

## **N.J.A.C. 19:31**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS***

### **Title 19, Chapter 31 -- Chapter Notes**

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#### **Statutory Authority**

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##### **CHAPTER AUTHORITY:**

N.J.S.A. 34:1B-1 et seq.

#### **History**

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##### **CHAPTER SOURCE AND EFFECTIVE DATE:**

R.2018 d.122, effective May 8, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

##### **CHAPTER HISTORICAL NOTE:**

Chapter 31, Authority Assistance Programs, was adopted as R.1990 d.410, effective August 20, 1990. See: 22 N.J.R. 1545(a), 22 N.J.R. 2536(a).

Subchapter 7, Local Development Financing Fund, was adopted as R.1992 d.421, effective October 19, 1992. See: 24 N.J.R. 2534(a), 24 N.J.R. 3735(a).

Subchapter 8, Hazardous Discharge Site Remediation Fund, was adopted as R.1994 d.192, effective April 18, 1994. See: 25 N.J.R. 4468(a), 26 N.J.R. 1706(c).

Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund, was adopted as R.1994 d.376, effective July 18, 1994. See: 26 N.J.R. 1613(a), 26 N.J.R. 2919(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.1995 d.435, effective July 20, 1995. See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Subchapter 10, Business Employment Incentive Program, was adopted as R.1996 d.470, effective October 7, 1996. See: 28 N.J.R. 3058(a), 28 N.J.R. 4510(b).

Subchapter 11, Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, was adopted as R.1998 d.151, effective March 16, 1998. See: 29 N.J.R. 5236(b), 30 N.J.R. 1054(a).

Subchapter 12, Technology Business Tax Certificate Transfer Program, was adopted as R.1999 d.381, effective November 1, 1999. See: 31 N.J.R. 2522(a), 31 N.J.R. 3525(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.2000 d.297, effective June 16, 2000. See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Chapter 31, Authority Assistance Programs, was readopted as R.2005 d.274, effective July 22, 2005. As a part of R.2005 d.274, Subchapter 5, Export Revolving Line of Credit; Subchapter 6, New Jersey Trade Adjustment Assistance Center; Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund and Subchapter 13, Rules for Implementation of an Act Concerning the Restructuring of Certain Solid Waste Facility Bonds, and Providing for the Financing Thereof through the New Jersey Economic Development Authority, P.L.2001, c.401 were repealed, effective August 15, 2005. See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Subchapter 4, Downtown Beautification Program, was repealed by R.2009 d.38, effective January 20, 2009. See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Subchapter 9, Urban Transit Hub Tax Credit Program, was adopted as new rules by R.2009 d.53, effective February 2, 2009. See: 40 N.J.R. 6426(a), 41 N.J.R. 807(a).

Pursuant to P.L. 2008, c. 27, § 10 (N.J.S.A. 34:1B-219) and by notice of administrative change, Subchapter 3, Energy Sales Tax Exemption Program, of Chapter 121 of Title 12A was recodified as Subchapter 13 of Chapter 31 of Title 19, effective January 29, 2009. See: 41 N.J.R. 1102(a).

Subchapter 5, InvestNJ Business Grant Program, and Subchapter 6, Main Street Business Assistance Program, were adopted as special new rules by R.2009 d.73, effective February 2, 2009. See: 41 N.J.R. 1103(a). Subchapter 5, InvestNJ Business Grant Program, and Subchapter 6, Main Street Business Assistance Program, were adopted as concurrent new rules by R.2009 d.181, effective May 4, 2009. See: 41 N.J.R. 2338(a).

Subchapter 14, Business Retention and Relocation Assistance Grant Program, was recodified from Subchapter 1 of N.J.A.C. 12A:2; Subchapter 15, Tax Credit Certificate Transfer Program, was recodified from Subchapter 1 of N.J.A.C. 12A:2A; Subchapter 16, Sales and Use Tax Exemption Program, was recodified from Subchapter 2 of N.J.A.C. 12A:2A; and Subchapter 17, Energy Sales Tax Exemption Program for Certain Counties, was recodified from Subchapter 4 of N.J.A.C. 12A:2A by R.2010 d.231, effective October 18, 2010. See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Chapter 31, Authority Assistance Programs, was readopted as R.2010 d.285, effective November 9, 2010. As a part of R.2010 d.285, Subchapter 5, InvestNJ Business Grant Program, was repealed, effective December 6, 2010. See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Subchapter 4, Economic Redevelopment and Growth Program, was adopted as special new rules by R.2011 d.152, effective May 3, 2011. See: 43 N.J.R. 1372(a). Subchapter 4, Economic Redevelopment and Growth Program, was adopted as concurrent new rules by R.2012 d.030, effective January 6, 2012. See: 44 N.J.R. 307(a).

Subchapter 18, Grow New Jersey Assistance Program, was adopted as new rules by R.2012 d.118, effective June 18, 2012. See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Subchapter 19, Angel Investor Tax Credit Program, was adopted as new rules by R.2013 d.132, effective November 4, 2013. See: 45 N.J.R. 1902(a), 45 N.J.R. 2399(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 31, Authority Assistance Programs, was scheduled to expire on November 9, 2017. See: 43 N.J.R. 1203(a).

Chapter 31, Authority Assistance Programs, was readopted as R.2018 d.122, effective May 8, 2018. As a part of R.2018 d.122, Subchapter 11, Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, was renamed Petroleum Underground Storage Tank Remediation, Upgrade, and Closure Fund. See: Source and Effective Date. See, also, section annotations.

Subchapter 20, Offshore Wind Economic Development Tax Credit Program, was adopted as special new rules by R.2018 d.194, effective October 17, 2018 (to expire October 17, 2019). See: 50 N.J.R. 2254(a). Subchapter 20, Offshore Wind Economic Development Tax Credit Program, was re-adoption of special new rules by R.2020 d.024, effective February 18, 2020. See: 51 N.J.R. 1699(a), 52 N.J.R. 208(a).

Subchapter 21, Garden State Film and Digital Media Jobs Program, was adopted as special new rules by R.2018 d.203, effective November 9, 2018 (to expire June 28, 2019). See: 50 N.J.R. 2422(a). Subchapter 21, Garden State Film and Digital Media Jobs Program, was re-adoption of special new rules by R.2020 d.007, effective December 4, 2019, with provisions of R.2018 d.203 re-adoption with non-substantial changes effective January 6, 2020. See: 51 N.J.R. 1256(a), 52 N.J.R. 58(b). See, also, section annotations.

Subchapter 22, Emerge Program Rules, was adopted as special and concurrently proposed new rules by R.2021 d.063, effective May 20, 2021 (scheduled to expire on November 20, 2021, but was extended by Executive Order No. 127 (2020) and P.L. 2021, c. 103, to January 1, 2022). Adopted concurrent new rules were adopted as R.2022 d.018, effective December 15, 2021. See: 53 N.J.R. 1091(a), 54 N.J.R. 160(b).

Subchapter 5, Main Street Recovery Finance Program, was adopted as special adopted and concurrently proposed new rules, and Subchapter 6, Main Street Business Assistance Program, was repealed, as specially adopted and concurrently proposed rules by R.2021 d.106, effective August 26, 2021 (to expire February 22, 2022). See: 53 N.J.R. 1631(a).

Subchapter 24, PPE Manufacturing Tax Credit Program, was adopted as special adopted and concurrently proposed new rules by R.2021 d.095, effective August 5, 2021. Subchapter 24, PPE Manufacturing Tax Credit Program, was adopted as new rules by R.2021 d.140, effective November 8, 2021. See: 53 N.J.R. 1519(a), 53 N.J.R. 2075(a).

Subchapter 5, Main Street Recovery Finance Program, was adopted as specially adopted and concurrently proposed new rules, and Subchapter 6, Main Street Business Assistance Program, was repealed, as specially adopted and concurrently proposed rules by R.2021 d.106, effective August 26, 2021. Subchapter 5, Main Street Recovery Finance Program, was adopted as new rules, and Subchapter 6, Main Street Business Assistance Program was repealed by R.2021 d.149, effective November 23, 2021. See: 53 N.J.R. 1631(a), 53 N.J.R. 2247(b).

Subchapter 23, Aspire, was adopted as specially adopted and concurrently proposed new rules by R.2021 d.143, effective November 15, 2021 and extended automatically upon filing (to expire November 10, 2022). See: 53 N.J.R. 2252(a).

Subchapter 22, Emerge Program Rules, was renamed Emerge by R.2022 d.058, effective May 16, 2022. See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

Subchapter 25, Evergreen, was adopted as specially adopted and concurrently proposed new rules by R.2022 d.065, effective April 29, 2022 and extended automatically upon filing (to expire April 24, 2023). See: 54 N.J.R. 1185(a). Subchapter 25, Evergreen, was adopted as new concurrent rules with changes by R.2023 d.052, effective May 1, 2023. See: 54 N.J.R. 1185(a), 55 N.J.R. 961(b).

Subchapter 26, Historic Property Reinvestment Program, was adopted as new rules by R.2022 d.137, effective November 7, 2022. See: 54 N.J.R. 531(a), 54 N.J.R. 2091(b).

In accordance with N.J.S.A. 52:14B-5.1.d(1), Subchapter 23, Aspire, the expiration date was extended by gubernatorial directive from November 10, 2022 to November 10, 2023. See: 54 N.J.R. 2152(b).

Subchapter 27, Brownfields Redevelopment Incentive Program, was adopted as specially adopted and concurrently proposed new rules by R.2022 d.144, effective November 2, 2022 (to expire April 25, 2024). See: 54 N.J.R. 2228(a). Subchapter 27, Brownfields Redevelopment Incentive Program, was adopted as concurrent new rules by R.2023 d.065, effective May 15, 2023. See: 54 N.J.R. 2228(a), 55 N.J.R. 1027(a).

Subchapter 28, Food Desert Relief Tax Credit Program, was adopted as specially adopted and concurrently proposed new rules by R.2023 d.072, effective May 4, 2023 (to expire October 25, 2024). See: 55 N.J.R. 1212(a).

## **N.J.A.C. 19:31-1.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 1. BOND FINANCING PROGRAM***

### **§ 19:31-1.1 Program description**

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- (a)** The Authority is empowered to issue tax-exempt and taxable bonds, the proceeds of which can be used to provide low-interest loans to businesses, governmental entities and certain nonprofit organizations to finance projects which provide or maintain employment and/or tax ratables.
- (b)** Most bond financings are not guaranteed by the Authority or the State, and are payable solely from revenues generated by the project being financed.
- (c)** The general credit of neither the Authority nor the State is pledged to secure the bonds.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 New Jersey Register 1705(a), 32 New Jersey Register 2602(c).

In (a), inserted a reference to governmental entities.

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## N.J.A.C. 19:31-1.2

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### **§ 19:31-1.2 Bond purchaser**

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- (a) The applicant shall secure a written commitment from a bond purchaser.
- (b) A bond purchaser shall be:
  - 1. A commercial bank or other institutional lender;
  - 2. An underwriter or placement agent;
  - 3. A privately owned entity; or
  - 4. An individual.
- (c) A bond purchaser other than a commercial bank or institutional lender must submit an Application to Purchase Bonds, which will be reviewed by the Authority to determine acceptability to purchase a bond. This application includes requests for identification of, or information about:
  - 1. The officers, directors, partners, owners and stockholders of the applicant;
  - 2. Litigation involving the applicant;
  - 3. Applicant's counsel, principal banks of account, and accountant; and
  - 4. Financial statements of applicant.
- (d) The bond purchaser establishes the amount, term, interest rate, collateral, etc., for the bond in negotiation with the applicant.

### **History**

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#### **HISTORY:**

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 New Jersey Register 1485(b), 29 New Jersey Register 2844(b).

Deleted (c), barring bond purchaser from being substantial owner or user of project; and recodified former (d) and (e) as (c) and (d).

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## **N.J.A.C. 19:31-1.3**

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### **§ 19:31-1.3 Bond financing**

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- (a)** Typically, the bonds are secured by a loan agreement and a mortgage on project assets.
- (b)** The funds raised by the bond issue are loaned by the Authority to pay for eligible project costs. The borrower signs an agreement with the Authority pledging to make payments sufficient to cover principal and interest on the bond. This agreement is then assigned to the bond purchaser.
- (c)** The borrower makes payments directly to the bond purchaser or trustee.

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## **N.J.A.C. 19:31-1.4**

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### **§ 19:31-1.4 Eligibility standards**

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**(a)** Generally, to be eligible for bond financing:

1. A project must serve a public purpose; that is, maintain or expand employment in New Jersey, assist in the economic development or redevelopment of a municipality, maintain or increase the tax base of the municipality, and maintain or diversify business and industry in the State; and
2. Applicants must represent to the Authority that they would not proceed with their project in the present time, place, or scope without the Authority's assistance.

**(b)** The Authority generally will not approve financial assistance to a project involving relocation within New Jersey if the relocation will result in a job loss and/or hardship for the existing employees or if the relocation endangers the maintenance of tax ratables in a particular community.

**(c)** There is no minimum size for borrowings under the program, but loan requests of less than \$ 750,000 should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

**(d)** Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Codes (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project.

**(e)** Taxable bonds issued through the Authority are not subject to the IRC. Loans may be made to borrowers for various projects and purposes including, but not limited to:

1. Office buildings;
2. Healthcare financings;
3. Warehouses and distribution facilities;
4. Manufacturing projects;
5. Commercial and retail projects;
6. Debt refinancing; and
7. Working capital needs.

### **History**

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**HISTORY:**

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 New Jersey Register 1485(b), 29 New Jersey Register 2844(b).

In (d), deleted last sentence, relating to tax exemptions for interest income.

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## **N.J.A.C. 19:31-1.5**

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### **§ 19:31-1.5 Application procedures**

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- (a)** A prospective applicant should consult with the Authority to determine if the project is eligible.
- (b)** To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.
- (c)** The Application includes requests for information about:
  - 1. The applicant's business, including financial statements and projections;
  - 2. The project to be undertaken;
  - 3. The officers, directors, partners, owners and stockholders of the applicant;
  - 4. Litigation involving the applicant;
  - 5. Other users of the project, if applicable;
  - 6. Municipal approvals, if applicable;
  - 7. Contractors, subcontractors, architects, engineers, and planners who will work on the project, if known;
  - 8. Equipment to be purchased as part of the project; and
  - 9. The relocation of any part of the applicant's or user's business, if applicable.
- (d)** Applications are logged in and assigned a number and project officer for review and processing.
- (e)** Applications are assigned to a bond counsel firm from the Authority's list of designated bond counsel to review the project for eligibility under Federal and State law (see N.J.A.C. 19:31-1.6). At the time of application, applicants may request assignment of one of the designated bond counsel firms, which request may be approved by the Authority at its discretion.
- (f)** Applications are processed through several levels of staff review, and may then be recommended for consideration and official action of the Members of the Authority (Members) at a public meeting. The applicant has no right to have its Application presented to the Members.

## **N.J.A.C. 19:31-1.6**

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### **§ 19:31-1.6 Bond counsel review and fees**

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**(a)** The Authority is represented in bond transactions by bond counsel, a private law firm with particular experience and expertise in this specialized area of law. The bond counsel firm:

1. Reviews Applications to determine eligibility under Federal and State law;
2. Assists the Authority in drafting the necessary resolutions to be adopted concerning projects;
3. Publishes notice of public hearing;
4. Drafts financing documents to be used in the transaction;
5. Prepares certain Federal forms for filing with the IRS relating to bond financing;
6. Delivers an opinion at the settlement of the transaction indicating, among other things:
  - i. The project qualifies for Authority assistance;
  - ii. The Authority has taken all necessary steps to accomplish the transaction; and
  - iii. The interest income to be earned on the Authority bonds issued for the project is exempt from most Federal and/or State income taxes.

**(b)** Bond counsel fees are paid by the applicant usually at the closing of the transaction, and may, subject to certain limitations, be included as a project cost to be financed out of the Authority bond issue.

**(c)** The borrower also is responsible for paying other professional fees associated with financing the project, including, but not limited to:

1. Printing fees;
2. Real estate commissions;
3. Consulting fees; and
4. Bond purchaser counsel fees.

**(d)** Applicants may be charged a fee by bond counsel even though the project does not close with Authority bonds.

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## **N.J.A.C. 19:31-1.7**

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### **§ 19:31-1.7 Approval process**

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- (a)** Only the Members acting at a duly constituted public meeting can authorize or approve assistance to a project. These public meetings will satisfy the requirements for public hearings in accordance with the IRC. The Authority staff is not empowered to authorize or approve such assistance.
- (b)** The following approvals are required:
- 1.** A preliminary resolution prepared by bond counsel making certain affirmative findings and determinations concerning the eligibility for assistance.
    - i.** Such official action permits an applicant to begin making expenditures on the project without jeopardizing the tax-free eligibility.
    - ii.** If an applicant makes substantial expenditures on a project prior to such official action, the expenditures may not be eligible for tax-free financing. The applicant should consult with bond counsel for advice as to how the IRC applies to expenditures.
    - iii.** A preliminary approval is not by itself sufficient authorization to permit the issuance of bonds;
  - 2.** A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:
    - i.** Receipt of a written commitment acceptable to the Authority from a bond purchaser;
    - ii.** Substantial agreement among the interested parties as to the form and substance of the financing documents; and
    - iii.** Availability under the State volume cap or carryforward bond allocation for bond financing in accordance with the IRC; and
  - 3.** Approval of the Governor.
- (c)** Bond counsel may prepare a combination resolution granting both preliminary and final bond approval at a single meeting, if the requirements set forth in (b)1 and 2 above have been met.
- (d)** The bond closing must occur within a specified period of time, usually not exceeding 90 days from the date of final bond approval.

### **History**

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**HISTORY:**

N.J.A.C. 19:31-1.7

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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## **N.J.A.C. 19:31-1.8**

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### **§ 19:31-1.8 Attorney General review**

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All financing documents, including the Application, are subject to review by the Attorney General.

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## **N.J.A.C. 19:31-1.9**

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### **§ 19:31-1.9 Post-closing review**

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The loan agreement executed with the Authority includes certain public purpose covenants and obligations that must be observed by the applicant during the term of the financing. Failure to comply with these covenants and obligations may result in cancellation of the bond by the Authority.

### **History**

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#### **HISTORY:**

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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## **N.J.A.C. 19:31-2.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS***

### **§ 19:31-2.1 Program description**

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**(a)** The Authority is empowered to guarantee a portion of the principal amount of a financing which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee.

**(b)** The Authority is empowered to own and lease equipment and/or real estate to eligible applicants.

**(c)** There are four types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees, Special Guarantees, and Smart Growth Pre-Development Guarantees.

**1.** Under the Fixed Assets Guarantee program:

**i.** The Authority may guarantee the lesser of \$ 2.0 million or 90 percent of the principal amount of the financing.

**ii.** The financing can either be:

**(1)** A taxable or tax-exempt Authority-issued bond financing (see N.J.A.C. 19:31-1); or

**(2)** Any other form of financing other than as stated in (b)1ii(1) above, including, but not limited to, bank loans, lease financing, seller take-back financing, Federal take-back financing and financings described in (b)3ii(1) and (2) below ("conventional financing");

**iii.** Proceeds of guaranteed conventional financing can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings; and

**iv.** Use of the proceeds of tax-exempt bond financing is governed by the Internal Revenue Code.

**2.** Under the Working Capital Guarantee program:

**i.** The Authority may guarantee the lesser of \$ 1.5 million or 90 percent of the principal amount of the financing;

**ii.** The financing can be either a conventional financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code; and

**iii.** The financing proceeds can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

**3.** Under the Special Guarantee program:

- i. The Authority may guarantee any amount;
- ii. The Authority guarantee shall be of:
  - (1) A loan or guarantee from a governmental entity which may be the Federal or State government, a department of the Federal or State government, an agency of the Federal or State government or a political subdivision of the State of New Jersey;
  - (2) A loan made under the Community Lending Program of the Federal Home Loan Bank of New York;
  - (3) Bonds issued by the Authority as a part of a bond issue for the benefit of multiple borrowers (whether or not such bond issue consists of multiple series of bonds issued for the benefit of individual borrowers);
  - (4) Conventional financing. An applicant for a conventional financing guarantee shall:
    - (A) Be in an industry and municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5;
    - (B) Demonstrate to the Authority that it has viable options to vacate the State or locate to another state, has been offered economic incentives by the competing state and that, without the special guarantee the applicant will not undertake the relocation or expansion in the State; and
    - (C) Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$ 65,000 per full-time job created and/or maintained; or
  - (5) Structured finance assistance. For purposes of this sub-subparagraph and the transaction documents, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Base years" means the first two complete calendar years following the approval by the members provided, however, that, at its discretion, an approved applicant may notify the Authority that the base years have terminated prior to such date, and further provided that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

"Designated industries" means a business engaged in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology as these terms are more particularly defined in N.J.A.C. 19:31-10.2.

"Disaster recovery center" means a redundant facility used to house back-up systems to be used in the event of a business interruption at the primary facility of the business.

"Employment compliance period" means with respect to net new full-time permanent jobs to be created, the five consecutive years immediately following the base years. Compliance with other covenants required by the transaction documents may be longer than the employment compliance period.

"Full-time permanent job" means a job filled by a full-time employee as that term is defined at N.J.A.C. 19:31-10.2.

"Manufacturing business" means a business in which more than 50 percent of the business conducted is the transformation of raw materials into finished goods for sale.

"Net new full-time permanent job" means the full-time permanent jobs created. "Net new full-time permanent job" shall not include any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of the application unless the employee's position at his or her previous employer is filled by a new employee.

"Structured finance assistance" means the program set forth in this sub-subparagraph, whereby the Authority purchases machinery, equipment, furniture, leasehold improvements or construction materials using the sales tax exemption granted to the Authority pursuant to N.J.S.A. 54:32B-9 and leases such items to an approved applicant.

**(A) Eligibility.** In order to be eligible for structured finance assistance, an applicant shall:

- I.** Demonstrate that the project is a designated industry as that term is defined in N.J.A.C. 19:31-10.2; and is located either in a Metropolitan Planning Area (PA 1), Suburban Planning Area (PA 2), designated center or an area designated for growth in a plan that has been endorsed by the New Jersey State Planning Commission at N.J.S.A. 52:18A-196 et seq.;
- II.** Demonstrate to the Authority that it has viable options to locate the project out of the State, has been offered economic incentives by a competing state and that, without the structured finance assistance, the applicant will not relocate or expand the project in the State;
- III.** Create a minimum 10 net new full-time permanent jobs for manufacturing businesses and designated industries. For disaster recovery centers which will increase the tax base of the State or any political subdivision of the State, the Authority may waive the requirement for the creation of net new full-time permanent jobs.
- IV.** For manufacturing businesses and designated industries, demonstrate that the business is making a minimum capital investment in the facility of \$ 10,000,000. For disaster recovery centers, demonstrate that the business is making a minimum capital investment in the facility of \$ 15,000,000.
- V.** The business is not eligible for assistance under structured finance if the business is eligible for assistance under the Sales Tax Exemption component of the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65, as amended. The business is not eligible for assistance under structured finance if the business has entered into an agreement for a Business Employment Incentive Program Grant at the project site (P.L. 1996, c. 26 as amended).

**(B) Program requirements.** Eligible applicants for structured finance assistance must comply with the following requirements:

- I.** The Authority's exposure (if any) shall not exceed \$ 65,000 per full-time permanent job;
- II.** The maximum time allowed for acquisition of machinery, equipment, furniture and fixtures, leasehold improvements or construction materials shall

be five years from the approval by the members of the project although the actual lease term may be for a longer period; and

**III.** Structured finance assistance shall have a rolling cap of \$ 40 million of sales tax benefit per two-year period based on the State's fiscal year. In the event that the rolling cap is met, the EDA may seek the approval of the State Treasurer to exceed the cap and shall only proceed with the administration of the sales tax benefit with the State Treasurer's written approval. By example, if the sales tax benefit approved in fiscal year 1 was \$ 18 million, the amount available for approval in fiscal year 2 would be \$ 22 million.

**(C)** If a firm does not meet their projections for net new full-time permanent jobs, it shall return to the State a proportionate percentage of the sales tax benefit.

**(D)** Fees are as follows:

**I.** A non-refundable application fee of \$ 1,000 shall accompany every application for assistance.

**II.** A closing fee of \$ 25,000 shall be paid to the Authority by the business at the time of closing.

**III.** A lease origination fee equal to 10 percent of the sales tax benefit shall be paid to the Authority by the business at the lease tranche closing(s), as they occur.

**IV.** A sales and use tax exemption letter fee of \$ 500.00 per year for each year a letter is issued by the Authority shall be paid to the Authority by the business.

**V.** An asset re-acquisition fee equal to 10 percent of the residual value of the machinery, equipment, furniture and fixtures shall be paid to the Authority by the business. The residual value will have a floor of one percent of the original purchase price and sales tax allocable to the residual value.

**4.** Under the Smart Growth Pre-development Guarantee Program:

**i.** The amount of the Authority guarantee shall not exceed \$ 1.0 million;

**ii.** The financing can be either a conventional financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code;

**iii.** The financing proceeds shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs; and

**iv.** Applicants for Smart Growth Pre-development Guarantee shall have projects which must be located either in Planning Areas 1 or 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

**(d)** Both the Fixed Asset guarantee and the Working Capital guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term. Smart Growth Pre-development guarantees have a maximum term of three years. A Special Guarantee term shall not exceed the term of the financing. Film Production Assistance Program guarantee terms will be

determined on a project-by-project basis. Factors to be considered in determining the terms of the guarantee are as set forth in N.J.A.C. 19:31-2.4.

## History

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### HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (b), substituted "three types" for "two types" and added "and Special Guarantees"; in (b)1ii(1), inserted "Authority issued"; added (b)1ii(2); substantially amended (b)2ii; in (b)iii, substituted "financing proceeds" for "loan proceeds"; inserted (b)3; and in (c), added last sentence.

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Inserted a new (b); recodified former (b) and (c) as (c) and (d); and in the new (c)3, inserted "or locate to another state" following "State" in ii(4)(B), and substituted a reference to companies for a reference to existing New Jersey companies in iii.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

Inserted (c)3ii(5).

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), deleted the second sentence; rewrote (c).

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

In (c), rewrote the introductory paragraph and added 4; in (d), added the last sentence.

Amended by R.2004 d.346 and d.347, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a), 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote (c); in (d), added the second sentence.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote (c).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

In (c), added definitions "Designated industries", "Disaster recovery center", and "Manufacturing business", rewrote definitions "Employment compliance period" and "Net new full-time permanent job", rewrote (A), deleted former (C), recodified and rewrote former (D) as (C), added (D).

Amended by R.2008 d.89, effective April 7, 2008.

See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).

In (c)2i, substituted "\$ 1.5 million" for "\$ 1 million".

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Deleted (c)6.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In the introductory paragraph of (c), substituted "four" for "five", and deleted "Film Production Program Assistance Guarantees" following "Special Guarantees, "; deleted (c)4; and recodified (c)5 as (c)4.

Amended by R.2014 d.187, effective December 15, 2014.

See: 46 N.J.R. 1682(a), 46 N.J.R. 2420(a).

In the introductory paragraph of (c), substituted "Pre-Development" for "Pre-development", in (c)3ii(4)(C) and (c)3ii(5)(B)I, substituted "\$ 65,000" for "\$ 50,000"; and in (c)3ii(4)(C), inserted "full-time".

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## **N.J.A.C. 19:31-2.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS***

### **§ 19:31-2.2 Eligibility standards**

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**(a)** Generally, preference for guarantees is given to projects which:

1. Are job intensive;
2. Will create or maintain tax ratables;
3. Are located in an economically distressed area; and/or
4. Represent an important economic sector of the State.

**(b)** For fixed asset financing guarantees, the applicant will be required to invest at least 10 percent equity into the project.

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## **N.J.A.C. 19:31-2.3**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS***

### **§ 19:31-2.3 Application procedures**

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- (a)** The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.
- (b)** To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.
- (c)** A completed Application includes:
  - 1. A history and description of the applicant's business;
  - 2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
  - 3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
  - 4. A current interim statement, if the most recent annual financial statement is more than six months old;
  - 5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
  - 6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
  - 7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;
  - 8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and
  - 9. A formal commitment letter from the lender providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.
- (d)** The Authority may also require:
  - 1. Appraisal(s) on real property and/or machinery and equipment;
  - 2. Aging of accounts receivable;
  - 3. Aging of accounts payable; and/or
  - 4. Any additional information deemed necessary to evaluate the Application.



(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

## History

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### HISTORY:

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added a new (e) and recodified former (e) as (f).

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Deleted (e); and recodified (f) as (e).

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## **N.J.A.C. 19:31-2.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS***

### **§ 19:31-2.4 Evaluation process**

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**(a)** When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

**(b)** After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing.

**(c)** If a positive determination is made, the requested financing is presented to the Members for approval.

### **History**

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**HISTORY:**

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added (a)9.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a)7, inserted "and" at the end; in (a)8, substituted a period for "; and" at the end; and deleted (a)9.

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## **N.J.A.C. 19:31-2.5**

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### **§ 19:31-2.5 Approval process**

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- (a)** Only the Members can approve a guarantee, either directly or through delegation.
- (b)** When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.
- (c)** The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.
- (d)** If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.
  - 1.** The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.
  - 2.** Except for the Structured Finance Program, usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as collateral assignee.
  - 3.** Except for the Structured Finance Program, personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.
- (e)** When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.
- (f)** When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the guarantee is delivered to the lender.

### **History**

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#### **HISTORY:**

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote (a) and (d).

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

In (d)2 and (d)3, deleted "Angel Investor Program guarantee and the" preceding "Structured".

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## **N.J.A.C. 19:31-2.6**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS***

### **§ 19:31-2.6 Attorney General review**

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All financing documents, including the Application, are subject to review by the Attorney General's Office.

### **History**

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#### **HISTORY:**

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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## **N.J.A.C. 19:31-3.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 3. DIRECT LOAN PROGRAM***

### **§ 19:31-3.1 Program description**

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- (a) The Authority is empowered to make direct loans to applicants that are unable to obtain funding from conventional sources even with the help of an Authority guarantee.
- (b) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of \$ 2,000,000 for fixed asset financing and \$ 750,000 for working capital.
1. For the Smart Growth Pre-development Loan Program, the maximum loan amount will be \$ 1 million.
  2. For the Brownfields Loan Program, the maximum loan amount will be \$ 5,000,000 and the minimum shall be \$ 100,000.
  3. The maximum amount of combined total financing under the Smart Growth Pre-development and Brownfield Redevelopment loan program(s) is \$ 1.0 million.
  4. The maximum amount of total financing for the New Jersey Growth Fund Program shall be \$ 1 million per transaction.
  5. For the urban loan product, the maximum loan amount will be \$ 3 million, not to exceed 50 percent of the total project costs, for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of under \$ 70 million; and \$ 5 million for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of over \$ 70 million.
  6. For the Edison Innovation Angel Growth Fund, the Authority may award up to \$ 250,000 in convertible debt financing to leverage private angel investments, on a two to one angel matching fund requirement, to a business that has generated a minimum of \$ 250,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, the Authority may award up to \$ 1 million in convertible debt financing to leverage institutional venture backed investments or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest, on a one to one matching fund requirement, to a business that has generated a minimum of \$ 500,000 or for the Edison Innovation Angel Growth Fund a minimum of \$ 250,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, the Authority may award up to \$ 500,000 in convertible debt financing, on a one to one matching fund requirement, to a business that has generated a minimum of \$ 2 million in prior 12-month commercial revenues. Except as otherwise provided, the total amount of assistance that a business may receive under the various programs funded by the Edison Innovation Fund, or any similar assistance provided by any other State agency, shall

not exceed \$ 1 million dollars. Notwithstanding the foregoing, any amount received by a business under the Edison Innovation Growth Stars Fund, Edison Innovation Clean Energy Manufacturing Fund, and Edison Innovation Green Growth Fund, shall not be considered in the \$ 1 million dollar limit.

**7.** For the Loans to Lenders component of the Fund for Community Economic Development, the maximum loan amount will not exceed \$ 750,000, except that Loans to Lenders may be used to develop grocery stores and supermarkets with a maximum loan amount of \$ 3 million, provided that no more than \$ 4 million will be used for this purpose. For the pre-development assistance component of the Fund for Community Economic Development, the maximum loan amount will not exceed \$ 50,000 per project.

**8.** For the Real Estate Impact Fund:

**i.** The maximum loan amount for a developer or business will be \$ 3 million, not to exceed 25 percent of the total project costs; and the total amount of public assistance that a developer or business may receive shall not exceed 50 percent of the total project costs; and

**ii.** The maximum loan amount for a municipality will be \$ 750,000; the loan amount for a municipality shall be the lesser of 100 percent of the total project costs or the property's appraised value in its remediated state, divided by 120 percent, rounded to the nearest one hundred dollars.

**(c)** Proceeds of fixed asset loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings.

**(d)** Proceeds of working capital loans can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

**(e)** Proceeds of Smart Growth Pre-development loans shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs.

**(f)** Proceeds of Brownfields loans shall be used for financing those costs not duplicative of other approved State or Federal grants previously awarded for the proposed use of funds and associated with the remediation project, including, but not limited to: soil, groundwater, and infrastructure investigation, assessment, and remediation; abatement; hazardous materials or waste disposal; long-term groundwater remediation, natural attenuation, or other forms of engineering and institutional controls; building and structural remedial activities, including, but not limited to, demolition, asbestos abatement, polychlorinated biphenyl removal, contaminated wood or paint removal, or other infrastructure remedial activities; attorney fees; and planning, engineering, and environmental consulting. Not more than 20 percent of the brownfields loan may be used for soft costs.

**(g)** Proceeds of urban loans shall be used for fixed asset financing as set forth in (c) above, not to exceed 50 percent of total project costs, in the nine urban centers designated in the New Jersey State Development and Redevelopment Plan (Atlantic City, Camden, East Orange, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton).

**(h)** Proceeds of Real Estate Impact Fund loans may be used by a developer, business, municipality, local redevelopment agency, or county improvement authority for eligible project development costs within municipalities qualified to receive assistance under P.L. 1978, c. 14



(N.J.S.A. 52:27D-178 et seq.) or by a developer or business within Fort Monmouth or as part of New Jersey university/college sponsored projects that include public-private partnerships that promote emerging technologies or industries.

**(i)** The Authority shall determine the term, and fixed and/or variable rates of interest, including interest rate floors, to be charged for each loan product through consideration and official action of the Members at a public hearing. The applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate or a variable interest rate.

**1.** Fixed Rate Interest: Interest on fixed asset or working capital loans will be fixed at the time of closing, with a floor that shall be indexed to a nationally recognized financial index, such as the five-year United States Treasury Bond of like term, plus or minus any additional basis points to be determined by the Authority. During the term of any loan, a scheduled rate reset shall not result in an increase of more than five percentage points greater than the original calculated interest rate.

**2.** Variable Rate Interest: Interest on fixed asset and working capital loans will be set with a floor that shall be indexed to a nationally recognized rate, such as the Prime Rate as published in the Wall Street Journal at the time of closing, plus or minus any basis points to be determined by the Authority. The interest rate will be variable, adjusted on the first business day of each calendar quarter in accordance with the relationship of the original calculated interest rate. The maximum increase in the variable interest rate during the term of the loan will be no more than five percentage points greater than the original calculated interest rate.

**3.** For fixed and variable rate loans, factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:

**i.** An applicant's creditworthiness;

**ii.** Amortization schedules;

**iii.** The quality of collateral; and

**iv.** The number of full-time jobs created or maintained in New Jersey provided the Authority's exposure may not exceed \$ 65,000 per job created or maintained.

**4.** For loans offered under the Edison Innovation Fund, the criteria for determining the rate of interest and additional basis points above the floor previously established by the Board may include the eligibility standards contained in N.J.A.C. 19:31-3.2(f).

**5.** In addition to any interest charged on an Edison Innovation Angel Growth Fund loan, an Edison Innovation VC Growth Fund loan, and an Edison Innovation Growth Stars Fund loan, the Authority may also require the payment of additional fees and charges, including, but not limited to, warrants, stock, stock options, a percentage of royalties, and a percentage of sales proceeds.

**6.** The rate of interest for Real Estate Impact Fund loans shall be determined by the economic feasibility and economics pertaining to the return on investment and the ability to attract the required investment; and full repayment shall be due and payable to the Authority at the earlier of the end of the loan term or a liquidity event, on terms and conditions mutually agreed upon based on the structure and merits of the project.

**7.** For Brownfields loans, full repayment shall be due and payable to the Authority at the earlier of the end of the loan term or upon closing of construction financing. The interest shall be fixed and shall be determined by the economic feasibility and economics pertaining to the

return on investment and the ability to attract the required investment. The Authority, at its sole discretion, may reduce the rate of interest based on factors associated with the redevelopment project's projected societal benefits and contribution to the economic development of the municipality and the areas to be affected by the redevelopment project as determined by a review of the redevelopment project design; such factors may include, but are not limited to:

- i.** The redevelopment project has been designed as a mixed-use residential project consisting of newly-constructed residential units where the developer will reserve at least 20 percent, but not more than 50 percent, of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the rules of the Council on Affordable Housing;
- ii.** The brownfield site is in an urban food desert community and the redevelopment project design includes a food delivery source, which means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to, a full-service supermarket or grocery store, or other healthy food retailers of at least 10,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals;
- iii.** The redevelopment project design includes a health care or health services center with a minimum of 10,000 square feet of space devoted to primary health care or health services and is located in a distressed municipality with a Municipal Revitalization Index score of 50 or lower;
- iv.** The redevelopment project has been designed as a tourism destination project, which means a non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which has been determined by the Authority to be located in an area appropriate for development and in need of economic development incentive assistance. A tourism destination project shall include a non-gaming business facility within an established tourism district with a significant impact on the economic viability of that district;
- v.** The redevelopment project design includes an electric vehicle charging station installation in at least 25 percent of the parking spaces to be located at the redevelopment project;
- vi.** The applicant demonstrates to the Authority that the parking area to be located at the redevelopment project is capable of conversion to commercial space if there is a decrease in demand for parking; and/or
- vii.** The redevelopment project has been designed to include an incubator facility or collaborative workspaces.

**8.** The Authority shall provide public notice of the loan terms and interest rates, including interest rate floors, to be charged for all loan products as authorized by the Members through, among other methods, listing on the agency's website at [www.njeda.com](http://www.njeda.com).

**(j)** For New Markets Loans:

**1.** The maximum amount of total financing for a New Markets loan is \$ 10 million, except for projects that provide extraordinary economic development benefits when the maximum amount of total financing for a New Markets loan is \$ 25 million.

**2.** For New Market Loans, the projects must be located within areas designated for smart growth land use development and designated by the New Jersey Development and Redevelopment Plan as in Planning Areas One or Two or in a designated center or endorsed plan. Additionally, projects must be located in communities and census tracts as approved by the Community Development Financial Institutions Fund (CDFI) as described in (j)2i through iii below and must have at least one of the characteristics described in (j)3 below.

- i. A poverty rate of at least 20 percent;
- ii. In the case of a tract not located within a Metropolitan area as defined by the United States Census, where the median income family income for such tract does not exceed 80 percent of the Statewide median family income; or
- iii. In the case of a tract located within a Metropolitan area, where the median family income for such tract does not exceed 80 percent of the greater of Statewide median income or the Metropolitan area median family income.

**3.** Additionally, New Markets loans must be located in at least one of the following types of designated areas:

- i. CDFI Hot Zone, Empowerment Zone, Renewal Community, HOPE VI Redevelopment area or Small Business Administration HUB Zone;
- ii. A brownfield redevelopment area, locally designated redevelopment area, or New Jersey Urban Enterprise Zone;
- iii. A census tract with an unemployment rate of 1.5 times the national average; or
- iv. A census area with a poverty rate greater than 30 percent or with median incomes of less than 60 percent of the area median income.

**4.** In addition to any interest charges on a New Markets loan, the Authority shall also require the payment of additional fees, including a one-time monitoring fee of \$ 1,000 and a management fee of five percent of the loan amount, with the exception of non-profit borrowers that will be charged a 3.5 percent management fee.

**(k)** For Small Businesses, Minorities' and Women's Enterprises loans:

**1.** Of the financial assistance allocated by the Authority from the funds made available pursuant to the provisions of N.J.S.A. 5:12-181, 50 percent shall be made available to women, and 50 percent shall be made available to minorities and all such funds shall be invested in accordance with the geographic restrictions established by N.J.S.A. 5:12-181;

**2.** Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to the provisions of N.J.S.A. 5:12-181, 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women;

**3.** For the purposes of financial assistance provided by the Authority pursuant to this subsection:

- i. A small business is a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women;

ii. A minority business is a business in which at least 51 percent of the beneficial ownership of the business is held by minorities and the majority of the management are minorities; and

iii. A women's business is a business in which at least 51 percent of the beneficial ownership of the business is held by women, and the majority of the management are women; and

4. Each application for a loan shall be accompanied by any proof of certification by a public entity which certifies that the business is beneficially owned by, and that the majority of the management are, minorities or women.

## History

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### HISTORY:

Amended by R.1992 d.126, effective March 16, 1992.

See: 24 N.J.R. 177(b), 24 N.J.R. 970(b).

Revised (e).

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Added (g) through (i).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (g)1, substituted "or" for "and" following "industry".

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), substituted "\$ 750,000" for "\$ 500,000" and "\$ 500,000" for "\$ 250,000"; in (g) and (h), substituted "\$ 750,000" for "\$ 500,000".

Amended by R.2002 d.223, effective July 15, 2002.

See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

Rewrote (e).

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

Rewrote (e).

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (e).

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Rewrote the section.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (b), added 4; rewrote (g) and (h).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

In (b), added 4; in (g)1 added iv.

Amended by R.2006 d.242, effective July 3, 2006.

See: 38 N.J.R. 1563(a), 38 N.J.R. 2887(c).

Inserted "at least the first seven years of" in (g)1iv.

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Deleted (b)5 and (g)1iv; deleted the last sentence of (h); and added ( l).

Amended by R.2008 d.89, effective April 7, 2008.

See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).

In the introductory paragraph of (b), substituted "\$ 1,250,000" for "\$ 750,000" and "\$ 750,000" for "\$ 500,000"; in the introductory paragraph of (i), substituted "\$ 1,250,000" for "\$ 750,000" twice; and in (j), substituted "\$ 1,250,000" for "\$ 750,000".

Amended by R.2008 d.90, effective April 7, 2008.

See: 40 N.J.R. 110(a), 40 N.J.R. 1928(a).

Added (b)5 and (b)6; added new (g); recodified former (g) through ( l) as (h) through (m); in the introductory paragraph of (h), substituted "(h)1" for "(g)1" and "(h)2" for "(g)2"; added (h)1iv and (h)1v; in (h)2, substituted "(h)1" for "(g)1"; in (h)3, inserted "or Edison Innovation R&D Fund" and "and incentives"; in (i), substituted "amortization may be" for "repayment schedule is usually" and "longer" for "shorter", and inserted "the use of proceeds and"; in (k), substituted "(j)" for "(i)" and "(j)2" for "(i)2"; in ( l), substituted "(j) and (k)" for "(i) and (j)"; and in the introductory paragraph of (m)4, substituted "(m)4i" for "( l)4i" and "(m)5" for "( l)5".

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

Rewrote (h); deleted former (i); recodified former (j) through (m) as (i) through ( l); in (j), substituted "(i)" for "(j)" and "(i)2" for "(j)2"; in (k), substituted "(i) and (j)" for "(j) and (k)"; deleted ( l)2 and ( l)3 and recodified former ( l)4 through ( l)6 as ( l)2 through ( l)4; in the introductory paragraph of ( l)2, substituted "Loans" for "loans", "in" for "is" following "Two or", "tracts" for "tracks", "( l)2i" for "(m)4i" and "( l)3" for "(m)5".

Amended by R.2008 d.294, effective October 6, 2008.

See: 40 N.J.R. 3980(a), 40 N.J.R. 5845(c).

Rewrote (b)5.

Amended by R.2009 d.139, effective April 20, 2009.

See: 41 N.J.R. 394(a), 41 N.J.R. 1891(a).

Added (b)7.

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Added new (h)3ii; and recodified former (h)3ii through (h)3ix as (h)3iii through (h)3x.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Added (m).

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

Rewrote (b)6 and (h)1; and in (h)5, substituted "Edison Innovation Angel Growth Fund loan, an Edison Innovation VC Growth Fund loan, and an Edison Innovation Growth Stars Fund loan" for "Edison Innovation R&D Fund loan,".

Amended by R.2012 d.101, effective May 21, 2012.

See: 44 N.J.R. 433(a), 44 N.J.R. 1644(a).

In (b)7, substituted "\$ 750,000" for "\$ 500,000".

Amended by R.2013 d.036, effective February 19, 2013.

See: 44 N.J.R. 2944(a), 45 N.J.R. 359(b).

In (b)6, substituted "\$ 1 million" for the second occurrence of "\$ 500,000" and inserted the last two sentences.

Amended by R.2013 d.082, effective June 3, 2013.

See: 45 N.J.R. 457(a), 45 N.J.R. 1413(b).

In (b)6, inserted "or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest".

Amended by R.2014 d.187, effective December 15, 2014.

See: 46 N.J.R. 1682(a), 46 N.J.R. 2420(a).

In the introductory paragraph of (b), substituted "\$ 2,000,000" for "\$ 1,250,000"; rewrote (h)3; deleted former (i) through (k); recodified ( l) as new (i); in the introductory paragraph of (i)2, substituted "(i)2i" for "( l)2i" and "(i)3" for ( l)3"; and recodified (m) as new (j).

Amended by R.2015 d.018, effective January 20, 2015.

See: 46 N.J.R. 2107(a), 47 N.J.R. 298(a).

Rewrote the section.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), substituted "that" for "which"; and in (b)6, substituted the second occurrence of "\$ 250,000" for "\$ 500,000", and inserted "or for the Edison Innovation Angel Growth Fund a minimum of \$ 250,000".

Amended by R.2017 d.070, effective April 17, 2017.

See: 49 N.J.R. 196(a), 49 N.J.R. 776(a).

Rewrote (b)8 and (h).

Amended by R.2019 d.111, effective October 7, 2019.

See: 51 N.J.R. 820(a), 51 N.J.R. 1537(a).

In (b)2, deleted "Redevelopment" following "Brownfields", and substituted "\$ 5,000,000 and the minimum shall be \$ 100,000" for "\$ 750,000"; rewrote (f); in the introductory paragraph of (i), deleted "at" preceding "a variable"; added (i)7; and recodified former (i)7 as (i)8.

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## **N.J.A.C. 19:31-3.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 3. DIRECT LOAN PROGRAM***

### **§ 19:31-3.2 Eligibility standards**

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**(a)** Generally, preference for direct loans is given to projects which:

1. Are job intensive;
2. Will create or maintain tax ratables;
3. Are located in an economically-distressed area; and/or
4. Represent an important economic sector of the State.

**(b)** For Smart Growth Pre-development loans, projects must be located in Planning Areas 1 and 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

**(c)** For brownfields loans:

1. The following words and terms, when used in this subchapter, shall have the following meanings only for purposes of the Brownfields Loan Program, unless the context clearly indicates otherwise:

- i. "Brownfields site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant or on which there is a contaminated building or which has been remediated for industrial use, but requires further remediation for mixed-use residential development.
- ii. "Contaminated building" means a structure for which abatement or removal of asbestos, polychlorinated biphenyls, contaminated wood or paint, and other infrastructure remedial activities is necessary.
- iii. "Contamination" or "contaminant" means any discharged hazardous substance as defined pursuant to section 3 of P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L. 1976, c. 99 (N.J.S.A. 13:1E-38), or pollutant as defined pursuant to section 3 of P.L. 1977, c. 74 (N.J.S.A 58:10A-3).
- iv. "Equity" means cash, development fees, costs for remediation and redevelopment project feasibility incurred within the 12 months prior to application, property value less any mortgages or liens, and the portion of the developer's fee that is delayed for a minimum of five years, and any other investment by the developer in the remediation or redevelopment project deemed acceptable by the Authority in its sole discretion but shall not include Federal, State, and local grants or Federal and State tax credits.



**v.** "Licensed site remediation professional" means an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to section 7 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-7) or the Department of Environmental Protection pursuant to section 12 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-12).

**vi.** "Local governmental redeveloper" means a municipal government, a municipal parking authority, a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3), a county improvement authority established pursuant to P.L. 1960, c. 183 (N.J.S.A. 40:37A-44 et seq.), or any subdivision, department, agency, or instrumentality of a county or municipality that is authorized to complete the remediation and redevelopment of a brownfield site.

**vii.** "Redevelopment project" means the specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, leased, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer, owner, or tenant, or both, at the brownfield site upon completion of the remediation project.

**viii.** "Remediation," "remediate," or "remedial activities" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in section 23 of P.L. 1993, c. 139 (N.J.S.A. 58:10B-1), provided, however, that "remediation," "remediate," and "remedial activities" shall not include the payment of compensation for damage to, or loss of, natural resources.

**ix.** "Remediation project" or "project" means the investigation, assessment, and remediation of a brownfield site.

- 2.** Applicants shall include potential purchasers or current owners of a brownfield site, including local governmental redevelopers, and shall not include individuals or entities responsible for, or individuals or entities who have common ownership or control with entities responsible for, any existing environmental contamination at the site or any individuals or entities that have indemnified a responsible party or a party who has common ownership or control with a responsible party. The applicant shall demonstrate to the Authority's satisfaction through the licensed site remediation professional or, as applicable for a structure, a qualified professional other than a licensed site remediation professional that the site is a brownfield site or the structure is a contaminated building;
- 3.** Demonstrate site control or a path to site control for the brownfield site;
- 4.** The brownfield site, in a remediated condition, shall have an appraised value equal to or greater than 100 percent of all debt financing, including the requested brownfields loan amount, unless the applicant can demonstrate other sources of collateral to the Authority's satisfaction;
- 5.** Future use of the site shall be commercial, including, but not limited to, manufacturing and retail, or mixed use.
- 6.** The applicant shall demonstrate the following to the Authority's satisfaction and based on the Authority's analysis, taking into account the costs of the remediation project:
  - i.** The redevelopment project is economically feasible, meaning there is enough cash flow to repay debt financing, including the brownfields loan; and

- ii. The redevelopment project has a funding gap, which shall be supported by a certification from the applicant that after making all good faith efforts to raise additional capital, additional capital cannot be raised from other sources;

**7.** Applications shall meet a minimum score and may be prioritized or selected in competitive rounds based on criteria that considers factors related to the economic distress of the municipality and the benefits of the proposed redevelopment project to the municipality and the State, including, but not limited to:

- i. The applicant is a non-profit entity;
- ii. The level of economic distress in the municipality as determined by the brownfield site being located in one of the 50 most distressed municipalities in the Municipal Revitalization Index, in an eligible Opportunity Zone pursuant to 26 U.S.C. § 1400Z-1 and 1400Z-2, or in a municipality serviced by the New Jersey Department of Environmental Protection Community Collaborative Initiative;
- iii. Investment received through a fund qualifying under 26 U.S.C. § 1400Z-1 and 1400Z-2, or engagement and collaboration with the Department of Environmental Protection Community Collaborative Initiative;
- iv. The brownfields site is located in Planning Area 1 (Metropolitan) pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.) and within a one-half mile radius, with bicycle and pedestrian connectivity, to the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation;
- v. The proposed plan for the reuse of the brownfield site is consistent with applicable local redevelopment plans;
- vi. The amount of the projected new tax revenues generated from the proposed use of the brownfield site;
- vii. The need of the loan to the viability of the remediation project and the redevelopment project;
- viii. The public health and environmental benefits of the proposed redevelopment project, in addition to the remediation of the brownfield site; and
- ix. The length of time the brownfield site has been abandoned or underutilized;

**8.** Remediation projects previously approved for reimbursement through the Brownfields and Contaminated Site Remediation Reimbursement Program are not eligible. Remediation projects that have not received any assistance from the Brownfields and Contaminated Site Remediation Program are eligible for a Brownfields loan provided that the loan is used for separate uses other than the reimbursement assistance.

**(d)** For Edison Innovation Fund loans, projects will be considered eligible if they have the following characteristics:

- 1. A commercially available product that meets the Authority's programmatic requirements in revenue thresholds, that is, for the Edison Innovation Angel Growth Fund, a minimum \$ 250,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, a minimum \$ 500,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, a minimum of \$ 2 million in prior 12-month commercial revenues;

2. A meaningful and defined market and customer base for the technology;
  3. A management team possessing appropriate skill sets, capacity and financial resources and willingness to strengthen management through other means such as advisory or consultant services;
  4. A meaningful customer base, partners, strategic alliances and professional relationships;
  5. An ability to leverage the Authority's resources by evidence of other fund raising and need for future capital requirements;
  6. A clear record of specific operational and research milestones achieved to date and proposed schedule and means to achieve future milestones; and
  7. A current and complete business plan including a detailed financial model.
- (e) For Edison Innovation Fund loans, a business shall not be eligible as follows:
1. A business that has received assistance under the Edison Innovation Fund from the Authority or similar assistance provided by any other State agency, shall not be eligible for the Edison Innovation Angel Growth Fund.
  2. A business shall not be eligible for assistance under the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, or the Edison Innovation Growth Stars Fund, if the business has received assistance under the New Jersey Board of Public Utilities' Edison Clean Energy Manufacturing Fund and/or the Edison Innovation Green Growth Fund.

## History

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### HISTORY:

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Added (d) and (e).

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (e) substituted "," for "and" following "Commerce", added "and Tourism" following "Growth"; added (f).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

Added (g) and (h).

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Deleted (g) and (h).

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

In the introductory paragraph of (f), substituted "Edison Innovation" for "New Jersey Growth".

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

Rewrote (f)1; in (f)6, inserted "and" at the end; in (f)7, substituted a period for "; and" at the end; deleted (f)8 and (f)9; and added (g).

Amended by R.2013 d.036, effective February 19, 2013.

See: 44 N.J.R. 2944(a), 45 N.J.R. 359(b).

Rewrote (g)2. Amended by R.2014 d.187, effective December 15, 2014.

See: 46 N.J.R. 1682(a), 46 N.J.R. 2420(a).

Deleted former (b) and (c); recodified former (d) through (g) as new (b) through (e); and in (c), substituted "and the" for a comma following "Protection", and deleted "and the New Jersey Commerce, Economic Growth and Tourism Commission" following "Treasury".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (d)1, substituted "that" for "which", and ", a minimum \$ 250,000 in prior 12-month commercial revenues; for" for "and".

Amended by R.2019 d.111, effective October 7, 2019.

See: 51 N.J.R. 820(a), 51 N.J.R. 1537(a).

Deleted former (c) and added new (c).

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## **N.J.A.C. 19:31-3.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 3. DIRECT LOAN PROGRAM***

### **§ 19:31-3.3 Application procedures**

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- (a)** The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.
- (b)** To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.
- (c)** A completed Application includes:
  - 1.** A history and description of the applicant's business;
  - 2.** A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
  - 3.** Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
  - 4.** A current interim statement, if the most recent annual financial statement is more than six months old;
  - 5.** Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
  - 6.** A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
  - 7.** A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;
  - 8.** A schedule of all officers, directors, and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and
  - 9.** For the Brownfields Loan Program, applications shall be accompanied by:
    - i.** A letter of support from the mayor or the governing body if the position of mayor does not exist of the municipality in which the brownfield site is located;
    - ii.** In the case of municipalities making application, all approvals required by the Local Finance Board in the Division of Local Government Services, Department of Community Affairs;
    - iii.** A plan for the redevelopment project, specifically including the proposed reuse of the brownfield site and a description of the relation of the reuse plan to applicable local redevelopment plan, zoning, and land use;

- iv. A completed report prepared by a licensed site remediation professional pursuant to N.J.A.C. 7:26E, Technical Requirements for Site Remediation; and
- v. Any applicable report prepared by other qualified professionals that demonstrates that the structure on the brownfield site is a contaminated building.

**(d)** The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;
2. Aging of accounts receivable;
3. Aging of accounts payable; and/or
4. Any additional information deemed necessary to evaluate the Application.

**(e)** Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

## History

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### HISTORY:

Amended by R.2019 d.111, effective October 7, 2019.

See: 51 N.J.R. 820(a), 51 N.J.R. 1537(a).

In (c)7, deleted 'and' from the end; in (c)8, inserted a comma following "directors", and substituted "; and" for a period; and added (c)9.

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## **N.J.A.C. 19:31-3.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 3. DIRECT LOAN PROGRAM***

### **§ 19:31-3.4 Evaluation process**

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**(a)** When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;
7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

**(b)** After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing. For a brownfields loan, the determination of the amount of the loan shall also be based on the amount of the funding gap.

**(c)** If a positive determination is made, the requested financing is presented to the Members for approval.

### **History**

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**HISTORY:**

Amended by R.2019 d.111, effective October 7, 2019.

See: 51 N.J.R. 820(a), 51 N.J.R. 1537(a).

In (b), inserted the second sentence.

NEW JERSEY ADMINISTRATIVE CODE

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End of Document



## **N.J.A.C. 19:31-3.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 3. DIRECT LOAN PROGRAM***

### **§ 19:31-3.5 Approval process**

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- (a)** Only the Members can approve a direct loan, either directly or through delegation.
- (b)** When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.
- (c)** The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.
- (d)** If there has been no veto, a formal commitment letter is issued to the applicant.
  - 1.** The commitment letter contains all terms, conditions, and collateral required by the Authority. As applicable, direct loans are subject to the Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4), and prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1).
  - 2.** With the exception of the New Jersey Growth Fund, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, the Edison Innovation Growth Stars Fund, and the Brownfields Loan Program, usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as a collateral assignee.
  - 3.** With the exception of the New Jersey Growth Fund, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, the Edison Innovation Growth Stars Fund, and the Brownfields Loan Program, personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.
  - 4.** For the Brownfields Loan Program, applicants are required to:
    - i.** As a condition to closing:
      - (1)** Provide documentation of owner equity equal to a minimum of 10 percent of the appraised value of the brownfield site in a remediated state; and
      - (2)** Demonstrate site control, which includes the ability to perform the remediation and redevelopment projects, grant a lien on the brownfield site as collateral to the Authority if applicable, and record the deed restriction in (d)4iii below.
    - ii.** Upon closing, record a deed restriction that requires that for 10 years after completion of the remediation project, any redevelopment project on the brownfield site shall be consistent with the proposed use and the factors considered to determine eligibility, rate of interest, or other benefits under the Brownfields Loan Program.

iii. Ensure that the Authority's affirmative action and prevailing wage requirements shall apply to the remediation project and the redevelopment project.

iv. Prior to final disbursement, provide evidence that the remediation project is completed. There shall be no requirement for the applicant to complete the redevelopment project.

(e) When the commitment letter has been accepted by the applicant and returned to the Authority, a list of closing instructions is mailed to the attorney for the applicant.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

## History

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### HISTORY:

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote (a) and (d)2 and 3.

Amended by R.2008 d.90, effective April 7, 2008.

See: 40 N.J.R. 110(a), 40 N.J.R. 1928(a).

In (d)2 and (d)3, inserted "and the Edison Innovation R&D Fund".

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

In (d)2 and (d)3, substituted ", the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund" for "and the Edison Innovation R&D Fund".

Amended by R.2019 d.111, effective October 7, 2019.

See: 51 N.J.R. 820(a), 51 N.J.R. 1537(a).

In (d)1, inserted a comma following "conditions" and inserted the second sentence; in (d)2 and (d)3, deleted "and" preceding "the Edison", and inserted "and the Brownfields Loan Program,"; and added (d)4.

## **N.J.A.C. 19:31-3.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 3. DIRECT LOAN PROGRAM***

### **§ 19:31-3.6 Attorney General review**

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All financing documents, including the Application, are subject to review by the Attorney General's Office.

### **History**

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#### **HISTORY:**

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

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End of Document

## N.J.A.C. 19:31-4.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.1 Applicability and scope**

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**(a)** The EDA and the State Treasurer may enter into a redevelopment incentive grant agreement with a developer, or non-profit organization on behalf of a qualified developer, for any qualifying redevelopment project located in an economic redevelopment and growth grant incentive area, except an area that qualifies solely by virtue of being a transit village. Up to an average of 75 percent of the incremental increase in approved State revenues or 85 percent of the project annual incremental revenues in a Garden State Growth Zone that are directly realized from businesses operating on the redevelopment project premises may be paid to the developer in the form of a grant derived from the realized revenues. For certain qualified residential projects, mixed use parking projects or projects involving university infrastructure, where the estimated amount of incremental revenues is inadequate to fully fund the amount of the State portion of the incentive grant, tax credits equal to the full amount of the incentive grant may be awarded. The term of each approved State redevelopment incentive grant agreement may extend for up to 20 years. Except for a redevelopment incentive grant agreement with a municipal redeveloper, the base amount of the combined reimbursements from State and local grants or tax credits cannot exceed 20 percent of the eligible cost of the project, except in a Garden State Growth Zone, which cannot exceed 30 percent and except for the parking component of a mixed use parking project, which can be up to 100 percent. A developer seeking an incentive grant is required to make an equity participation for at least 20 percent of the project's eligible cost.

**(b)** The Authority will conduct a fiscal analysis to determine redevelopment project costs, evaluate and validate the project financing gap estimated by the developer and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project will result in net positive economic benefit to the State where each proposed project is located. The State Treasurer will approve or disapprove such analysis.

**(c)** In order to ensure compliance with the "Appropriations clause" of the New Jersey State Constitution (N.J. Const. Art. VIII, Sect. II, para.2), this subchapter provides that payments under State incentive grant agreements are subject to annual appropriations and availability of funds.

**(d)** Upon notice to and consent by the EDA and the State Treasurer, a developer's right, title, and interest in, a redevelopment incentive grant agreement may be pledged, assigned, or sold by a developer.

### **History**

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#### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (a) and (d).

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted ", mixed use parking projects or projects involving university infrastructure," and "or tax credits", and substituted ". Except" for "; however, except", and "and except for the parking component of a mixed use parking project, which can be up to 100 percent. A" for "; and a".

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## **N.J.A.C. 19:31-4.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Ancillary infrastructure project" means structures or improvements that are located within the incentive area, but outside the project area of a redevelopment project, including, but not limited to, docks, bulkheads, parking garages, freight rail spurs, roadway overpasses, and train station platforms, provided a developer or municipal redeveloper has demonstrated that the redevelopment project would not be economically viable or promote the use of public transportation without such improvements, as approved by the State Treasurer.

"Applicant" means a developer proposing to enter into a redevelopment incentive grant agreement and may include a non-profit organization to which a developer has assigned its ability to apply for a redevelopment incentive grant.

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Aviation district" means the area within a one-mile radius of the outermost boundary of the "Atlantic City International Airport," established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

"Deep poverty pocket" means a population census tract having a poverty level of 20 percent or more, according to the 2010 U.S. Census, and which is located within the incentive area.

"Developer" means any person who enters or proposes to enter into a redevelopment incentive grant agreement or an approval letter pursuant to the provisions of the Economic Redevelopment and Growth (ERG) Program, or its successors or assignees, including, but not limited to, a lender that has been approved by the Authority and the State Treasurer and that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project, a municipal redeveloper, or Rutgers, the State University of New Jersey.

"Developer contributed capital" means equity contributed by the developer.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Disaster recovery project" means a redevelopment project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster, and which is located within the incentive area.

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act, P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local

Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Eligibility period" means 10 years for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits or, for all other redevelopment projects, the period of time specified in a redevelopment incentive grant agreement for the payment of reimbursements to a developer, which period shall not exceed 20 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

"Eligible revenue" means any of the incremental revenues set forth in section 6 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489f), except in the case of a Garden State Growth Zone, in which the property tax increment and any other incremental revenues are calculated as those incremental revenues that would have existed notwithstanding the provisions of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161.

"Equity" means cash, development fees, costs for project feasibility incurred within the 12 months prior to application, Federal or local grants, Federal tax credits, property value less any mortgages, and any other investment by the developer in the project deemed acceptable by the Authority in its sole discretion. Property value shall be valued at the lesser of either the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application, or the value as determined by a current appraisal acceptable to the Authority. For a qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity means the portion of the developer's fee that is delayed for a minimum of five years.

"Fiscal impact analysis" means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State. For the purposes of determining if the applicant fulfills the net positive economic benefit requirement, the analysis needs to demonstrate that the project's net positive economic benefit equals at least 110 percent of the amount of grant assistance, for the period equal to 75 percent of the useful life of the project not to exceed 20 years. The analysis will be an econometric model that uses project data provided by the developer, including, but not limited to: full-time employees at the qualified business facility in new and retained jobs, amount of capital investment, type of project, occupancy characteristics, and location; and by using this information, shall generate an estimate of direct and indirect economic benefits, including without limitation, non-financial community revitalization objectives including, but not limited to, objectives memorialized in a municipal master plan or plan for an area in need of redevelopment or rehabilitation, or the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project, as deemed reasonable by the Authority, and projected eligible revenues. This information may be supplemented by the use of industry accepted estimates, that is, U.S. Department of Commerce Regional Input-Output Modeling System data, when specific data is not available.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

"Highlands development credit receiving area or redevelopment area" means an area located within an incentive area and designated by the Highlands Council for the receipt of Highlands Development Credits under the Highlands Transfer Development Rights Program authorized under section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

"Incentive grant" means reimbursement of all or a portion of the project financing gap of a redevelopment project.

"Infrastructure improvements in the public right-of-way" mean public structures or improvements located in the public right-of-way that are located within a project area or that constitute an ancillary infrastructure project and may include, but not be limited to, signalization and new interchanges, public parking structures, and pedestrian, bi-cycle-oriented, and mass transit improvements; and public utilities such as water, sewer, electric, and gas, either of which are dedicated to or owned by a governmental body or agency upon completion, or any required payment in lieu of the structures, improvements, or projects or any costs of remediation associated with the structures, improvements, or projects, and that are determined by the Authority, in consultation with applicable State agencies, to be consistent with and in furtherance of State public infrastructure objectives and initiatives.

"Internal rate of return" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment.

"Local incentive grant" means a grant made pursuant to a redevelopment incentive grant agreement between a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, and which is subject to review by the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs.

"Low-income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Major rail station" means a railroad station located within a qualified incentive area, which provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Minimum environmental and sustainability standards" means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

"Mixed use parking project" means a redevelopment project consisting of a building or structure, the parking component of which shall constitute 51 percent or more of any of the following: the total square footage of the entire mixed use parking project; the estimated revenues of the entire mixed use parking project; or the total construction cost of the entire mixed use parking project.

"Moderate-income housing" means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal redeveloper" means an applicant for a redevelopment incentive grant agreement, which applicant is a municipal government, a municipal parking authority, or a redevelopment



agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3); or a developer of a mixed use parking project, provided that the parking component of the mixed use parking project is operated and maintained by a municipal parking authority for the term of any financial assistance grant pursuant to P.L. 2015, c. 69.

"Municipal Revitalization Index" means the 2007 index by the Office for Planning Advocacy, within the Department of State, measuring or ranking municipal distress.

"Non-parking component" means that portion of a mixed use parking project not used for parking, together with the portion of the costs of the mixed use parking project, including, but not limited to, the footings, foundations, site work, infrastructure, and soft costs that are allocable to the non-parking use.

"Parking component" means that portion of a mixed use parking project used for parking, together with the portion of the costs of the mixed use parking project, including, but not limited to, the footings, foundations, site work, infrastructure, and soft costs that are allocable to the parking use.

"Project area" or "redevelopment project area" means land or lands located within the incentive area under common ownership or control, which shall be located in a qualifying economic redevelopment and growth grant incentive area, including, but not limited to, control through a redevelopment agreement with a municipality pursuant to N.J.S.A. 40A:12A-1 et seq., or as otherwise established by a municipality or a redevelopment agreement executed by a State entity to implement a redevelopment project.

"Project cost" means the costs incurred in connection with the redevelopment project by the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, for a specific investment or improvement, including the costs relating to receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13), lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus costs not directly related to construction, of an amount not to exceed 20 percent of the total costs, capitalized interest paid to third parties, and the cost of infrastructure improvements, including ancillary infrastructure projects, and, for projects located in a Garden State Growth Zone only, the cost of infrastructure improvements including any ancillary infrastructure project and the amount by which total project cost exceeds the cost of an alternative location for the redevelopment project, but excluding any particular costs for which the project has received Federal, State, or local funding. For purposes of this definition, as determined by the Authority, certain Federal tax credit programs that involve significant private investment, including, but not limited to, the Low Income Housing Tax Credit administered by the New Jersey Housing and Mortgage Financing Agency, will not be considered Federal funding.

"Project financing gap" means the part of the project costs that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital or equity or other contributed capital or equity, which shall not be less than 20 percent of the eligible project cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of-way, subject to review by the State Treasurer, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis, and except for final point of sale retail businesses, including,

but not limited to, retail, educational, hospital, and hotel projects, the amount by which total project costs exceed the cost of a viable alternative location for the out-of-State redevelopment project in the event the business's chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of leaving the State and that the project would not occur, but for the provision of the incentive grant under the program. When calculating the project financing gap, the factors set forth at N.J.A.C. 19:31-4.6(a)4, including, but not limited to, internal rate of return on developer's contributed capital, and net profit margin, will be considered. The project financing gap may be increased by the cost of capital necessary to raise an amount of current capital sufficient to complete the project when combined with all other sources of capital in recognition that the incremental eligible revenues will be reimbursed over an estimated period of years. A qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency (NJHMFA) will be determined to have a project financing gap if the developer cannot achieve the fee authorized by NJHMFA within five years after the project is placed in operation, provided that in no event shall the sum of the tax credits awarded under this subchapter and the State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency exceed ninety percent of the total development cost.

"Qualified incubator facility" means a commercial building located within an incentive area: which contains 100,000 or more square feet of office, laboratory, or industrial space; which is located near, and presents opportunities for collaboration as demonstrated by a written agreement with, a research institution, teaching hospital, college, or university; and within which, at least 75 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

"Qualified residential project" means a redevelopment project for which a developer must submit a temporary certificate of occupancy by July 28, 2019, that is predominantly residential and includes multi-family residential units for purchase or lease, or dormitory units for purchase or lease, having a total project cost of at least \$ 17,500,000, if the project is located in any municipality with a population greater than 200,000 according to the latest Federal decennial census, or having a total project cost of at least \$ 10,000,000 if the project is located in any municipality with a population less than 200,000 according to the latest Federal decennial census, or is a disaster recovery project, or having a total project cost of \$ 5,000,000 if the project is in a Garden State Growth Zone. A qualified residential project shall not include transitional or homeless units.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" means an aviation district, a port district, a distressed municipality, or an area:

1. Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or
2. Located within:
  - i. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);
  - ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404

(N.J.S.A. 13:17-4), including the sports complex, that is, the 750-acre sports and exposition site located in the Borough of East Rutherford under the jurisdiction of the New Jersey Sports and Exposition Authority as of February 5, 2015, the effective date of P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.), and such additional property that is owned and controlled by the New Jersey Sports and Exposition Authority as may be designated by the Meadowlands Regional Commission, as established by P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), and section 6 of P.L. 2015, c. 19 (N.J.S.A. 5:10A-6) from time to time as part of the sports complex;

**iii.** A regional growth area, a rural development area zoned for industrial use as of December 5, 2016, the effective date of P.L. 2016, c. 75, a town, a village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

**iv.** The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a highlands development credit receiving area or redevelopment area;

**v.** A Garden State Growth Zone;

**vi.** Land approved for closure under any Federal Base Closure and Realignment Commission action; or

**vii.** Only the following portions of the areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive). This subparagraph shall only apply if Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within:

**(1)** A designated center under the State Development and Redevelopment Plan;

**(2)** A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts rules to revise this definition as it pertains to Statewide planning areas;

**(3)** Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-14);

**(4)** Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided the expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals;

**(5)** The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a highlands development credit receiving area or redevelopment area; or

**(6)** Any area on which an existing tourism destination project is located.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in the Highlands Water Protection and Planning Act, P.L. 2004, c. 120 (N.J.S.A. 13:20-1 et seq.).

"Redevelopment incentive grant agreement" means an agreement between the State Treasurer, the Authority, and a developer, or a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, under which, in exchange for the proceeds of an incentive grant, the developer agrees to perform any work or undertaking necessary for a redevelopment project, including the clearance, development, or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, residential, or public structures or improvements within a qualifying economic redevelopment and growth grant incentive area or a transit village.

"Redevelopment project" or "project" means a specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, leased, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved, undertaken by a developer, owner or tenant, or both within a project area and any ancillary infrastructure project including infrastructure improvements in the public right-of-way, as set forth in an application to be made to the Authority. The use of the term "redevelopment project" in sections 3 through 18 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489c et seq.) shall not be limited to only redevelopment projects located in areas determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6) but shall also include, but not be limited to, any work or undertaking in accordance with the Redevelopment Area Bond Financing Law, sections 1 through 10 of P.L. 2001, c. 310 (N.J.S.A. 40A:12A-64 et seq.) or other applicable law, pursuant to a redevelopment plan adopted by a State entity, or as described in the resolution adopted by a public entity created by State law with the power to adopt a redevelopment plan or otherwise determine the location, type, and character of a redevelopment project or part of a redevelopment project on land owned or controlled by it or within its jurisdiction, including, but not limited to, the New Jersey Meadowlands Commission established pursuant to P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), the New Jersey Sports and Exposition Authority established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), and the Fort Monmouth Economic Revitalization Authority created pursuant to P.L. 2010, c. 51 (N.J.S.A. 52:27I-18 et seq.).

"Retained job" means a position that currently exists in New Jersey and is filled by a current employee but which, as certified by the business's chief executive officer, is at risk of being lost to another state or country.

"Revenue increment base" means the amounts of all eligible revenues from sources within the redevelopment project area in the calendar year preceding the year in which the redevelopment incentive grant agreement is executed, as certified by the State Treasurer for State revenues.

"SDA district" means an "SDA district" as defined in section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situated.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

"Square feet of gross leasable area" or "gross leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building

that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Technology startup company" means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service that the business intends to move to commercialization.

"Tourism destination project" means a redevelopment project that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance.

"Transit project" means a redevelopment project located within a one-half-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-4.7(e)4, a bus station platform is a terminal as listed on the EDA's website at [www.njeda.com](http://www.njeda.com).

"Transit village" means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its economic development and revitalization goals and designated by the New Jersey Department of Transportation as a transit village.

"University infrastructure" means any of the following located on the campus of Rutgers, the State University of New Jersey: buildings and structures, such as academic buildings, recreation centers, indoor athletic facilities, public works garages, and water and sewer treatment and pumping facilities; open space with improvements, such as athletic fields and other outdoor athletic facilities, planned commons, and parks; and transportation facilities, such as bus shelters and parking facilities.

"Urban transit hub" means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), or all light rail stations and property located within a one-mile radius of the mid-point of the platform area of such a rail, bus, or ferry station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

"Vacant commercial building" means any commercial building or complex of commercial buildings having over 400,000 square feet of office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied at the time of application to the Authority or is negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), or any unleased and unoccupied commercial building in a Garden State Growth Zone having over 35,000 square feet of office, laboratory, or industrial space, or over 200,000 square feet of office, laboratory, or industrial space in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties available for occupancy for a period of over one year.

"Vacant health facility project" means a redevelopment project where a health facility, as defined by section 2 of P.L. 1971, c. 136 (N.J.S.A. 26:2H-2), currently exists and is considered vacant. A health facility shall be considered vacant if at least 70 percent of that facility has not been open to the public or utilized to serve any patients at the time of application to the Authority.

## History

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**HISTORY:**

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote definition "Qualifying economic redevelopment and growth grant incentive area".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In definition "Fiscal impact analysis", inserted ", for the period equal to 75 percent of the useful life of the project not to exceed 20 years"; and added definition "Full-time employee at the qualified business facility".

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote definitions "Ancillary infrastructure project", "Developer", "Eligible revenue", "Fiscal impact analysis", "Infrastructure improvements in the public right-of-way", " 'Project area' or 'redevelopment project area' ", "Project financing gap", and " 'Redevelopment project' or 'project' "; added definitions "Aviation district", "Deep poverty pocket", "Developer contributed capital", "Disaster recovery project", "Distressed municipality", "Eligibility period", " 'Garden State Growth Zone' or 'growth zone' ", "Highlands development credit receiving area or redevelopment area", "Low-income housing", "Major rail station", "Minimum environmental and sustainability standards", "Moderate-income housing", "Municipal Revitalization Index", "Project cost", "Qualified incubator facility", "Qualified residential project", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", "SDA district", "SDA municipality", "Square feet", " 'Square feet of gross leasable area' or 'gross leasable area' ", "Technology startup company", "Tourism destination project", "Transit project", "Urban transit hub", "Vacant commercial building", and "Vacant health facility project"; in definition "Applicant", inserted "and may include a non-profit organization to which a developer has assigned its ability to apply for a redevelopment incentive grant"; in definition "Redevelopment incentive grant agreement", inserted a comma following "Authority" and "development", and inserted "or a transit village"; and deleted definitions "Eligible project costs", "Net profit margin", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", and "Soft costs".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Deleted definition "Cash on cash yield"; rewrote definitions "Equity", " 'Garden State Growth Zone' or 'growth zone' ", and "Project financing gap"; and in definition "Qualified residential project", substituted "2018" for "2015", and inserted the last sentence.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In definition "Developer", inserted ", a municipal redeveloper, or Rutgers, the State University of New Jersey"; in definition "Eligibility period", substituted ", mixed use parking projects, or projects involving university infrastructure, if the project receives" for "that receive"; in definition "Infrastructure improvements in the public right-of-way", substituted "the" for "such" preceding "structures," twice; added definitions "Mixed use parking project", "Non-parking component", "Parking component", and "University infrastructure"; rewrote definition "Municipal redeveloper"; in definition " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", rewrote paragraph 2ii; in definition "

'Redevelopment project' or 'project' ", deleted a comma following "owner", and inserted the first occurrence of ", but not be limited to,"; and in definition "SDA municipality", substituted "situated" for "situate".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

In definition "Developer", substituted "assignees" for "assigns"; in definition "Eligible revenue", substituted the third occurrence of "the" for "such"; in definition "Qualified residential project", substituted "2019" for "2018"; in definition "Qualifying economic redevelopment and growth grant incentive area" or 'incentive area' ", in 2i, substituted "(i) of" for "(i)of", in 2iii, inserted "a rural development area zoned for industrial use as of December 5, 2016, the effective date of P.L. 2016, c. 75," and in 2vii(4), substituted the second occurrence of "the" for "such".

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## **N.J.A.C. 19:31-4.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.3 Eligibility criteria**

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- (a) In order to be eligible for a State or local incentive grant the following must apply:
1. The redevelopment project must be located in a qualifying economic redevelopment and growth grant incentive area, provided, however, that a State incentive grant shall not be given for a project in an incentive area that qualifies as such solely by virtue of being a transit village;
  2. The developer must not have commenced any construction at the site of a proposed redevelopment project prior to submitting an application, except as set forth in (a)2i or ii below. For purposes of this paragraph, construction shall have commenced if the project has received site plan approval and started site preparation or utility installation.
    - i. In the event construction has commenced on a proposed redevelopment project, the project may be eligible if the Authority, at its sole discretion, determines that the project would not be completed otherwise; or
    - ii. In the event the project is to be undertaken in phases, a developer may apply for phases for which construction has not yet commenced, subject to N.J.A.C. 19:31-4.6(a)2;
  3. For any State incentive grant project consisting of newly-constructed residential units, the developer shall be required, pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-304), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan;
  4. A project financing gap exists; and
  5. For a State incentive grant, except for a qualified residential project, a mixed use parking project, or a project involving university infrastructure, pursuant to a fiscal impact analysis, the overall public assistance provided to the project will result in net benefits to the State.

### **History**

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**HISTORY:**



Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the introductory paragraph of (a); in (a)2ii, updated the N.J.A.C. reference; and rewrote (a)5.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)5, inserted "a mixed use parking project, or a project involving university infrastructure,".

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End of Document

## **N.J.A.C. 19:31-4.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.4 Application submission requirements for State incentive grants**

**(a)** A developer that submits an application to the Authority for a State incentive grant shall indicate on the application whether it is also applying for a local incentive grant. In each instance where an applicant indicates that it is also applying for a local incentive grant, the EDA shall forward a copy of the application to the municipality wherein the redevelopment project is to be located so that the local incentive grant may be reviewed and approved by municipal ordinance. A developer or municipal redeveloper that submits an application for a local incentive grant shall indicate on the application whether it is also applying for a State incentive grant.

**(b)** A developer seeking a State incentive grant shall submit to the Authority the following information in its application:

1. The name of the business;
2. The contact information of the business;
3. Prospective future address of the business (if different);
4. The type of the business;
5. Principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. An anticipated construction schedule;
9. Estimated project costs, including any State or local grant funding to the project, and proposed terms of financing, including projected internal rate of return on developer's contributed capital, net margin, return on investment, and cash on cash yield;
10. Estimates of the revenue increment base and projection of the eligible revenues for the project, and the assumptions upon which those estimates are made;
11. For qualified residential projects, a certification that it meets the requirements of N.J.A.C. 19:31-4.3(a)3;
12. Estimated costs to the municipality resulting from the project;
13. A written certification by the chief executive officer, or equivalent officer for North American operations, stating:

- i. That the business applying for the program is not in default with any other program administered by the State of New Jersey; and
- ii. That he or she has reviewed the application information submitted and that the representations contained therein are accurate;

- 14.** Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- 15.** Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101;
- 16.** A list of all development subsidies, as defined by The Development Subsidy Job Goals Accountability Act, P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.), that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;
- 17.** The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated upon the local tax map;
- 18.** A list and status of all required State and Federal government permits that have been issued for the redevelopment project, or will be required to be issued pending resolution of financing issues, as well as of all local planning and zoning board approvals, that are required for the redevelopment project;
- 19.** A description of how the project addresses the factors contained in N.J.A.C. 19:31-4.7(b);
- 20.** A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction, as listed on the EDA website at [www.njeda.com](http://www.njeda.com);
- 21.** A copy of a letter of support from the governing body of the municipality in which the proposed redevelopment project or ancillary infrastructure project or infrastructure improvement in the right-of-way is located; and
- 22.** Any other necessary and relevant information as determined by the applicant or the Authority for a specific application.

**(c)** Any developer shall be allowed to assign their ability to apply for a State incentive grant to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone. The non-profit organization may make an application on behalf of a developer that meets the requirements for the incentive grant, or a group of non-qualifying developers, such that these will be considered a unified project for the purposes of the incentives provided under this subchapter. In addition to the information required pursuant to (b) above, the non-profit organization shall be required to submit:

- 1.** Evidence of the assignment to apply for the tax credit from the developer or the group of non-qualifying developers;
- 2.** The name of the non-profit organization;
- 3.** The contact information of the non-profit organization;
- 4.** The New Jersey employer identification number;

5. The Federal employer identification number; and
6. The mission statement of the non-profit organization.

**(d)** A developer who has already applied for an incentive grant award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such grant, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for an incentive grant award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions established pursuant to P.L. 2013, c. 161, except that projects with costs exceeding \$ 200,000,000 shall not be eligible for revised percentage caps under subsection d. of section 19 of P.L. 2013, c. 161.

## History

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### HISTORY:

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (b)13.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (b)9, (b)11, (b)20, and (b)21; in (b)19, updated the N.J.A.C. reference; and added (c) and (d).

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## **N.J.A.C. 19:31-4.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.5 Fees**

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- (a)** A developer applying for benefits under this program shall submit a one-time non-refundable application fee of \$ 5,000, with payment in the form of a check, payable to the "New Jersey Economic Development Authority."
- (b)** A developer shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.
- (c)** For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a non-refundable fee of .5 percent of the approved incentive grant or tax credit, not to exceed \$ 300,000, shall be charged by the Authority prior to the approval of the tax credit. For all other incentive grants, a non-refundable fee of .5 percent of the approved incentive grant, not to exceed \$ 500,000, shall be charged by the Authority prior to the approval of the incentive grant. The fee shall be refunded if the Authority does not approve the incentive grant or tax credit.
- (d)** For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a non-refundable fee of .5 percent of the tax credit, not to exceed \$ 300,000, shall be charged upon the receipt of the tax credit certificate. For all other incentive grants, a non-refundable fee of .5 percent of the incentive grant, not to exceed \$ 500,000, shall be charged upon execution of the incentive grant agreement.
- (e)** For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a developer shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual report. The annual review fee shall be \$ 2,500 per year.
- (f)** For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-4.10 or permission to pledge a tax credit transfer certificate purchase agreement as collateral, a developer shall pay to the Authority a fee of \$ 5,000 and \$ 2,500 for each additional request made annually.
- (g)** Upon application to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive agreement and in the incentive grants payable thereunder, a developer shall pay to the Authority a fee of \$ 2,500.

**(h)** A non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications, such as those requiring extensive staff time and Board approval.

**(i)** A non-refundable fee of \$ 1,000 shall be paid for the first six-month extension to the date by which evidence must be submitted to demonstrate compliance with the conditions set forth in commitment letter pursuant to N.J.A.C. 19:31-4.8(a); and a non-refundable fee of \$ 2,500 shall be paid for the second extension to that date.

**(j)** A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee of \$ 5,000 for terminations that do not require extensive staff time and Board approval; and a non-refundable fee of \$ 25,000 for terminations that require extensive staff time or Board approval.

## History

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### HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.5, Financing gap and fiscal impact analysis, recodified to N.J.A.C. 19:31-4.6.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (c) through (f), inserted ", mixed use parking project, or project involving university infrastructure," throughout; and in (f), substituted "\$ 5,000 and \$ 2,500 for each additional request made annually" for "\$ 2,500".

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Rewrote (b).

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## **N.J.A.C. 19:31-4.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.6 Financing gap and fiscal impact analysis**

**(a)** The Authority, in consultation with the State Treasurer, shall review the proposed project costs and evaluate and validate the project financing gap estimated by each developer applying for a State incentive grant, as follows:

1. The Authority will evaluate proposed project costs against reasonable costs as noticed on the EDA website at [www.njeda.com](http://www.njeda.com) for the standard of review, which shall include, but not be limited to, construction, tenant fit out, consultants, rental rates, rates of return and vacancy allowances. For a project involving university infrastructure, in validating the project financing gap, the Authority may rely on a certification of the Chief Financial Officer of the university that, based on current university budget projections, a financing gap exists;
2. For a redevelopment project involving rehabilitation or improvement of an existing building(s), the costs of land acquisition and rehabilitation shall not exceed 100 percent of the replacement cost for new construction, exclusive of any environmental remediation costs. When evaluating a redevelopment project involving rehabilitation or improvement of existing building(s), if a developer spends more than 100 percent of the total cost of acquisition of the building(s) on such rehabilitation or improvement, then the cost of acquisition shall be included in the eligible project costs. With respect to the Authority's evaluation of a redevelopment project pursuant to the requirements of N.J.A.C. 19:31-4.3(a)2i, a developer's future expenditures will have to be at least 100 percent of the project costs previously expended as of its application date in order for the Authority to include the costs expended prior to the application date to be included in the project costs;
3. For large, multi-phased projects that are built sequentially over time, the EDA shall only evaluate and validate the project financing gap on phases of the project with funding commitments;
4. The project financing gap analysis shall include, but not be limited to, an evaluation of the project costs, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, internal rate of return on developer's contributed capital, and return on investment, or, in the Authority's sole discretion, in comparison to alternative financing structures for a comparable project available to the developer or its tenants; and
5. Except for final point of sale retail businesses, including, but not limited to, retail, educational, hospital, or hotel projects, the project financing gap will include the amount by which the total project cost exceeds the cost of a viable alternative location for the out-of-State redevelopment project in the event the business's chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of

leaving the State or not being located in the State and that the project would not occur but for the provision of the incentive grant under the program. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the Authority may revoke any award of an incentive grant in its entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to.

**(b)** The Authority, in consultation with the State Treasurer, shall undertake the fiscal impact analysis by determining whether the overall public assistance provided to the proposed project, except with regard to a qualified residential project, mixed use parking project, or project involving university infrastructure, will result in net positive economic benefits equaling no less than 110 percent of the amount of grant assistance, to the State for a period not to exceed 20 years.

**(c)** In determining whether the project meets the net positive economic benefits analysis, the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the developer, taxes paid directly or generated indirectly by new or retained jobs, and peripheral economic growth caused by the project including, without limitation, both direct and indirect economic benefits and non-financial community revitalization objectives, to be determined by the Authority in its sole discretion, including, but not limited to, objectives memorialized in a municipal master plan or plan for an area in need of redevelopment or rehabilitation, or the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

**(d)** For the calculation of new revenues in predominantly retail projects in the net positive economic benefits analysis, the following weighting criteria shall be used:

1. When a project is proximate to a neighboring state jurisdiction (that is, Pennsylvania, Delaware, New York) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;
2. When a project is a destination entertainment and retail facility (that is, a project which contains unique retail establishments, entertainment and/or sports venues) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;
3. For projects which are significantly retail in nature, but do not meet either (d)1 or 2 above:
  - i. Ongoing State sales tax revenue will be calculated at 0 percent value;
  - ii. One-time construction related taxes will be calculated at 100 percent value; and
  - iii. Ongoing other tax revenues, for example, corporation business taxes and gross income taxes, will be calculated at 66 percent value.

**(e)** The State Treasurer will approve or disapprove the redevelopment project costs, the financing gap, and the net positive economic benefits.

## History

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**HISTORY:**

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (b), inserted "equaling 110 percent of the amount of grant assistance,".

Recodified from N.J.A.C. 19:31-4.5 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In the introductory paragraph of (a) and in (b), deleted "redevelopment" following "proposed"; in (a)2, deleted "eligible" preceding the fourth occurrence of "project"; in (a)3, deleted "and" at the end; rewrote (a)4 and (c); added (a)5; and in (b), inserted ", except with regard to a qualified residential project,". Former N.J.A.C. 19:31-4.6, Approval of application for State incentive grant, recodified to N.J.A.C. 19:31-4.7.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a)2, substituted the second and third occurrences of "100" for "50"; rewrote (a)4; and in (b), inserted "no less than", and deleted "equal to 75 percent of the useful life of the project" following "period".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)1, inserted the second sentence; and in (b), inserted ", mixed use parking project, or project involving university infrastructure,".

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## **N.J.A.C. 19:31-4.7**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.7 Approval of application for State incentive grant**

**(a)** The Authority and the State Treasurer may, except in the case of a qualified residential project, mixed use parking project, or project involving university infrastructure, approve an application only if they make a finding 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 portion of the project financing gap allocable to the State incentive grant. This finding may be made by an estimation based upon the professional judgment of the Chief Executive Officer of the Authority and the State Treasurer.

**(b)** In deciding whether or not to recommend entering into a redevelopment incentive agreement, the Chief Executive Officer shall consider the following factors prior to approval:

1. The economic feasibility of the redevelopment project;
2. The extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project or the level of site specific distress to include dilapidated conditions, brownfields designation, environmental contamination, pattern of vacancy, abandonment, or under utilization of the property, rate of foreclosures, or other site conditions as determined by the Authority;
3. The degree to which the redevelopment project will advance State, regional and local development and planning strategies;
4. The likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred as provided in the redevelopment incentive grant agreement, provided, however, that any tax revenue generated by a redevelopment project that is a disaster recovery project shall be considered new tax revenue, even if the same or more tax revenue was generated at or on the site prior to the disaster;
5. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;
6. The need of the redevelopment incentive grant agreement to the viability of the redevelopment project or the promotion of the use of public transportation; and
7. The degree to which the redevelopment project enhances and promotes job creation and economic development or the promotion of the use of public transportation.

**(c)** The decision whether or not to approve an application and enter into a redevelopment incentive grant is solely within the discretion of the Authority and the State Treasurer, provided they both agree to enter into an agreement.

**(d)** Except for a local redevelopment incentive grant agreement with a municipal redeveloper or with the developer of a redevelopment project solely with respect to the cost of infrastructure improvements in the public right-of-way, including any ancillary infrastructure project in the public right-of-way, in no event shall the base amount of the combined reimbursements under the redevelopment incentive grant agreements with the State and municipality exceed 20 percent of the total project cost, except in a Garden State Growth Zone, which shall not exceed 30 percent. The maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 30 percent of the total project cost, except for projects located in a Garden State Growth Zone, in which case the maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 40 percent of the total project cost or mixed use parking projects, in which case the maximum amount of any redevelopment incentive with respect to a mixed use parking project shall be up to 100 percent of the total project costs allocable to the parking component of the project and shall be up to 40 percent, including any increase in the amount of reimbursement under (e) below, of the total project cost allocable to the non-parking component of the project.

**(e)** The Authority, pursuant to section 19 of P.L. 2013, c. 161 may increase the amount of the reimbursement under the redevelopment incentive grant agreement with the State by up to 10 percent of the total project cost if the project is:

1. Located in a distressed municipality that lacks adequate access to nutritious food in the judgment of the Chief Executive Officer of the Authority and will include either a supermarket or grocery store with a minimum of 15,000 square feet of selling space devoted to the sale of consumable products or a prepared food establishment selling only nutritious ready-to-serve meals;
2. Located in a distressed municipality that lacks adequate access to health care and health services in the judgment of the Chief Executive Officer of the Authority and will include a health care and health services center with a minimum of 10,000 square feet of space devoted to the provision of health care and health services;
3. Located in a distressed municipality that has a business located therein that is required to respond to a request for proposal to fulfill a contract with the Federal government as set forth in subsection d. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244);
4. A transit project;
5. A qualified residential project in which at least 10 percent of the residential units are constructed as, and reserved for, moderate income housing;
6. Located in a highlands development credit receiving area or redevelopment area;
7. Located in a Garden State Growth Zone;
8. A disaster recovery project;
9. An aviation project;
10. A tourism destination project; or
11. A project involving the substantial rehabilitation or renovation of more than 51 percent of an existing structure or structures.

**HISTORY:**

Recodified from N.J.A.C. 19:31-4.6 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.7, State incentive grant agreement, recodified to N.J.A.C. 19:31-4.8.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted "mixed use parking project, or project involving university infrastructure,"; and in (d), rewrote the second sentence.

NEW JERSEY ADMINISTRATIVE CODE

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## **N.J.A.C. 19:31-4.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.8 State incentive grant agreement**

**(a)** Except for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits, upon approval of the application by the Authority and the State Treasurer, the Authority and the developer will execute a commitment letter providing information specific to the grant amount and containing conditions that must be met prior to receiving the grant. Within one year following the date of approval, the developer shall submit progress information indicating that the developer has financing, copies of all required State and Federal government approvals and all local planning and zoning board approvals, and site control of and site plan approval for the redevelopment project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval. Upon a receipt of evidence from the developer that it has control of the redevelopment project site and offers of financing, which may be conditioned upon execution of the grant agreement, and that it has met any other conditions set forth in the commitment letter, the Authority and the State Treasurer may enter into a State redevelopment incentive grant agreement with a developer for the reimbursement of incremental State revenues directly realized from businesses operating on the redevelopment project premises.

**(b)** Except for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits, the Chief Executive Officer of the Authority, in consultation with the State Treasurer, shall negotiate the terms and conditions of any State redevelopment incentive grant agreement. The State redevelopment incentive grant agreement shall include, but not be limited to, the following terms and conditions as determined by the Authority:

1. The eligibility period, the maximum amount of project cost, the maximum percentage reimbursement amount, the maximum aggregate dollar amount of the incentive grant to be awarded the developer, the maximum annual percentage of reimbursement, the particular tax or taxes to be utilized from those listed in N.J.A.C. 19:31-4.10(a), the order in which multiple taxes will be applied to determine the incentive grant amount, and, for a project receiving an incentive grant in excess of \$ 50 million, the amount of the negotiated repayment to the State, which may include, but not be limited, to cash, equity, and warrants and shall be up to the amount of the maximum aggregate dollar amount of the reimbursement. If the actual project costs are less than the project costs set forth in the application, the percentage reimbursement amount will be based on the actual project costs. For the purposes of determining the amount and timing of any repayment due for projects receiving an incentive grant in excess of \$ 50 million, the Authority shall consider such factors as the financial structure of the project, risk of the project, developer returns, magnitude of State support, as

well as the returns of various types of revenue generating projects, that is, retail, commercial, and/or hotel. If the project does not produce the anticipated amount of incremental taxes in a given year, the developer shall only receive the approved percentage of actual tax revenue created. No portion of revenues pledged pursuant to P.L. 2013, c. 161 shall be subject to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof in the grant agreement;

**2.** All payments shall be made annually and subject to annual appropriation and availability of funds;

**3.** In the absence of extenuating circumstances, the reimbursement schedule, which will indicate the annual percentage amount of reimbursement provided that it not exceed:

i. Seventy-five percent of the annual incremental State revenues; or

ii. Eighty-five percent of the projected annual incremental revenues in a Garden State Growth Zone.

**4.** Representations that the developer is in good standing, that the project complies with all applicable law, and specifically, that the project will comply with the Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), and the project does not and will not violate any environmental law;

**5.** The frequency of payments and eligibility period, which shall not exceed 20 years, during which that tax credit shall be granted;

**6.** Description of the occupancy permit or other event evidencing project completion that begins the eligibility period and whether the project will be undertaken in phases;

**7.** The requirement that the developer submit, prior to the first disbursement of funds under the agreement, satisfactory evidence of actual project costs, as certified by a certified public accountant, evidence of a temporary certificate of occupancy, or other event evidencing project completion that begins the eligibility period indicated in the incentive agreement, and, if applicable, evidence that the municipality is in substantial compliance with the requirements under N.J.A.C. 19:31-4.3(a)3. In the event the project cost or square footage of the project are reduced below the amount of project cost or square footage of the project in the approval of the incentive grant, the Authority may reevaluate the fiscal impact analysis and financing gap analysis and reduce the size of the grant accordingly;

**8.** Annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance against established milestones for calculating any necessary repayments pursuant to (b)1 above;

**9.** Representations that the developer will comply with the green building standards pursuant to N.J.A.C. 19:31-4.4(b)20;

**10.** To the extent the taxes of such businesses are to be reimbursed, covenant that the developer will notify all businesses operating on the redevelopment project premises that certain incremental taxes are to be reimbursed under the agreement. The developer shall also covenant that the developer shall obtain information about such businesses as is necessary for the State to ascertain the incremental tax revenue. Such information may include, but not be limited to, name, address, taxpayer identification number, change in business ownership and any other information that may be required by the State. The developer shall also

acknowledge that the State will not provide to the developer information about individual taxes paid by businesses located at the redevelopment project;

**11.** Acknowledgement that if the developer has entered into a Brownfield Reimbursement Agreement for the redevelopment project premises, to the extent that the same eligible revenues are identified in both the Brownfields Reimbursement Agreement and the incentive grant, then the incentive grant will not commence until the reimbursement has terminated or otherwise as subject to review of the Division of Taxation;

**12.** Indemnification and insurance requirements;

**13.** Events, if any, that would trigger forfeiture of the grant;

**14.** Default and remedies;

**15.** Reporting requirements, as required pursuant to N.J.S.A. 52:27D-489f, and other reporting requirements that may be required by law or agreement, such as an annual report and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.);

**16.** Requirement to demonstrate that the project continues to be eligible for any increase of reimbursement pursuant to N.J.A.C. 19:31-4.7(e); and

**17.** To the extent the project consists of newly-constructed residential units, the approval letter will require that the project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.

**(c)** Agreement that a fee of \$ 5,000 annually will be paid to the Division of Taxation and all other administrative costs associated with the incentive grant shall be assessed to the developer and retained by the State Treasurer from the annual incentive grant payments.

## History

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### HISTORY:

Recodified from N.J.A.C. 19:31-4.7 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.8, Incremental revenue sources, recodified to N.J.A.C. 19:31-4.10.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (a); in the introductory paragraph of (b), inserted the first occurrence of "grant"; in (b)15, deleted "and" from the end; in (b)16, substituted "; and" for a period; and added (b)17.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a) and the introductory paragraph of (b), substituted ", mixed use parking projects, or projects involving university infrastructure, if the project receives", for "that receive".





## N.J.A.C. 19:31-4.9

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.9 Tax credits for qualified residential projects, mixed use parking projects, or projects involving university infrastructure**

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**(a)** In the case of a qualified residential project, mixed use parking project, or project involving university infrastructure, if the Authority determines that the estimated amount of incremental revenues pledged towards the State portion of an incentive grant is inadequate to fully fund the amount of the State portion of the incentive grant, then in lieu of an incentive grant based on such incremental revenue, the developer shall be awarded tax credits equal to the full amount of the incentive grant, which shall be taken over a 10-year period, at the rate of one-10th of the total amount for each tax accounting or privilege period of the developer. For (a)1 through 4 below, not more than \$ 40,000,000 of credits shall be awarded to any qualified residential project in a deep poverty pocket or distressed municipality and not more than \$ 20,000,000 of credits shall be awarded to any other qualified residential project. The value of all credits approved by the Authority pursuant to this subsection shall not exceed \$ 628,000,000, of which:

1. \$ 250,000,000 shall be restricted to qualified residential projects within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties, of which, \$ 175,000,000 of the credits shall be restricted to qualified residential projects located in a Garden State Growth Zone located within the aforementioned counties and mixed use parking projects located in a Garden State Growth Zone or urban transit hub located within the aforementioned counties; and \$ 75,000,000 of credits shall be restricted to qualified residential projects in municipalities with a 2007 Municipal Revitalization Index of 400 or higher as of the date of enactment of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161;
2. \$ 250,000,000 shall be restricted to the following categories of projects:
  - i. Qualified residential projects located in urban transit hubs that are commuter rail in nature that otherwise do not qualify under (a)1 above;
  - ii. Qualified residential projects located in Garden State Growth Zones that do not qualify under (a)1 above;
  - iii. Mixed use parking projects located in urban transit hubs or Garden State Growth Zones that do not qualify under (a)1 above, provided however, an urban transit hub shall be allocated no more than \$ 25,000,000 for mixed use parking projects and \$ 25,000,000 of credits shall be restricted to mixed use parking projects in Garden State Growth Zones that have a population in excess of 125,000 and do not qualify under (a)1 above;
  - iv. Qualified residential projects that are disaster recovery projects that otherwise do not qualify under (a)1 above; or

v. Qualified residential projects in SDA municipalities located in Hudson County that were awarded State Aid in State Fiscal Year 2013 through the Transitional Aid to Localities program and otherwise do not qualify under (a)1 above;

3. \$ 87,000,000 shall be restricted to the following categories of projects: qualified residential projects located in distressed municipalities, deep poverty pockets, highlands development credit receiving areas or redevelopment areas, otherwise not qualifying pursuant to (a)1 or 2 above; and mixed use parking projects that do not qualify under (a)1 and 2 above and which are used by an independent institution of higher education, a school of medicine, a nonprofit hospital system, or any combination thereof; provided, however, that \$ 20,000,000 of the \$ 87,000,000 shall be allocated to mixed use parking projects that do not qualify under (a)1 or 2 above;

4. \$ 16,000,000 shall be restricted to qualified residential projects that are located within a qualifying economic redevelopment and growth grant incentive area otherwise not qualifying under (a)1, 2, or 3 above; and

5. \$ 25,000,000 shall be restricted to projects involving university infrastructure.

**(b)** In developing a recommendation for allocating tax credits to qualified residential projects, mixed use parking projects, or projects involving university infrastructure, the Chief Executive Officer of the Authority shall take into account, together with the factors set forth at N.J.A.C. 19:31-4.7(b):

1. An evaluation of the developer's pro forma analysis;
2. Input from the municipality in which the project is located;
3. Whether the project furthers specific State or municipal planning and development objectives, or both;
4. Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both; and
5. Whether the project contributes to the recovery of areas affected by Superstorm Sandy.

**(c)** Upon receipt of a recommendation from the Authority staff on the qualified residential facility, mixed use parking project, or project involving university infrastructure application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, mixed use parking project, or project involving university infrastructure, and promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits, including the same financial and related analysis, the same term of the grant, and same mechanism for administering the credits as if such credits had been awarded to the developer pursuant to section 35 of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3). An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and the requirement that the minimum environmental and sustainability standards, are incorporated into the proposed project including the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

- 1.** If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment required for the tax credits. The approval letter will require that the qualified residential project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.
  - 2.** In the approval letter to the developer, the Authority shall set a date by which its approval will expire.
- (d)** Within one year following the date of Board approval by the Authority, each approved developer of a qualified residential facility, mixed use parking project, or project involving university infrastructure, if the project has been approved for tax credits shall submit progress information indicating that the developer has site plan approval, financing for, and site control of the qualified business facility, qualified residential project, mixed use parking project, or project involving university infrastructure. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.
- (e)** No later than July 28, 2019, each approved developer of a qualified residential facility that has been approved for tax credits after September 18, 2013, the effective date of P.L. 2013, c. 161 shall submit evidence of a temporary certificate of occupancy. The developer of a mixed use parking project or project involving university infrastructure seeking an award of credits towards the funding of its incentive grant agreement pursuant to (a)3 above and if approved after January 11, 2016, the effective date of P.L. 2015, c. 217, shall submit a temporary certificate of occupancy no later than July 28, 2021.
- (f)** Upon completion of the capital investment and receipt of the occupancy permit or other event evidencing project completion indicated in the approval letter, the developer shall submit a certification of an independent certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the developer has satisfied the conditions relating to the capital investment requirements.
- 1.** Once accepted by the Authority, the certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified residential facility, mixed use parking project, or project involving university infrastructure, and in no event will the amount of tax credits exceed the maximum percentage amount of allowed tax credits approved by the Board for the developer's capital investment in a qualified residential project, a mixed use parking project, or a project involving university infrastructure.
  - 2.** The certification under this subsection shall be submitted to the Authority no later than 12 months after the submission to the Authority of a temporary certificate of occupancy.
- (g)** Once the Authority accepts the certification of the developer that it has satisfied the capital investment requirements of the program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the developer and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.
- (h)** After notification, either the developer, the owner of the project, or a tax credit transferee shall furnish to the Authority an annual report in a format as may be determined by the Authority, which shall contain the following information:

1. A certification indicating whether or not the party submitting the report is aware of any condition, event, or act that would cause the business not to be in compliance with the approval, the Act, or this subchapter;
  2. Documentary evidence that a deed restriction has been recorded against each residential component of the qualified residential project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;
  3. Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by an MAI appraiser or governmental official;
  4. Evidence that the parking component of the mixed use parking project is not being used as non-parking component; and
  5. Additional reporting requirements as may be contained in the tax credit certificate.
- (i) Failure to submit a copy of the annual report, or submission of the annual report without the information required in (g) above, will result in forfeiture of any annual tax credits to be received by the developer or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the developer or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.
- (j) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the developer or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.
- (k) The tax credit certificate shall set forth the following terms:
1. The starting date of the tax period and the commitment duration;
  2. The amount of the tax credits;
  3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;
  4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to the date of filing relating to each tax accounting or privilege period of the proposed allocation of tax credits by the business;
  5. Events that would trigger reduction and forfeiture of tax credit amounts; and
  6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

## History

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### HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.9, Pledge and assignment of grant amount, recodified to N.J.A.C. 19:31-4.11.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the introductory paragraph of (c), (c)1, and (e).

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Section was "Tax credits for qualified residential projects". Rewrote the section.

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End of Document

## **N.J.A.C. 19:31-4.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.10 Incremental revenue sources**

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**(a)** Except for projects receiving an increase in the amount of reimbursement under N.J.A.C. 19:31-4.7(b)4, in accordance with a State redevelopment incentive grant agreement beginning upon the receipt of occupancy permits for any portion of the redevelopment project or upon such other event evidencing project completion as set forth in the incentive grant agreement, the State Treasurer will pay to the developer up to an average of 75 percent of the projected annual incremental revenues, or an average of 85 percent of the projected annual incremental revenues in a Garden State Growth Zone, directly realized from businesses operating on or at the site of the redevelopment project from the following taxes:

1. The Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.);
2. The tax imposed on marine insurance companies pursuant to N.J.S.A. 54:16-1 et seq.;
3. The tax imposed on insurers generally, pursuant to P.L. 1945, c. 132 (N.J.S.A. 54:18A-1 et seq.);
4. 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 (N.J.S.A. 54:30A-49 et seq.);
5. The tariffs and charges imposed by electric, natural gas, telecommunications, water and sewage utilities, and cable television companies under the jurisdiction of the New Jersey Board of Public Utilities, or comparable entity, except for those tariffs, fees, or taxes related to societal benefits charges assessed pursuant to section 12 of P.L. 1999, c. 23 (N.J.S.A. 48:3-60), any charges paid for compliance with the Global Warming Response Act, P.L. 2007, c. 112 (N.J.S.A. 26:2C-37 et seq.), transitional energy facility assessment unit taxes paid pursuant to section 67 of P.L. 1997, c. 162 (N.J.S.A. 48:2-21.34), and the sales and use taxes on public utility and cable television services and commodities;
6. 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.A. 54A:1-1 et seq.;
7. 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 (N.J.S.A. 54:32B-1 et seq.);
8. The tax imposed pursuant to P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) from the purchase of furniture, fixtures, and equipment, or materials for the remediation of, or the construction of new structures at the site of a redevelopment project. For the purpose of

computing the sales and use tax on the purchase of materials used for remediation, construction of new structures, or the construction of new residences at the site of the project, it shall be presumed by the Director of the Division of Taxation, in lieu of an exact accounting from the developer, suppliers, contractors, subcontractors, and other parties connected with the project, that the tax equals one percent of the developer's contract price for such remediation or construction or such other percentage, not to exceed three percent, that may be agreed to by the director upon the presentation of clear and convincing evidence that the tax on materials is greater than one percent of the contract price for the remediation or construction;

**9.** The hotel and motel occupancy fee imposed pursuant to section 1 of P.L. 2003, c. 114 (N.J.S.A. 54:32D-1); or

**10.** The portion of the fee imposed pursuant to section 3 of P.L. 1968, c. 49 (N.J.S.A. 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 (N.J.S.A. 46:15-8).

**(b)** The Director of the Division of Taxation may retain up to 20 percent of certain State incremental tax revenues, such as the corporate business tax and sales and use tax, for adjustment as necessary, which shall be returned to the developer after such time as the statute of limitations has expired for the specific tax withheld. No portion of revenues pledged pursuant to P.L. 2013, c. 161 shall be subject to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof in the grant agreement.

**(c)** Incremental revenue shall be calculated as the difference between the amount collected in any fiscal year from any eligible revenue source included in the State incentive grant agreement, less the revenue increment base for that eligible revenue.

## History

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### HISTORY:

Recodified from N.J.A.C. 19:31-4.8 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.10, Affirmative action and prevailing wage, recodified to N.J.A.C. 19:31-4.12.

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## **N.J.A.C. 19:31-4.11**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM***

### **§ 19:31-4.11 Pledge, assignment, transfer, or sale of grant amount**

**(a)** A developer may, upon notice to and consent of the Authority and the State Treasurer, which consent shall not be unreasonably withheld, pledge, assign, transfer, or sell any or all of its right, title, and interest in and to such agreements and in the incentive grants payable thereunder, and the right to receive same, along with the rights and remedies provided to the developer under such agreement. Any such assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Any pledge of incentive grants made by the developer shall be valid and binding from the time when the pledge is made and filed in the records of the Authority. The incentive grants so pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. Neither the redevelopment incentive grant agreement nor any other instrument by which a pledge under this section is created need be filed or recorded except with the Authority.

**(b)** A developer may apply to the Director of the Division of Taxation and the Chief Executive Officer of the Authority for a tax credit transfer certificate, if the developer is awarded a tax credit pursuant to N.J.A.C. 19:31-4.8 or 4.9, covering one or more years, in lieu of the developer being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the developer shall include a statement waiving the developer's right to claim that amount of the credit against the taxes that the developer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this subsection shall not be exchanged for consideration received by the developer of less than 75 percent of the transferred credit amount before considering any further discounting to present value which may be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the developer who originally applied for and was allowed the credit.

### **History**

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**HISTORY:**

Recodified from N.J.A.C. 19:31-4.9 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Section was "Pledge and assignment of grant amount". Inserted designation (a); in (a), substituted ", assign, transfer, or sell any or all of its right, title," for "and assign as security for any loan or bond any or all of its right, title"; and added (b). Former N.J.A.C. 19:31-4.11, Severability, recodified to N.J.A.C. 19:31-4.14.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (b), substituted "or 4.9" for "(d)", "\$ 25,000" for "100,000", and "before considering any further discounting to present value which may be permitted" for ", as determined at present value", and deleted ", provided that one transfer consisting of any remainder that is less than \$ 100,000 may be made in each tax period in an amount less than \$ 100,000," following "credits".

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## **N.J.A.C. 19:31-4.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-4.12 Affirmative action and prevailing wage**

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The Authority's affirmative action requirements P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to State incentive grant projects undertaken in connection with financial assistance received under the Economic Redevelopment and Growth Program; and, for a State incentive grant solely for infrastructure improvements in the public right-of-way or any ancillary infrastructure project, regardless of whether the work or improvements are part of a larger redevelopment project, only to the work relating to the infrastructure improvements in the public right-of-way or the ancillary infrastructure project for which the incentive grant is issued.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-4.10 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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## **N.J.A.C. 19:31-4.13**

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### **§ 19:31-4.13 Appeals**

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- (a) The Board's action on applications shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c) Appeals that are timely submitted shall be handled by the Authority as follows:
1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

### **History**

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**HISTORY:**

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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## **N.J.A.C. 19:31-4.14**

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### **§ 19:31-4.14 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-4.11 by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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## **N.J.A.C. 19:31-5.1**

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### **§ 19:31-5.1 Applicability and scope**

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The New Jersey Economic Development Authority is promulgating this subchapter to establish criteria for products that provide grants to small businesses, loans and grants to microbusinesses, and loans and grants to eligible lending entities as part of the Main Street Recovery Finance Program, which utilizes the Main Street Recovery Fund, in accordance with the Main Street Recovery Finance Program Act, sections 82 through 88 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 (N.J.S.A. 34:1B-349 et seq.), as amended by P.L. 2021, c. 160.

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End of Document

## **N.J.A.C. 19:31-5.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-5.2 Definitions**

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The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Main Street Recovery Finance Program Act, sections 68 through 81 of P.L. 2020, c. 156.

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Capital improvements" means:

1. Expenses that a business incurs for preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, including, but not limited to, water, electric, sewer, and stormwater, and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems, or other environmental components.
2. Expenses that a business incurs for obtaining, and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168. and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property.
3. "Capital improvements" shall not include site acquisition; vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement; any capital improvement for which the business received any grant financial assistance from any State source; costs of a lease, including any capital lease; or any soft costs.

"Community development financial institution" means a financial institution certified by the U.S. Department of the Treasury as a community development financial institution. (12 CFR 1805.201).

"Eligible microbusiness" means any microbusiness that satisfies the relevant eligibility criteria set forth at N.J.A.C. 19:31-5.3 for direct financial assistance from the Authority.

"Eligible small business" means any small business that satisfies the relevant eligibility criteria set forth at subsection (b) of section 85 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-352) and N.J.A.C. 19:31-5.3.

"Full-time employee" means:

1. A person:
  - i. Who is employed by a business for consideration for at least 35 hours a week and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.; or
  - ii. Who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for at least 35 hours a week and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.; or
  - iii. Who is a partner of a business who works for the partnership for at least 35 hours a week and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.; or
  - iv. Who is a resident of another state and would be eligible under subsections i, ii, or iii above, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., due to a reciprocity agreement with the other state.
2. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for paragraph 1 above.
3. "Full-time employee" shall not include any person who works for the business as an independent contractor or on a consulting basis.

"Fund" means the Main Street Recovery Finance Fund established under the Main Street Recovery Finance Program pursuant to section 84 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-351).

"Home-based business" means a business that does not have a separate entrance for commercial customers and that requires customers to enter the residential portion of the property in order to conduct business, provided that bed and breakfast establishments are not considered home-based businesses.

"Microbusiness" means a business, including non-profit entities, that produces goods or provides services and has fewer than 10 full-time employees and annual gross revenue of less than \$ 1,500,000 at the time of application for a loan or grant under the program. The business shall have a physical location in the State, provided the location cannot be residential, unless the location is a home-based business.

"Microbusiness lenders" means community development financial institutions, minority depository institutions, or other eligible lenders.

"Minority depository institution" means any Federally insured depository institution that is listed on the Federal Deposit Insurance Corporation's Minority Depository Institutions List, which is available on the Federal Deposit Insurance Corporation's website.

"Other eligible lender" means a zone development corporation as defined in section 3 of P.L. 1983, c. 303 (N.J.S.A. 52:27H-62), that is located in a municipality with a population greater than 100,000. It also means other nonprofit lenders, such as an economic development corporation or community development corporation. To be an other eligible lender, the lender shall have a minimum of 10 years of experience in lending to microbusinesses.



"Product" means a sub-program established by the Authority under the Program to provide a particular type of financial assistance to one or more categories of eligible entities.

"Program" means the Main Street Recovery Finance Program established pursuant to section 84 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-351).

"Qualified opportunity zone" means a Federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400.Z-1.

"Small business" means a business, including non-profit entities, engaged in the conduct of a trade or business in this State that qualifies as a "small business concern" within the meaning of the Federal Small Business Act, Pub. L. 85-536 (15 U.S.C. § 631. et seq.) for the purpose of the small business's eligibility assistance from the United States Small Business Administration. The Authority shall determine whether a business is a "small business" based solely on the applicant and shall not consider any affiliates or other businesses related to the applicant. The business shall have a physical location in the State, provided the location cannot be residential unless the location is a home-based business.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, freight and shipping delivery, early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

## **N.J.A.C. 19:31-5.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-5.3 Product description and eligibility criteria**

(a) The Board may establish grant products that shall make available grants to eligible small businesses, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible grant uses shall be capital improvements or operating expenses. The eligible capital improvement may be made by an entity that is wholly owned by the applicant;
2. Eligible capital improvements by a home-based business shall be the purchase and installation of new furniture and equipment but shall not include building renovations and improvements. For purposes of home-based businesses, allowable furniture and equipment must be used exclusively for the business and must not be attached to the building;
3. A small business shall be eligible to receive a grant if the small business demonstrates to the Authority at the time of application that:
  - i. The small business has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting a tax clearance certificate, as described at section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39); and
  - ii. After execution of the grant agreement, the small business shall pay each full-time and part-time employee during the term of the grant not less than \$ 15.00 per hour or 120 percent of the minimum wage fixed under subsection (a) of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips; and
4. In addition to the requirements at (a)2 above, a small business shall be eligible to receive a grant for capital improvements only if the small business demonstrates to the Authority, at the time of application, that:
  - i. Any capital improvement in excess of \$ 50,000 and undertaken with grant funds shall comply with standards established by the Authority, and published on the Authority's website, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction;
  - ii. Each worker employed to perform construction work in connection with a capital improvement undertaken with grant funds in excess of \$ 50,000 shall be paid not less than

the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.). This requirement shall extend through the term of the grant. For purposes of this provision, "worker" shall mean any person working on a capital improvement, whether employed by the small business or the small business's contractor or subcontractor; and

iii. The applicant leases or owns the facility at which capital improvement is made. If the applicant leases the facility, the applicant must have the right to make the capital improvements.

**(b)** The Board may establish grant and loan products that shall make available grant and loans to eligible microbusiness lenders, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible grant and loan uses shall be strengthening capital structures, leveraging additional debt capital, and increasing lending and investing in economically disadvantaged communities in New Jersey. Any lending and investing by the microbusiness lender using grant and loans from the Authority shall be limited to microbusinesses.
2. A microbusiness lender shall be eligible to receive a grant or loan, if the microbusiness lender demonstrates to the Authority at the time of application that the microbusiness lender has a minimum of 10 years of experience in lending to microbusinesses.
3. Grants available to microbusiness lenders may include a grant for the purpose of providing technical assistance to microbusinesses applying for financial assistance to the microbusiness lender. The technical assistance grant may be awarded in conjunction with a loan to the microbusiness lender. To be eligible for loans that include such grants, the microbusiness lender must demonstrate to the Authority at the time of application that the microbusiness lender has the capacity to provide technical assistance.

**(c)** The Board may establish loan products that shall make available to eligible microbusinesses, subject to availability of funds in the Fund. Eligibility criteria shall be the following:

1. Eligible loan uses shall include, but are not limited to, capital improvements, employee training, salaries for new positions, and day-to-day operating expenditures, including payroll, rent, utilities, insurance, and purchases of goods and services.
2. The Board may establish conditions where the loans provided to eligible microbusinesses may be forgiven at the Authority's discretion; and
3. Any other eligibility criteria consistent with the Act that the Authority determines accomplishes the purpose of the microbusiness loan product, which other eligibility shall be posted by the Authority on its website.

**(d)** The following apply to all products established under the Main Street Recovery Finance Program:

1. The following apply to the extent that the number of employees or full-time employees is a criteria for a business to qualify as a microbusiness or small business:
  - i. If the business employs employees through a professional employer organization, the professional employer organization must be registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.); and

ii. The business must satisfy the minimum number of employees or full-time employees on the date of application and the date three months before the application.

2. Businesses that are engaged in the following are not eligible for funding directly from the Authority or through grants and loans to eligible microbusiness lenders: the conduct or purveyance of "adult" (that is, pornographic, lewd, prurient, obscene, or otherwise similarly disreputable) activities, services, products, or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction, bankruptcy, fire, "lost-our-lease," "going-out-of-business," or similar sale; sales by transient merchants, Christmas tree sales, or other outdoor storage; or any activity constituting a nuisance.

3. In its allocation of financial assistance, directly to businesses or through grants and loans to eligible microbusiness lenders, the Authority may consider the business's benefit to the community in which it is situated and the degree to which the business enhances economic development in communities that have been severely impacted by the COVID-19 pandemic when making awards under the Program. The Authority may prioritize or make available a percentage of the funds under grant products to businesses in qualified opportunity zones.

4. To the extent permitted by law and based on the recommendations of a disparity study to be conducted by the Authority evaluating the relative availability of capital and related banking resources for small businesses and microbusinesses that are women- and minority-owned, the Authority shall establish policies, practices, protocols and, if appropriate, minimum percentages of the Fund to be set aside for eligible small businesses and microbusinesses that are minority- or women-owned.

5. For all loan products, the Authority shall establish the term and interest rate based on economic conditions prevailing in the market. The Authority shall post the term and interest rate on its website.

**(e)** Pursuant to (a) above, a small business improvement grant product is established that shall provide reimbursement grants of up to \$ 50,000 to eligible small businesses in an amount equaling 50 percent of the eligible capital improvement.

1. Only one grant shall be awarded per applicant. An applicant shall apply for the grant in a single application for all capital improvement costs or for separate locations. No landlords shall be eligible under the Program.

2. The eligible capital improvements must be at least \$ 5,000.

3. No grant shall be approved for a capital improvement that commenced, or was purchased, prior to two years before the date of the application, but in no event prior to March 9, 2020.

4. After the date of closing of the grant, the applicant shall remain at the location two years for grant awards not exceeding \$ 25,000 or four years for all other grant awards.

**(f)** Pursuant to (a) above, a small business lease grant product is established that shall provide grants to eligible small businesses that make lease decisions through new leases, lease amendments, and lease extensions. Grants shall be disbursed in two payments. The first disbursement shall be up to 20 percent of the annualized lease payment as of the date of closing of the grant, and the second disbursement shall be up to 20 percent of the annualized lease payment as of the first anniversary of the date of closing of the grant.

1. Only one grant shall be awarded per applicant for the same location. Only one location shall be included in one application. An applicant seeking a grant for more than one location shall submit an application for each location.

- 2.** The applicant's landlord cannot have any ownership interest in the applicant.
- 3.** The leased premises shall be used as office, commercial, or retail space.
- 4.** Applicants who have or are seeking to expand, renew, or newly lease commercial space are eligible. No grant shall be approved for an expansion, renewal, or new lease with an effective date prior to one year before the date of the application, but in no event prior to March 9, 2020.
- 5.** The new or additional space or the space that is being renewed must measure more than 250 square feet and be fully or partially located on the first floor.
- 6.** Applicants shall remain at the leased premises for five years after the date of closing of the grant. Tenants may have a right to purchase after the five-year period.
- 7.** Applicants that are terminating an existing lease and obtaining a new lease must demonstrate that the new lease is at least 250 square feet larger than the prior space.
- 8.** Applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, must demonstrate that they are current on rent payments.
- 9.** The amount of the grant shall be based on the lower of the lease payments or market-rate pricing, as determined by the Authority, based upon comparable market rates. The Authority may obtain comparable market rates through a third-party. In considering comparable market rates, the Authority shall consider the base rent and all other payments due from the tenant to the landlord.
- 10.** A small business leasing more than 10,000 square feet shall receive a grant based on the lease for the first 10,000 square feet.

## **N.J.A.C. 19:31-5.4**

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### **§ 19:31-5.4 Application and review**

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- (a)** A small business, microbusiness, or microbusiness lender seeking financing through a product established in the program shall submit an application that shall be available on the Authority's website at [www.njeda.com](http://www.njeda.com) or by contacting the Authority.
- (b)** A completed application includes:
1. The name of the applicant;
  2. The contact information of the applicant;
  3. Except for loans to microbusiness lenders, the prospective future address of the applicant (if different);
  4. The organizational type of the applicant;
  5. The principal products and services and three-digit North American Industry Classification System number;
  6. The New Jersey tax identification number;
  7. The Federal tax identification number;
  8. The most recent three Federal tax returns filed;
  9. Except for loans to microbusiness lenders, the total number of full-time and part-time employees of the applicant, in New Jersey at the time of application, and three months prior to the submission of the application;
  10. Except for loans to microbusiness lenders, the comprehensive list of the applicant's locations in New Jersey and the function performed at each location;
  11. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
  12. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
  13. For any grant product pursuant to N.J.A.C. 19:31-5.3(a), including, but not limited to, the small business improvement grant product and the small business lease grant product, WR 30, payroll reports, or equivalent documentation for the quarter preceding submission of application;
  14. For the small business improvement grant product, an application shall include:
    - i. Executed lease or recorded deed evidencing site control of the relevant property;

- ii. Documentation evidencing proof of past or proposed eligible capital improvements; and
  - iii. If the property is leased, evidence that the landlord has granted the applicant the right to make the capital improvements;
- 15.** For the small business lease grant product, an application shall include:
- i. A copy of the lease for the relevant property, which must include square footage and rent; and
  - ii. For applicants who have already expanded or renewed their lease, or who are seeking to expand or renew their presently leased space, documentation that the applicant is current on rent payments;
- 16.** For microbusiness lenders, an application shall include:
- i. A comprehensive description of the applicant's lending portfolio that demonstrates the applicant's lending experience with microbusinesses and capacity to lend to microbusinesses;
  - ii. A description of the applicant's experience working in communities and business segments underserved by the banking sector; and
  - iii. For products that include a grant to provide technical assistance to microbusinesses, a description of the applicant's capacity to provide the technical assistance;
- 17.** A certification under the penalty of perjury from the applicant, or an authorized agent of the applicant, that the information provided in the application is true; and
- 18.** Any other necessary and relevant information as determined by the Authority for any product or for a specific application.
- (c)** The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date. If interest in a product so warrants, at the Authority's discretion and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review of a submitted application will determine whether the applicant:
- 1. Complies with the eligibility criteria;
  - 2. Satisfies the submission requirements; and
  - 3. Provides adequate information for the subject application.
- (d)** Before the Authority may approve an eligible business's application:
- 1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and the Department of the Treasury that the applicant is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.
    - i. Substantial good standing shall be determined by each department and mean, at a minimum, that the eligible business:
      - (1)** As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

**(A)** Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the eligible business; and

**(B)** Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

**(2)** As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

**ii.** If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a business is in substantial good standing.

**2.** The Authority shall confirm that the applicant is in good standing on all financial assistance received from the Authority.

**3.** The Authority may contract with an independent third party to perform a background check on the eligible business.

**(e)** Upon completion of the review of an application pursuant to this section, the Authority shall determine whether or not to approve the application and the amount of assistance to be granted. The Authority shall notify the applicant of the determination. For a loan product, the Authority shall issue a commitment letter, and the award of the financial assistance will be subject to terms and conditions in the commitment letter.



## **N.J.A.C. 19:31-5.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 5. MAIN STREET RECOVERY FINANCE PROGRAM***

### **§ 19:31-5.5 Grant and loan agreements**

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**(a)** For loans, upon satisfaction of conditions in the commitment letter, as determined by the Authority, but before the disbursement of loan funds, the entity shall execute a loan agreement. For grants, following approval by the Authority, but before the disbursement of grant funds, the entity shall enter into a grant agreement with the Authority, provided that the terms of the grant approved to a microbusiness lender in conjunction with a loan shall be included in the loan agreement. All grant agreements and loan agreements shall include, but not be limited to, the following provisions:

1. The amount of the financial assistance and the frequency and dates of disbursements;
2. The term of the agreement;
3. A detailed description of the specific use for which the financial assistance was approved;
4. Representations that the entity is in substantial good standing or meets the agreement requirements described at N.J.A.C. 19:31-5.4(d)1;
5. A provision requiring the entity to return to the Authority all the financial assistance disbursed if the Authority determines that the entity made a material misrepresentation on its application, which shall be in addition to any other remedies in the agreement and any criminal or civil penalties to which the entity and any corresponding officer may be subject;
6. A provision permitting an audit from time-to-time, as the Authority deems necessary, of all evidence, records, or any other evidence of the entity supporting the representations and certifications made as part of the application, the agreements, and any annual reports;
7. A requirement for the entity to indemnify the Authority in relation to the loan or grant agreement and the uses of the loan or grant funds and a requirement for insurance from the entity, as determined by the Authority, based on the product and the amount and permitted use of the financial assistance;
8. Reporting requirements determined by the Authority to be necessary to verify that the financial assistance is used only for the approved use; and
9. Defaults and remedies.

**(b)** For small business grant products established pursuant to N.J.A.C. 19:31-5.3(a), including, but not limited to, the small business improvement grant product and the small business lease grant product, the grant agreement shall additionally include the following:

1. The location(s) of the applicant;

2. For the small business lease grant product, a requirement for the small business to remain at the same location for five years after the date of closing of the grant;
  3. For the small business improvement grant product, a requirement for the small business to remain at the same location(s) after the date of closing of the grant for two years, if the grant amount does not exceed \$ 25,000, or four years for all other grant amounts;
  4. A requirement that the small business pay each full-time or part-time employee employed by the small business not less than \$ 15.00 per hour or 120 percent of the minimum wage fixed under subsection (a) of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips;
  5. A requirement to submit annually for the term of the grant agreement, starting with the first anniversary of the closing of the grant agreement, the following:
    - i. WR 30, payroll reports, or equivalent documentation for the preceding year;
    - ii. Certification and evidence documenting that the eligible small business is in the same location; and
    - iii. Any other items that the Authority shall determine as necessary;
  6. A provision requiring the entity to return to the Authority all the financial assistance disbursed if the Authority determines that the entity failed to comply with the prevailing wage requirements at N.J.A.C. 19:31-5.3(a)4ii, the green building standards at N.J.A.C. 19:31-5.3(a)4i, the payment of employees at N.J.A.C. 19:31-5.3(a)3ii, and the provision of a tax clearance certificate at N.J.A.C. 19:31-5.3(a)3i; and
  7. A provision that the Authority shall recognize the amount of time the entity was in compliance with the agreement in calculating any repayment if the business ceases operations or moves to another location in the State.
- (c)** The following apply to financial assistance to microbusiness lenders:
1. A requirement that any lending and investing by the microbusiness lender using the grant or loan from the Authority shall be limited to microbusinesses;
  2. Interest rate and repayment obligations;
  3. If the Authority approved the loan for the microbusiness lender to invest or lend to microbusinesses, a requirement to submit annually, no later than 30 days after the end of the microbusiness lender's fiscal year, for the term of the grant agreement, a list of the loans the microbusiness lender has provided to microbusinesses using the loan. The list shall include outstanding loans, loans past due, reserves, loss experience, and non-accrual loans. For each loan, the list shall set forth the loan amount approved and disbursed, the job creation or retention anticipated at the time of approval, the location(s) of business, any additional amount of private funding per project, whether the business is women- or minority-owned, whether the business is certified by the State as a "minority business" or a "women's business," and, to the extent known, whether any owner of the microbusinesses is a woman, minority group member, veteran, or LBGTQA person.
- (d)** In any submission required by the Authority pursuant to this section, the applicant, or an authorized agent of the applicant, shall certify under the penalty of perjury that the information provided in the submission is true.

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End of Document

## **N.J.A.C. 19:31-5.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 5. MAIN STREET RECOVERY FINANCE PROGRAM***

### **§ 19:31-5.6 Fees**

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**(a)** In administering the products established under the Program, the Authority shall apply fees to applicants as set forth at N.J.A.C. 19:30-6, except:

1. No fee shall be required for applications from small businesses for any grant products; and
2. The Authority may waive any or all fees from microbusinesses for any product based on factors such as the prevailing economic conditions, the size of the award, and the purpose of the product.

## **N.J.A.C. 19:31-5.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 5. MAIN STREET RECOVERY FINANCE PROGRAM***

### **§ 19:31-5.7 Affirmative action and prevailing wage**

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**(a)** In addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, for small business grant products, the Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and N.J.A.C. 19:30-3.4, shall apply to the extent required pursuant to N.J.A.C. 19:31-5.3(a)4ii.

**(b)** In addition to the employee minimum wage requirements set forth at N.J.A.C. 19:31-5.5(b)4, for all other products, the Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and N.J.A.C. 19:30-3.4, shall apply to projects undertaken in connection with financial assistance received from the Fund.

**(c)** The Authority's affirmative action requirements at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), and N.J.A.C. 19:30-3 shall apply commencing with August 26, 2021, the effective date of this subchapter, to projects undertaken in connection with financial assistance received under the Fund.

## **N.J.A.C. 19:31-5.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 5. MAIN STREET RECOVERY FINANCE PROGRAM***

### **§ 19:31-5.8 Appeals**

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- (a)** Any action by the Board shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b)** An applicant may appeal an action by the Authority by submitting in writing to the Authority, within 10 business days from the effective date of the Authority's action, an explanation as to how the applicant has met the product criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c)** Appeals that are timely submitted shall be handled by the Authority as follows:
- 1.** The Chief Executive Officer, or other Authority staff designated under delegated authority, shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the product criteria.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature.
  - 3.** The Board, or the Chief Executive Officer, or other Authority staff under delegated authority, shall issue a final decision on the appeal as follows:
    - i.** If the Board is issuing the final decision, the Chief Executive Officer may include a recommendation to the written report of the hearing officer.
    - ii.** The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
    - iii.** The Authority shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Authority shall issue a final decision on the appeal.

4. Final decisions rendered by the Authority shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

## **N.J.A.C. 19:31-5.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 5. MAIN STREET RECOVERY FINANCE PROGRAM***

### **§ 19:31-5.9 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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End of Document



## **N.J.A.C. 19:31-6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 6. (RESERVED)***

### **Title 19, Chapter 31, Subchapter 6. (Reserved)**

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End of Document

## **N.J.A.C. 19:31-7.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND***

### **§ 19:31-7.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement "The New Jersey Local Development Financing Fund Act" (P.L. 1983, c. 190). This Act established the Local Development Financing Fund, a special depository fund for the purpose of providing financial assistance to certain commercial and industrial projects in certain municipalities who sponsor these projects.

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## **N.J.A.C. 19:31-7.2**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND***

### **§ 19:31-7.2. Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the New Jersey Local Development Financing Fund Act (P.L. 1983, c.190) as amended and supplemented.

"Eligible project" means a project which has been approved by the Authority to receive financial assistance from the Local Development Financing Fund.

"Eligible project costs" means the costs of planning, developing, executing and making operative, an industrial or commercial redevelopment project. Eligible project costs include:

1. The cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;
2. The cost incurred for, or in connection with, or incidental to, acquiring and managing the land, property or interest;
3. The cost incurred for, or in connection with, the relocating and moving of persons displaced by acquisition;
4. The cost of development or redevelopment, including:
  - i. The comprehensive renovation or rehabilitation of the land, property or interest;
  - ii. The cost of equipment and fixtures which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project;
  - iii. The cost of energy conservation improvements designed to encourage the efficient use of energy resources, including renewable and alternative energy resources and cogenerating facilities; and
  - iv. The disposition of land or other property for these purposes.
5. The cost of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;
6. The cost of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project; and
7. The cost incurred or incidental cost including, but not limited to:
  - i. Administrative, appraisal and economic analysis;

- ii. Engineering service;
- iii. Planning service;
- iv. Design service;
- v. Architectural service;
- vi. Surveying service; and
- vii. Other professional service.

"Financial assistance" means, but is not limited to, loans, loan guarantees, grants, secondary mortgages, and equity participation provided by the fund.

"Fund" means the Local Development Financing Fund.

"Municipality" means a New Jersey municipality qualifying for aid pursuant to the State formula for State aid to municipalities (see N.J.S.A. 52:27D-178) for services and to offset property taxes.

"Project" means an industrial or commercial enterprise within a municipality that would not be undertaken in its intended scope but for the assistance provided for under the Act and these rules.

"Sponsor" means the governing body of a municipality or, with the approval of the government of the municipality, a local development corporation, community development corporation, municipal port authority (established pursuant to N.J.S.A. 40:68A-29), or governing body of a county, or, with the approval of the government of a county, a county development corporation or other public entity designated by the Authority as a sponsor.

## History

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### HISTORY:

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 New Jersey Register 1714(a), 37 New Jersey Register 3058(a).

In "Sponsor" definition, added "(established pursuant to N.J.S.A. 40:68A-29)" and deleted "(see N.J.S.A. 40:68A-29)".

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## **N.J.A.C. 19:31-7.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND***

### **§ 19:31-7.3 Application for financial assistance**

---

**(a)** Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of \$ 1,000. A non-refundable commitment fee of .875 percent of the loan amount is charged with the acceptance by an applicant of a direct loan commitment under the Local Development Financing Fund. The fee to be paid at closing is .875 percent of the loan amount. If financial assistance is provided from the Fund to purchase a participation in a bank loan, a non-refundable fee of \$ 750.00 is charged with the acceptance of a commitment under the Fund. A closing fee is not charged for a bank participation from the Fund.

**(b)** Each application for financial assistance from the Fund shall be accompanied by evidence of the support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall mean an approved resolution of the governing body of the municipality.

**(c)** Each application for financial assistance from the Fund shall be accompanied by a benefit statement prepared by the applicant. The benefit statement shall address:

1. The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;
2. The number of jobs preserved by the completion of the project in the case of an existing enterprise;
3. The increase in the valuation of real property in the municipality as a result of the completion of the project;
4. Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;
5. Whether the project will be located in an area targeted for economic development and receiving Federal, State and/or local development assistance under other programs;
6. The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;
7. The extent to which the project will advance State and/or regional planning and development strategies; and
8. The extent to which the location of the project is accessible to and promotes the use of public transportation.

**(d)** Each application for financial assistance from the Fund shall be accompanied by evidence of private source or other public source financing commitments.

(e) Each application for financial assistance from the Fund shall be accompanied by evidence of all requisite Federal and/or State environmental permits necessary for the project.

(f) Each application for financial assistance from the Fund shall be accompanied by a plan for the utilization of minority and women contractors and equal opportunity for employment in connection with the project (see N.J.A.C. 19:31-7.6).

## History

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### HISTORY:

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

In (a), substituted "\$ 1,000" for "\$ 500.00", and inserted the last two sentences.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), added the last two sentences.

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## **N.J.A.C. 19:31-7.4**

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### **§ 19:31-7.4 Financial assistance**

---

**(a)** No more than 20 percent of the total financial assistance provided from the Fund shall be in the form of grants or other non-lending assistance.

**(b)** The total amount of financial assistance provided to project applicants in any county during any year shall not exceed 20 percent of the appropriation made during that year to the Fund.

**(c)** No financial assistance from the Fund shall be granted to an individual applicant project unless at least 50 percent of the total eligible project cost consists of private resources. For purposes of these rules, private resources shall include, but are not limited to:

1. Conventional private sector mortgages;
2. Purchase money mortgages;
3. Industrial Revenue Bonds;
4. Leases;
5. Loans guaranteed by the Federal Small Business Administration, or similar loan guarantees of other governmental and/or quasi-governmental entities; and
6. Equity investments in the project.

**(d)** The Fund shall provide loans in the form of permanent subordinate mortgage financing for eligible project cost at or below market rates of interest, as determined by the Authority (see N.J.A.C. 19:31-7.5(c)).

**(e)** The applicant shall secure interim financing on all projects involving construction, unless the Authority agrees otherwise in writing. The interim lender shall assume full responsibility for monitoring the construction of a project and for its timely completion. The interim lender may be the first mortgage lender or another experienced, qualified construction lender and shall be approved by the Authority.

**(f)** The applicant shall have such equity in the project as the Authority may deem appropriate to insure the applicant's ability to repay the loan from the Fund.

**(g)** The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitment and that without assistance from the Fund the project would be economically unviable and unable to proceed.

**(h)** Assistance other than loans from the Fund may be approved where the Authority deems such assistance necessary to the success of the project. Such assistance shall not be provided for projects that can be funded by loans.

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## N.J.A.C. 19:31-7.5

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### **§ 19:31-7.5 Terms of financial assistance**

---

- (a) The minimum loan amount from the Fund shall be \$ 50,000 and the maximum loan amount from the Fund shall be \$ 2,000,000.
- (b) The Authority shall determine the term and the interest rate to be charged on a loan from the fund through consideration and official action of the Members at a public hearing.
- (c) Factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:
1. The applicant's creditworthiness;
  2. The quality of collateral;
  3. The number of jobs maintained or expanded in New Jersey;
  4. The location/municipality of project;
  5. The industry type;
  6. The increase in tax ratable values;
  7. Leveraging of total project costs to public dollars;
  8. Whether the business is new to the State or expanding operation in the State; and
  9. Whether the applicant is locating to a former brownfield site.
- (d) The Authority shall provide public notice of the loan term and interest rate, including the interest rate floor, to be charged for the Local Development Financing Fund as authorized by the Members through, among other methods, listing on the agency's website at [www.njeda.com](http://www.njeda.com).

### **History**

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#### **HISTORY:**

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2002 d.223, effective July 15, 2002.

See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

In (c), substituted "three for "five".

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

In (c), substituted "approval," for "closing" following "time of loan".

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

In (c), substituted "closing" for "approval".

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

Rewrote (b) and (c); and added (d).

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## **N.J.A.C. 19:31-7.6**

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### **§ 19:31-7.6 Evaluation of applications**

---

**(a)** The Authority shall evaluate and rank each application for financial assistance considering the following factors:

1. The number of unemployed persons in the municipality in which the project is located;
2. The number of permanent full-time jobs to be created and/or maintained directly by the project, excluding the period of construction or development;
3. The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State;
4. The increase in the valuation of real property in the municipality as a result of the completion of the project;
5. The percentage of the total eligible project costs to be financed from private and/or other public sources;
6. Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;
7. Whether the project will be located in an area targeted for economic development and/or will be receiving Federal, State and/or local development incentives under other programs;
8. The extent to which the project will contribute to an economic revitalization of a municipality or region, and will promote or add to the rehabilitation of the physical environment of the immediate area or municipality in which it is to be located;
9. The degree to which the project will facilitate the advancement of State or regional planning development strategies;
10. The extent to which the locations of the project are accessible to and/or promote the use of public transportation;
11. The degree of support for, participation in, and/or consultation about the project, within the community in which the project will be located;
12. The likelihood that the project will create and/or preserve private sector jobs, which will last for a period of at least two years; and
13. The likelihood that the project will result in providing a significant increase in the real property tax base of the municipality in which the project is located.

**(b)** After the evaluation and ranking is completed, the projects will be presented to the members of the Authority for their review and approval.

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## **N.J.A.C. 19:31-7.7**

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### **§ 19:31-7.7 Minority and women business set-aside plans and requirements**

- (a)** Each project approved to receive financial assistance from the Fund shall set a target level of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses and women businesses.
- (b)** The developer and/or general contractor of the project shall identify the minority and/or women businesses that will participate in the project by construction trade, together with the contract sum to be paid to each minority business.
- (c)** In determining the target level and compliance therewith, a developer and/or general contractor must proceed in accordance with N.J.A.C. 12A:10-2.

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## **N.J.A.C. 19:31-7.8**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND***

### **§ 19:31-7.8 Rescission of financial assistance from the Fund**

**(a)** The Authority may at its discretion rescind part or all of the financial assistance from the Fund when it has become evident after the granting of financial assistance that:

1. The commitment of other financial resources from private sources has been withdrawn;
2. The project is judged no longer capable of repaying the Fund for the financial assistance it has received;
3. The project is judged incapable of achieving its target requirement, pursuant to N.J.A.C. 19:31-7.7, or that the project is not employing good faith efforts to achieve the requirements under N.J.A.C. 19:31-7.7; or
4. The participants in the project are found not to be of a good moral character. Such a finding may be based on convictions of felony offenses or any other conduct of the applicant which may be viewed in a nonfavorable light by a reasonable person.

**(b)** Upon determination of the Authority that financial assistance from the Fund shall be rescinded, the Authority shall send a certified letter to the applicant and the sponsor informing them of the rescission.

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## **N.J.A.C. 19:31-8.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND***

### **§ 19:31-8.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1993, c.139 which pertain to the Hazardous Discharge Site Remediation Fund. This Act established the Hazardous Discharge Site Remediation Fund, a special, revolving fund for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous waste.

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## **N.J.A.C. 19:31-8.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND***

### **§ 19:31-8.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means P.L. 1993, c. 139, as amended and supplemented.

"Applicant" means a municipality, county, redevelopment entity, company, firm, non-profit organization, an individual, corporation, partnership, or other private business entity which has been determined by the Department to be eligible for financial assistance or a grant under the Fund.

"Authority" means the New Jersey Economic Development Authority.

"Brownfield development area" means an area that has been so designated by the Department, in writing, pursuant to Section 7 of P.L. 1993, c. 139 as amended.

"Brownfield site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

"Community collaborative initiative" means the partnership established between the New Jersey Department of Environmental Protection and the Authority, where Department staff are assigned to work directly with Department-designated communities to address environmental and redevelopment issues.

"Department" means the New Jersey Department of Environmental Protection.

"Discharge" shall have the same meaning as set forth at N.J.A.C. 7:26E, Technical Requirements for Site Remediation.

"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

"Financial assistance" means loans and loan guarantees.

"Fund" means the Hazardous Discharge Site Remediation Fund.

"Members" means the members of the Authority.

"Non-profit organizations" mean 501(c)3 corporations pursuant to Section 501(c)3 of the Federal Internal Revenue Code, 26 U.S.C. § 501.(c)3, that are exempt from taxation pursuant to section 501(a) of the Federal Internal Revenue Code, 26 U.S.C. § 501.(a).

"Person" means any individual, corporation, company, partnership, firm, or other private business entity and shall not include non-profit organizations.

"Preliminary assessment" shall have the same meaning as set forth at N.J.A.C. 7:26E.



"Public entities" means municipalities, counties and, as defined in this section, redevelopment entities.

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation or natural resources, or both.

"Redevelopment entity" means any redevelopment entity authorized to exercise government powers pursuant to section 4 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-4).

"Remediation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation funding source" means the methods of financing the remediation of a discharge.

"Renewable energy generation" means:

1. Electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, methane gas from landfills, a resource recovery facility, a hydropower facility or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner, and provided further that the Commissioner of the Department of Environmental Protection has determined that the resource recovery facility, hydropower facility or biomass facility, as appropriate, meets the highest environmental standards and minimizes any impacts to the environment and local communities; and
2. Energy produced from solar thermal or geothermal technologies.

"Site investigation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

## History

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### HISTORY:

Amended by R.1994 d.375, effective July 18, 1994.

See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote "Applicant"; and inserted "Municipal governmental entity", "NJRA" and "Qualifying person".

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In definition "Act", inserted ", as amended and supplemented"; in definition "Applicant", substituted "municipality, county, redevelopment entity, company, firm, non-profit organization" for "municipal governmental entity, the New Jersey Redevelopment Authority"; added definitions "Brownfield development area", "Brownfield site", "Non-profit organizations", "Public entities", "Redevelopment entity" and "Recreation and conservation purposes"; in definition "Department", deleted "and Energy" from the end; rewrote definitions "Innocent Party" and "Person"; and deleted definitions "Municipal governmental entity" and "NJRA".

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Added definition "Renewable energy generation".

Amended by R.2021 d.126, effective November 1, 2021.

See: 53 N.J.R. 1270(a), 53 N.J.R. 1859(a).

Added definition "Community collaborative initiative"; in definition "Department", inserted "New Jersey"; in definition "Discharge", inserted ", Technical Requirements for Site Remediation"; and deleted definitions "Innocent party" and "Qualifying person".

## **N.J.A.C. 19:31-8.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND***

### **§ 19:31-8.3 Eligibility**

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- (a) Financial assistance from the Fund may be made for eligible projects to public entities for:
1. Implementation of remedial action on contaminated real property; and
  2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose in imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.
- (b) Grants from the Fund may be made for eligible projects to public entities for:
1. Preliminary assessment, site investigation, or remedial investigation of a suspected or confirmed discharge of a hazardous substance or hazardous waste;
  2. Implementation of remedial action for real property where there is a confirmed discharge of a hazardous substance or hazardous waste, not to exceed 75 percent of the total costs of the remedial action;
  3. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property to be used for recreation and conservation purposes, provided that such use is included in the comprehensive plan for the development or redevelopment of the real property and a permanent restriction regarding development and preserving such use is recorded and indexed with the deed in the registry of deeds for the county in which the real property is located;
  4. Matching grants of up to 50 percent of the costs of remedial action on contaminated real property to be used for affordable housing pursuant to N.J.S.A. 52:27D-301 et seq.;
  5. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property for renewable energy generation;
  6. Matching grants of up to 25 percent of the project costs of that portion of the total costs of a remediation to implement an unrestricted use remedial action, in a total amount not to exceed \$ 250,000, to public entities that propose to perform a remedial action;
  7. In a brownfield development area, for preliminary assessment, site investigation, remedial investigation, and remedial action for real property where there is a discharge or suspected discharge of a hazardous substance or hazardous waste. An ownership interest in the real property shall not be required to receive a grant for a preliminary assessment, site investigation, and remedial investigation; however, any grant awarded for remedial action on

real property not owned by the public entity shall be subject to the lien provisions set forth at N.J.A.C. 19:31-8.4; and

**8.** At least 30 percent of the moneys in the Fund shall be allocated for grants to public entities for the preliminary assessment, site investigation, remedial investigation, or remedial action of real property, not located in a brownfield development area, that has been contaminated by a discharge or a suspected discharge of a hazardous substance or hazardous waste. The remainder of the moneys in the Fund shall be allocated for any of the purposes authorized pursuant to section 28 of the Act.

**(c)** Financial assistance from the Fund may be made for eligible projects to persons for:

**1.** Remediation of real property located in a qualifying municipality, as defined in N.J.S.A. 52:27D-178;

**2.** Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

**3.** Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the N.J.A.C. 7:26C, and who have not been ordered or directed to perform the remediation by the Department or by a court pursuant to Section 27b(3) of the Act; and

**4.** Persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted.

**(d)** Grants from the Fund may be made for eligible projects to qualifying persons who are applying for a matching grant and proposing to perform a remedial action for the implementation of an unrestricted use remedial action and who have a net worth of not more than \$ 2 million for:

**1.** Matching grants of up to 25 percent of the project costs of that portion of the total costs of a remediation to implement an unrestricted use remedial action, incurred after receipt of the application by the Department, in a total grant amount not to exceed \$ 250,000; and

**2.** An owner or operator of a child care center licensed pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), or a prospective owner or operator of a child care center who has applied for a license pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), a grant of \$ 1,500 for the costs of a preliminary assessment performed in order to obtain a no further action letter as required pursuant to the provisions of subsection b. of section 2 of P.L. 2007, c. 1 (N.J.S.A. 52:27D-130.5) or performed as part of the child care center licensing requirements established by the Department of Children and Families.

**(e)** Preconditions to eligibility are as follows:

**1.** For public entities:

**i.** Except for remediation grants made pursuant to (b)6 above, public entities shall either hold a tax sale certificate on the real property; have acquired the real property through foreclosure or other similar means; or have acquired the real property through voluntary conveyance, or have passed a resolution or ordinance or other appropriate document to acquire it through voluntary conveyance for the purpose of redevelopment or for recreation and conservation purposes. Regarding the third precondition above, the document authorizing the real property acquisition may also provide that, should good faith negotiations fail, the public entity may choose to exercise its right of eminent domain

in order to acquire title to the real property. Additionally, there must have been a discharge, or there is currently a suspected discharge, of a hazardous substance or hazardous waste on the real property.

**ii.** Except for a grant awarded pursuant to (b) 3, 4, or 7 above, no grant or financial assistance shall be awarded for a remedial action until the public entity actually owns the real property.

**iii.** No grant shall be awarded unless the public entity has adopted a comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated, real property, or can otherwise demonstrate its commitment to the Authority that the real property will be developed or redeveloped within three years from the completion of the remediation. Demonstration of a public entity's commitment to develop or redevelop the real property may include, but is not limited to:

**(1)** A resolution to complete an investigation to determine whether an area is in need of redevelopment or rehabilitation including the real property;

**(2)** A demonstration that the real property is within an area designated as in need of redevelopment or rehabilitation and that the proposed project is consistent with that designation;

**(3)** A demonstration that the project plan is consistent with a community-driven vision or need to address environmental or public health issues, as formalized in a plan by a community-based organization (for example, neighborhood plan);

**(4)** A resolution demonstrating financial commitment for a development or redevelopment project by the local governing body; or

**(5)** Commitment to leverage other stable financial funding sources, including Federal or State funding that may expire, to ensure project viability.

**2.** No financial assistance or grant from the Remediation Fund shall be rendered to a person or any public entity that, at the time of application, is in violation of an administrative or judicial order, judgment or consent agreement regarding violation or threatened violation of an environmental law regarding the subject real property, unless the violation, fee, penalty or assessment is currently being contested by the applicant in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform the required remediation activities.

**3.** Financial assistance from the Fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of the remediation and may be rendered only for that amount of the cost of remediation for which the person cannot establish a remediation funding source. An applicant for financial assistance or a grant shall certify to the Department and to the Authority that it cannot establish a remediation funding source for all or part of the remediation costs. This requirement shall not apply to public entities or to persons who are not required to establish a remediation funding source for the part of the remediation involving an unrestricted use remedial action, persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation.

**4.** Failure to expend an award of financial assistance or grant from the Fund within the following time limits shall result in the cancellation of the award, recoupment of unexpended funds, if funds are provided prior to incurring costs, and no further disbursement of unexpended funds:

- i. Preliminary assessment or site investigation of a contaminated site shall be expended within two years after the date of the award; and
- ii. Remedial investigation of a contaminated site shall be expended within five years after the date of the award, unless such time is extended by the Authority in consultation with the Department.

5. No financial assistance or grant from the Fund shall be rendered to a person or any public entity until it has been demonstrated to the Authority that the full amount of any previous financial assistance or grant awarded to that applicant for the same property has been or will be fully expended.

(f) The determination of eligibility will be made by the Department in accordance with Sections 28 through 31 of the Act.

## History

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### HISTORY:

Amended by R.1994 d.375, effective July 18, 1994.

See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Rewrote the section.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Added new (b)4; recodified former (b)4 and (b)5 as (b)5 and (b)6; in (d)1, deleted "and" from the end; added new (d)2; recodified former (d)2 as (d)3; and in (e)1i and (e)1ii, substituted "6" for "5".

Amended by R.2021 d.126, effective November 1, 2021.

See: 53 N.J.R. 1270(a), 53 N.J.R. 1859(a).

Rewrote the section.

## **N.J.A.C. 19:31-8.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND***

### **§ 19:31-8.4 Lien provision**

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Any expenditure of grant monies by a public entity for a remedial action in a brownfield development area for real property in which the public entity does not have an ownership interest shall constitute a debt of the real property owner to the fund. The authority shall cause to be filed in the county recording office of the county in which the real property is located a notice of lien listing the name of the real property owner, a description of the real property subject to the remedial action and an identification of the amount of the grant awarded from the fund. The notice of lien shall have priority over all other claims or liens which have been filed against the real property, except as provided in the act. The lien shall be removed upon transfer of ownership of the real property to the public entity that expended grant monies for remedial action on that real property.

### **History**

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#### **HISTORY:**

New Rule, R. 2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Former N.J.A.C. 19:31-8.4, Terms of financial assistance, recodified to N.J.A.C. 19:31-8.5.

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## N.J.A.C. 19:31-8.5

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### **§ 19:31-8.5 Financial assistance: term; interest rate; transfer of title**

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- (a) Loans from the Fund or loans guaranteed by the Fund shall be for a term of not more than 10 years.
- (b) Loans to public entities shall bear an interest rate equal to two points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate shall be no lower than three percent. Loans to persons shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, with a minimum floor of five percent.
- (c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable. Notwithstanding the foregoing, the unpaid balance of the loan that is transferred by devise or succession shall not become immediately payable in full, and loan repayments shall be made by the new title holder of the real property.

### **History**

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#### **HISTORY:**

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (b).

Recodified from N.J.A.C. 19:31-8.4 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Section was "Terms of financial assistance". Rewrote (b) and (c). Former N.J.A.C. 19:31-8.5, Amount of financial assistance and grants, recodified to N.J.A.C. 19:31-8.6.

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## N.J.A.C. 19:31-8.6

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### **§ 19:31-8.6 Amount of financial assistance and grants**

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- (a)** Financial assistance and grants may be for up to 100 percent of the estimated applicable remediation costs, except that the cumulative maximum amount of financial assistance to a person in any calendar year, for one or more properties, shall be \$ 500,000.
- (b)** Financial assistance and grants to any one public entity shall not exceed \$ 3,000,000 in any calendar year, except as provided at (c) below.
- (c)** The Authority may award an additional amount of up to \$ 2,000,000 of financial assistance and grants in any calendar year to any one public entity for the remediation of real property in a brownfield development area.
- (d)** The total cumulative amount of matching grants awarded to public entities for up to 75 percent of the costs of the remedial action of real property to be used for recreation and conservation purposes, for up to 75 percent of the costs of the remedial action for renewable energy generation or for up to 50 percent of the costs for affordable housing, shall not exceed \$ 10,000,000 in any calendar year.
- (e)** The amount of financial assistance or grant awarded shall be based upon a scope of work for remediation which is in compliance with N.J.A.C. 7:26D, 7:26E, 7:26B and 7:14B as applicable.
- (f)** The amount of a grant for costs of a remedial action shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances do not allow for residential use.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), deleted "and grants" following "assistance"; and in (b), inserted "or NJRA" following "entity".

Recodified from N.J.A.C. 19:31-8.5 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In (a), substituted "remediation" for "Remediation"; rewrote (b); added new (c), (d) and (g); recodified former (c) and (d) as new (e) and (f); and in (f), inserted "awarded". Former N.J.A.C. 19:31-8.6, Priority system for financial assistance and grants, recodified to N.J.A.C. 19:31-8.7.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (d), inserted ", for renewable energy generation or for affordable housing,".

Amended by R.2021 d.126, effective November 1, 2021.

See: 53 N.J.R. 1270(a), 53 N.J.R. 1859(a).

In (a), substituted "\$ 500,000" for "\$ 1,000,000"; in (b), substituted "at" for "in"; rewrote (d); deleted former (e); and recodified former (f) and (g) as (e) and (f).

## **N.J.A.C. 19:31-8.7**

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### **§ 19:31-8.7 Priority system for financial assistance and grants**

**(a)** An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application, readiness to proceed with remediation as determined by the Department and the Authority, and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this section in the following order of priority:

1. Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;
2. Sites that are owned by a municipality in a brownfield development area; and
3. Sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.).

**(b)** Demonstration of readiness to proceed with the remediation shall, at a minimum, include proof of ownership or control over the real property and retention of a Licensed Site Remediation Professional. Additional factors that may be considered include, but are not limited to: whether the project is located in a municipality designated as part of the Community Collaborative Initiative; whether the project was developed through stakeholder and community engagement; documentation of a resolution by the local governing body demonstrating financial commitment for a development or redevelopment project; or documentation that the project has a commitment of a stable leveraged funding source and requires financial assistance or a grant from the Fund to fulfill a cost-share requirement.

**(c)** The Chief Executive Officer of the Authority shall, from time-to-time, review the allocation of moneys in the Fund and the requirements of applicants for money from the Fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

### **History**

#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (b), inserted a reference to the NJRA.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (a)2, substituted "Chief Executive Officer" for "Executive Director".

Recodified from N.J.A.C. 19:31-8.6 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In the introductory paragraph of (a), substituted "in the following order of priority:" for a period at the end; rewrote (a)1; added new (a)2; recodified former (a)2 as new (a)3; and deleted (b). Former N.J.A.C. 19:31-8.7, Application for financial assistance and grants, recodified to N.J.A.C. 19:31-8.9.

Amended by R.2021 d.126, effective November 1, 2021.

See: 53 N.J.R. 1270(a), 53 N.J.R. 1859(a).

In (a), inserted ", readiness to proceed with remediation as determined by the Department and the Authority," and substituted "section" for "rule"; in (a)1, deleted "and" from the end; rewrote (a)2 and (a)3; and added (b) and (c).

## **N.J.A.C. 19:31-8.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND***

### **§ 19:31-8.8 Non-profit pilot program**

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In accordance with the Act, an allocation from the Fund in an amount not to exceed \$ 5,000,000 shall be set aside for a Non-Profit Pilot Program. Under this Pilot Program, grants may be made for eligible projects to non-profit organizations for the purpose of funding preliminary assessment, site investigation and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the Brownfields and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.1 to 3.1, shall apply to the award of grants to non-profit organizations under this section.

### **History**

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#### **HISTORY:**

New Rule, R. 2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Former N.J.A.C. 19:31-8.8, Evaluation process for financial assistance and grants, recodified to N.J.A.C. 19:31-8.10.

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## **N.J.A.C. 19:31-8.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND***

### **§ 19:31-8.9 Application for financial assistance and grants**

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- (a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source, if applicable.
- (b) The Department shall forward the approved application to the Authority for further processing. The Authority shall have the discretion to request any additional information from the applicant and/or from the Department which it deems necessary in order to complete its evaluation of the application. An application shall be deemed to be complete at such time as the Authority has received all required information in the required form.
- (c) The applicant will be given priority for financial assistance and grants based on the date of receipt by the Authority of a completed application, readiness to proceed with the remediation, and availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to any priority given at N.J.A.C. 19:31-8.7 and credit approval by the Authority.
- (d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority. Notwithstanding anything in this section to the contrary, in the event the applicant submits the additional information in the required form within the 30 day period, the application shall be deemed complete as of the initial application submission date.
- (e) If the applicant fails to file the additional information within the 30-day period, the filing date for the application shall be the date the additional information is received by the Authority, for those applications relating to sites that are not within a priority category enumerated in N.J.A.C. 19:31-8.7.
- (f) A completed application shall include, if applicable, as determined by the Authority:
1. A history and description of the applicant's business;
  2. A description of the proposed project and a detailed breakdown of the use of the loan or grant proceeds;
  3. Where a public entity is applying for a grant, either an adopted comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated real property, or demonstration of commitment that the real property will be developed or redeveloped within three years from the completion of the remediation, pursuant to N.J.A.C. 19:31-8.3;
  4. Demonstration of readiness to proceed with remediation, as required to be prioritized for the ranking pursuant to N.J.A.C. 19:31-8.7;

5. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years.
  6. A current interim statement, if the most recent annual financial statement is more than six months old;
  7. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
  8. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
  9. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number and contact person;
  10. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and
  11. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.
- (g) The Authority may also require:
1. Appraisal(s) on real property and/or machinery and equipment;
  2. Aging of accounts receivable;
  3. Aging of accounts payable; and/or
  4. Any additional information deemed necessary to evaluate the application.
- (h) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the Authority Members at a public meeting. The applicant has no right to have its application presented to the Members.

## History

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### HISTORY:

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (b); inserted references to grants in (c) and (f)2; and in (d), added a second sentence.

Recodified from N.J.A.C. 19:31-8.7 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In (a), inserted ", if applicable"; in (c), inserted ", subject to any priority given under N.J.A.C. 19:31-8.7"; and in (e), inserted ", for those applications relating to sites that are not within a priority category enumerated in N.J.A.C. 19:31-8.7". Former N.J.A.C. 19:31-8.9, Approval process for financial assistance and grants, recodified to N.J.A.C. 19:31-8.11.

Amended by R.2021 d.126, effective November 1, 2021.

See: 53 N.J.R. 1270(a), 53 N.J.R. 1859(a).

Rewrote (c); in the introductory paragraph of (f), inserted a comma following "applicable"; added (f)3 and (f)4; recodified former (f)3 through (f)9 as (f)5 through (f)11; and rewrote (h).

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End of Document



## **N.J.A.C. 19:31-8.10**

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### **§ 19:31-8.10 Evaluation process for financial assistance and grants**

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- (a)** When all of the required information is received, the Authority will perform its own underwriting criteria. For public entities, all Local Finance Board requirements must be satisfied.
- (b)** After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.
- (c)** If a positive determination is made, the requested financial assistance or grant shall be presented to the Members for approval.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Inserted (a)9.

Recodified from N.J.A.C. 19:31-8.8 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In the introductory paragraph of (a), substituted "applicable criteria as determined by the Authority, including" for "the following"; in (a)1, inserted ", or real property which is the subject of the application"; in (a)9, substituted "public entities" for "municipal government entities"; and in (c), inserted "or grant". Former N.J.A.C. 19:31-8.10, Disbursement of financial assistance and grants, recodified to N.J.A.C. 19:31-8.12.

Amended by R.2021 d.126, effective November 1, 2021.

See: 53 N.J.R. 1270(a), 53 N.J.R. 1859(a).

Rewrote the section.

## **N.J.A.C. 19:31-8.11**

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### **§ 19:31-8.11 Approval process for financial assistance and grants**

- (a)** Only the Members can approve financial assistance or a grant, except that Authority staff may approve a request for grant or financial assistance as delegated to them by the Authority Members.
- (b)** When the Members approve financial assistance or a grant, the minutes of the meeting at which such approval occurs are submitted to the Governor.
- (c)** The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.
- (d)** If there has been no veto, a formal commitment letter, award closing package, notice of approval of financial assistance, or grant, is issued to the applicant.
  - 1.** The notice of approval will contain all material terms, conditions and collateral required by the Authority and will include personal guarantees of owners of 10 percent or more of the applicant and corporate, partnership or limited liability company guarantees of any companies related to the applicant. There may be a requirement for collateral apart from the applicant's collateral to secure the guarantees.
- (e)** Within 90 calendar days for a person, or within 180 calendar days for a public entity, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.
- (f)** When the notice of approval has been accepted by the applicant and returned to the Authority within the requisite time frame, a list of closing instructions shall be mailed to the applicant or public entity or its designated representative. The Authority's commitment shall terminate and the Authority shall have no further obligation in connection with an application if the notice of approval is not signed and returned to the Authority, together with the applicable fees, within 120 days of its delivery or month's end, whichever is later for public entities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants. In addition, in the event that the financing is not closed on or before 90 days from the date of acceptance for public entities and 180 days from the acceptance date for other applicants, the Authority's obligation to provide financing shall terminate and the applicant shall be required to submit a new application. Upon receipt of a written request, the Authority, in consultation with the Department, may consider an extension of time.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a closing shall be scheduled and the funds made available to the applicant subject to approval by the Authority.

## History

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### HISTORY:

Administrative Correction.

See: 26 N.J.R. 2462(b).

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (d) and (f); in (e), inserted a reference to grants; and in (g), substituted a reference to closings for a reference to loan closings, and deleted a reference to sponsors.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

In (f), added "for municipalities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants" at the end of the second sentence, and inserted "for municipalities and 180 days from the acceptance date for other applicants" following "acceptance" in the third sentence.

Recodified from N.J.A.C. 19:31-8.9 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Rewrote (a) and (d)1; in (e), substituted "person" for "private entity" and "public entity" for "municipal governmental entity or NJRA"; in (f), substituted "applicant or public entity" for "municipality", "its designated representative" for "attorney for the applicant", and "public entities" for "municipalities" twice; and, also in (f), deleted "of Environmental Protection" following "Department". Former N.J.A.C. 19:31-8.11, Attorney General review, recodified to N.J.A.C. 19:31-8.13.

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## N.J.A.C. 19:31-8.12

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### **§ 19:31-8.12 Disbursement of financial assistance and grants**

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- (a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant to the Department with a certification from the contractor or consultant that the requested moneys will be spent or have been spent in accordance with a Department approved scope of work and a certification from the applicant that it is in full compliance with all of the terms and conditions of the assistance agreement. Disbursements are subject to certain preconditions, including, among other things, approval by the Department of the remediation contracts and all previously performed work.
- (b) The recipient of the financial assistance or grant must provide access, to the Authority and the Department, at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.
- (c) In the case of a grant or financial assistance, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.118 who does not have a defense to that liability under N.J.S.A. 58:10-23.11(g). All moneys collected in a cost recovery subrogation action shall be deposited into the Fund. No award of a grant or financial assistance shall be made if the applicant relinquishes, impairs or waives, or has relinquished, impaired or waived, any right to recover the costs of remediation against any insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.11(g).
- (d) Where financial assistance to a person is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.
- (e) Upon request, the recipient of financial assistance or grant shall provide the Authority with evidence that the monies are being spent in accordance with the Department approved scope of work, and that it is adhering to the terms and conditions of its agreement with the Authority.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote (a); in (c), substituted a reference to liable parties for a reference to responsible parties, and added a second sentence; and in (d) inserted a reference to the NJRA.

Recodified from N.J.A.C. 19:31-8.10 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

In (a), inserted "or have been spent" and substituted "with" for "within" following "accordance"; in (b), substituted "to" for "by" following "access,"; in (d), deleted "other than a municipal governmental entity or the NJRA" following "person"; and added (e). Former N.J.A.C. 19:31-8.12, Fees, recodified to N.J.A.C. 19:31-8.14.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted "to the Department"; and rewrote (c).

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## **N.J.A.C. 19:31-8.13**

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### **§ 19:31-8.13 Attorney General review**

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All financing documents, including the Application, are subject to review by the Attorney General's Office.

### **History**

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#### **HISTORY:**

Amended by R.1995 d.435, effective August 21, 1995.

See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Recodified from N.J.A.C. 19:31-8.11 by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Former N.J.A.C. 19:31-8.13, Public record, recodified to N.J.A.C. 19:31-8.15.

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## **N.J.A.C. 19:31-8.14**

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### **§ 19:31-8.14 Fees**

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(a) Application fees shall be charged as follows:

1. A \$ 500.00 non-refundable fee shall be due upon submittal of an application for financial assistance or grant;
2. Additional non-refundable application fees for financial assistance are as follows: \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged upon the acceptance of financial assistance under the Fund; and \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged at closing.

(b) An applicant shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

(c) No Authority fees shall be paid from the financial assistance or grant award.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Recodified from N.J.A.C. 19:31-8.12 and amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Rewrote the section.

Repeal and New Rule, R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Section was "Fees".

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Added (b) and recodified former (b) as (c).

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## **N.J.A.C. 19:31-8.15**

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### **§ 19:31-8.15 Public record**

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All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-8.13 by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

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## **N.J.A.C. 19:31-8.16**

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### **§ 19:31-8.16 Appeals**

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- (a)** The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b)** An applicant may appeal the Board's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c)** Appeals that are timely submitted shall be handled by the Authority, as follows:
  - 1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  - 3.** The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  - 4.** Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

### **History**

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**HISTORY:**

New Rule, R.2021 d.126, effective November 1, 2021.

See: 53 N.J.R. 1270(a), 53 N.J.R. 1859(a).

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End of Document

## **N.J.A.C. 19:31-8.17**

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### **§ 19:31-8.17 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

### **History**

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#### **HISTORY:**

New Rule, R.2021 d.126, effective November 1, 2021.

See: 53 N.J.R. 1270(a), 53 N.J.R. 1859(a).

## **N.J.A.C. 19:31-9.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.1 Applicability and scope**

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These rules are promulgated by the New Jersey Economic Development Authority (the Authority) to implement the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346 (the Act), as amended by P.L. 2009, c. 90. The Act establishes a tax credit program for capital investments and increased employment in targeted urban rail transit hubs to catalyze economic development in those transit hubs. The Act further provides that the Urban Transit Hub Tax Credit Program (the Program) is to be administered by the New Jersey Economic Development Authority and that the Authority consults with the Director of the Division of Taxation in the Department of the Treasury when adopting rules for the Program. The Program provides that businesses making at least \$ 50,000,000 in new capital investments in a qualified business facility in an "urban transit hub" and employing at least 250 full-time employees at that facility may be eligible for tax credits in order to catalyze economic development in those urban areas. The tax credits are equal to 100 percent of the claimant's qualified capital investments made, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation business tax or insurance premiums tax. Tenants in qualified business facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least \$ 17,500,000 of the capital investment in the facility and employ at least 250 full-time employees in that facility. Developers that previously applied for the 20 percent credit of their capital investment in a qualified residential project may reapply provided the project meets the statutory criteria that it is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits. Finally, businesses may apply for a credit for their capital investment in a qualified business facility that is part of a mixed use project and developers may apply for a credit for their capital investment in a qualified residential project that includes a mixed use project, but not for both a residential project and mixed use project separately. The tax credits are reduced to 80 percent if 200 new jobs (to the State) are not created, or forfeited if certain facility and Statewide employment levels are not maintained. The program is limited to municipalities that are eligible for urban aid, that had at least 30 percent of their real property value exempt from property taxes during 2006, and that have a specified commuter rail station, excluding any rail station located at an international airport.

### **History**

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#### **HISTORY:**

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Inserted ", as amended by P.L. 2009, c. 90", the seventh sentence, "to 80 percent if 200 new jobs (to the State) are not created," and "during 2006", substituted "\$ 50,000,000" for "\$ 75 million", "\$

17,500,000" for "\$ 25 million" and "had at" for "have a" preceding "least 30 percent", and deleted "and all light rail stations" following "airport".

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

Inserted a comma following "2013" and following "insurance premiums tax", and substituted "December 21, 2012, and shall submit their documentation to support the amount of their capital investment no later than April 26, 2017" for "July 28, 2014 and satisfy the capital investment conditions for award of credits by July 28, 2017" and "the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it. Developers" for "developers".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote the section.

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## **N.J.A.C. 19:31-9.2**

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### **§ 19:31-9.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Acquisition" means the purchase of a qualified business facility between unrelated parties pursuant to an arm's length transaction. The value of the land shall be appraised as vacant and subtracted from the purchase price to determine the amount of the capital investment. If the acquisition is of a facility that existed prior to the January 13, 2008 effective date of the Act, the buyer shall undertake capital investments of a value not less than 50 percent of the total cost to acquire the facility in order for the acquisition of such facility to be included in this Program.

"Act" means the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1563 or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 414(b), (c). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-209).

"Approval letter" means the letter sent by the Authority that sets forth the conditions subsequent to the approval, the forecasted schedule for completion and occupancy of the project, the date the 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such information which further the purposes of P.L. 2007, c. 346. The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

"Authority" means the New Jersey Economic Development Authority.

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is an entity classified as a partnership, an S corporation, or a limited liability

company. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate are necessary to evidence compliance with eligibility requirements.

"Capital investment" in a qualified business facility and a qualified residential project means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs. Capital investment includes obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED(R) building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility or qualified residential project site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. With respect to commercial development, to be included the capital investment must be commenced after January 13, 2008, the effective date of P.L. 2007, c. 346. For applications submitted to and approved by the Authority prior to September 18, 2013, the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L. 2013, c. 161, the applicant shall incur expenses and submit its documentation for approval of its credit amount by January 13, 2016, the eighth anniversary of the effective date of P.L. 2007, c. 346, and for commercial development applications approved on or after September 18, 2013, and on or before December 31, 2013, the applicant shall incur expenses and submit its documentation for approval of its credit amount no later than April 26, 2019. With respect to residential development, the capital investment must be commenced after July 28, 2009, the effective date of P.L. 2009, c. 90, to be included and developers shall incur expenses and submit their documentation to support the amount of their capital investment no later than April 26, 2019. For purposes of this subchapter, "commenced" shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

"Developer" means, with respect to a qualified business facility, a business that intends to construct and lease a business facility. A developer may seek to receive approval that the facility will constitute a qualified business facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

"Eligibility period" means the 10-year period in which a business may claim an urban transit hub tax credit, beginning with the tax period in which the Authority first certifies that the business has met the capital investment and employment qualifications, if any, of the Program.

"Eligible municipality" means a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) or which was continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation, which is taxable and that which is tax exempt. For



State fiscal year 2008, the eligible municipalities are: Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken. For subsequent State fiscal years, the Authority, after consultation of the Department of Community Affairs, shall annually publish at [www.newjerseybusiness.gov](http://www.newjerseybusiness.gov) a notice listing the eligible municipalities.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or an employee who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority. For the purpose of calculating the number of new full-time employees, a position shall not be considered a new full-time position unless it is in addition to the number of full-time employees in the business's Statewide workforce in the last tax accounting or privilege period prior to the tax credit amount approval.

"Leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-9.14 that must accompany the use of the tax credit certificate.

"Light rail station" means a location where passengers board or alight River Line Light Rail, the Hudson-Bergen Light Rail, the Newark Light Rail services, or any other light rail service owned and/or operated by New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation in the State of New Jersey. Light rail is a transit mode with a lighter volume traffic capacity compared to commuter rail service and characterized by lighter vehicles operating in one or two-car trains on fixed rails, powered by electric or diesel, and not regulated by the Federal Railroad Administration unless covered by a waiver for shared-use operation of freight and light rail passenger service.

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project, provided that the residential project does not need to be the predominant part of the mixed use project if it meets the criteria set forth in N.J.A.C. 19:31-9.3(a)5.

"Net leasable area" means the usable area or actual occupiable area of a building, a floor or an office suite. The amount of usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled, and thus is not fixed for the life of a building as would be the case with leasable area.

"New full-time position" means a position created by the business at the qualified business facility that did not previously exist in this State. New full-time position shall also include new full-time positions that a business creates after receipt of approval pursuant to N.J.A.C. 19:31-97 that are transferred to the qualified business facility upon completion thereof.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the Urban Transit Hub Tax Credit Program created pursuant to P.L. 2007, c. 346 and provided in this subchapter.

"Progress information" means the information that must be submitted pursuant to N.J.A.C. 19:31-9.8.

"Project" or "hub project" means employment by the business of a minimum of 250 full-time employees at a facility that meets the capital investment criteria of the Act in a qualified business facility located within a designated urban transit hub in an eligible municipality.

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment as defined under capital investment, located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

"Qualified residential project" means any building, complex of buildings or structural components of buildings, consisting predominantly of residential units, located in an urban transit hub within an eligible municipality.

"Rail station" means a rail station, including light rail stations, of the New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation, but shall not include any rail station located at an international airport, except that any property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation rail station platform area at an international airport upon which a qualified business facility is constructed or renovated commencing after the effective date of P.L. 2011, c. 149 shall be deemed an urban transit hub, excluding any property owned or controlled by the Port Authority of New York and New Jersey.

"Residential developer" means a business that intends to make or acquire capital investments in a qualified residential project pursuant to sections 34 and 35 of P.L. 2009, c. 90.

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Site preparation" means the clearing, excavation, or removal of existing buildings, structures, vegetation, or facilities, and the site grading or other earth work, which is necessary for the construction of a qualified business facility.

"Soft costs" means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.

"Tax accounting period" or "tax privilege period" or "tax period" shall mean tax year for purposes of this chapter.

"Tenant" means a business that is a lessee or owner of a condominium in a qualified business facility and does not include a lessee or owner of a condominium in a qualified residential facility.

"Urban transit hub" means property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations; property located within a one-mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development; the site of the campus of an acute care medical facility located within a one-mile radius of the mid point of the platform area of such a rail station; the site of a closed hospital located within a one-mile radius of the mid point of the platform area of such a rail station; property located within a one-half mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station; and property adjacent to, or connected by rail spur to, a freight rail line if, as part of its regular course of business, as determined by the Authority, the business utilizes that freight rail line for loading and unloading freight cars on trains delineated by the Authority pursuant to subsection e. of section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-3e). A property, which is partially included within the radius, shall only be considered part of the hub if over 50 percent of its land area falls within the radius. In the case of a rail station with multiple rail lines, a separate midpoint shall be determined for each such rail line. Once the hubs have been delineated, the Authority will post eligible rail stations and corresponding midpoints on the website at [www.newjerseybusiness.gov](http://www.newjerseybusiness.gov). The posting will be updated if the eligible rail stations change and to reflect changes in station midpoints.

"Urban transit hub tax credit" or "tax credit" means the tax credit permitted under P.L. 2007, c. 346, as amended by P.L. 2009, c. 90 and this subchapter, which may be applied against the tax liability otherwise due for corporation business tax or insurance premiums tax pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5.

"Urban transit hub tax credit transferee" or "tax credit transferee" means if the business transfers its tax credits by first obtaining and then selling or assigning its tax credits as evidenced by a tax credit transfer certificate, then the owner of the tax credits, including any subsequent owners of the tax credits.

## History

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### HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote definitions "Affiliate", "Business", "Capital investment", "Full-time employee", "Light rail station", "Rail station", "Urban transit hub" and "Urban transit hub tax credit"; substituted definition "Approval letter" for definition " 'Agreement' or 'project agreement' "; rewrote definition "Approval letter"; added definitions "Developer", "Full-time employee at the qualified business facility", "Letter of compliance", "Professional employer organization", "Progress information", "Qualified residential project", "Residential developer", "Residential unit", "Soft costs" and "Tenant"; in definition "Eligibility period", inserted ", if any,"; and in definition "Eligible municipality", substituted the second occurrence of "was" for "is" preceding "exempt from", and inserted "during tax year 2006".

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Added definitions "Mixed use project" and "Urban transit hub tax credit transferee"; in definition "Qualified residential project", substituted "consisting predominantly" for "including a mixed use project, the majority of which, as measured by square footage, consists"; in definition "Urban transit hub", inserted "if the business uses that freight line at any rail spur located adjacent to or within a one-mile radius surrounding the entrance to the property, provided the property is located in the eligible municipality,", and in definition "Urban transit hub tax credit", substituted "or" for a comma preceding and deleted "or gross income tax" following "insurance premiums tax".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In definition "Eligibility period", substituted "first certifies that" for "accepts the certification of" and deleted "that it" following the second occurrence of "business"; in definition "Full-time employee at the qualified business facility", inserted the last sentence; and rewrote definitions "Rail station" and "Urban transit hub".

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In definition "Capital investment", inserted a comma following the second, third, and fourth instances of "facility", substituted "third-party" for "third party", inserted a comma following the second instance of "construction", substituted "January 13, 2008, the" for "the January 13, 2008", inserted a comma following "Act", and substituted "developers shall submit their documentation to support the amount of their capital investment no later than April 26," for "the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date, that is, by July 28,".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote definition "Capital investment".

## **N.J.A.C. 19:31-9.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.3 Eligibility criteria**

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- (a) In order to be eligible to be considered for an urban transit hub tax credit:
1. For a qualified business facility, if the business is other than a tenant, the business shall:
    - i. Make or acquire capital investments in a qualified business facility totaling not less than \$ 50,000,000. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of \$ 50,000,000 provided that the owner so indicate in his application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;
    - ii. Employ not fewer than 250 full-time employees at the qualified business facility; and
    - iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.
  2. If the business is a tenant in a qualified business facility:
    - i. The owner of the qualified business facility shall make or acquire capital investments, or in a mixed-use facility capital and residential capital investments in the facility totaling not less than \$ 50,000,000, as calculated in accordance with (a)1i above;
    - ii. The tenant shall occupy a leased area of the qualified business facility that represents at least \$ 17,500,000 of the capital investment in the facility, as calculated pursuant to (b) below;
    - iii. The tenant business and up to two other tenants shall employ not fewer than 250 full-time employees in the aggregate at the qualified business facility;
    - iv. The business shall lease the qualified business facility for a term of not less than 10 years; and
    - v. Except for tenants of a qualified business facility for which the owner has previously demonstrated a net positive benefit and received approval of the project site or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the

term of the tenant's lease, not to exceed 20 years. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment, but not from employees other than those referenced in (a)2iii above.

3. For a qualified residential project, the residential developer shall:
  - i. Make or acquire capital investments totaling not less than \$ 50,000,000 in a qualified residential project. This requirement may be met by the residential developer or by one or more of its affiliates;
  - ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and
  - iii. Not be required to meet the employment requirements required for a qualified business facility.
4. For a qualified business facility that is part of a mixed use project, the business shall:
  - i. Make or acquire capital investments in a qualified business facility that is part of a mixed use project provided that the qualified business facility represents at least \$ 17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified business facility is a part is not less than \$ 50,000,000;
  - ii. Employ not fewer than 250 full-time employees at the qualified business facility; and
  - iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.
5. For a qualified residential project that is part of a mixed use project, the developer shall:
  - i. Make or acquire capital investments in a qualified residential project that is part of a mixed use project provided that the qualified residential project represents at least \$ 17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified residential project is a part is not less than \$ 50,000,000;
  - ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and
  - iii. Not be required to meet the employment requirements required for a qualified business facility.

**(b)** In order to determine whether the tenant's leasable area of the qualified business facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$ 50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

**(c)** Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

**(d)** Because a business may include an affiliate or affiliates, the capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.

**(e)** A business shall be treated as owner of a qualified business facility or a qualified residential project if it holds title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

**(f)** A business that is investing in a qualified business facility or qualified residential project may apply for tax credits valued at less than the total amount of the capital investments in its project.

**(g)** In determining whether a proposed capital investment will yield a net positive benefit, the transfer of an existing job from one location in the State to another may be considered as the creation of a new job if:

1. The business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State; or
2. The business's chief executive officer, or equivalent officer, submits a certification pursuant to N.J.A.C. 19:31-9.5(a)3iv.

**(h)** For purposes of mixed use projects or qualified residential projects, an eligible municipality shall have the option, pursuant to section 18 of P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by low or moderate income households, as those terms are defined under the rules of the Department of Community Affairs concerning affordable housing. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L. 2011, c. 89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

**(i)** If a developer of a mixed use project obtains tax credits for its capital investment in a qualified residential project that is part of that mixed use project, it shall not be allowed a credit for the same qualified residential project pursuant to other sections of this subchapter. For a developer that is allowed a credit for its capital investment in a qualified residential project that is part of a mixed use project, it, or an eligible tenant, shall also be allowed a credit for the capital investment in a qualified business facility that is part of the same mixed use project, in the respective amounts set forth in N.J.A.C. 19:31-9.9(a), provided that the criteria in (a)4 and 5 above are satisfied.

## History

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### HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the section.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (a)3ii, inserted "and" at the end; in (a)3iii, substituted a period for "; and" at the end; deleted (a)3iv; and added (a)4, (a)5 and (g) through (i).

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (a)2v, substituted "requested tax credit" for "approved tax" and deleted the last sentence.

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

Rewrote the introductory paragraph of (a)4 and (i); and in the introductory paragraph of (a)5, substituted "is part of" for "includes".

NEW JERSEY ADMINISTRATIVE CODE

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## **N.J.A.C. 19:31-9.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.4 Restrictions**

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- (a) A business shall not be allowed urban transit hub tax credits if:
1. The business participates in a Business Employment Incentive Program agreement pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) relating to the same capital investment, employees, and site that qualify the business for urban transit hub tax credits; or
  2. The business receives assistance from the Business Retention and Relocation Assistance Grant Program pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).
- (b) A business that is allowed a tax credit under this section shall not be eligible for incentives authorized by the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).
- (c) A business shall not qualify for a tax credit based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 (N.J.S.A. 34:1B-237 et seq.).
- (d) Capital investments in a qualified business facility must be incurred after January 13, 2008, the effective date of P.L. 2007, c. 346. An approved business must submit its documentation for approval of its credit amount before the end of the eighth year after the effective date, and thus, before January 13, 2016, if its application was submitted to and approved by the Authority prior to September 18, 2013, the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L. 2013, c. 161. The credit amount allowed for a tax period ending after January 16, 2016 during which documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. This eight-year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project. If the Authority approved the business's application on or after September 18, 2013, and on or before December 31, 2013, the business shall submit its documentation for approval of its credit amount no later than April 26, 2019, and the credit amount for any tax period ending after July 28, 2019, during which the documentation of the business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it. Capital investments in a qualified residential facility must be incurred after July 28, 2009, the effective date of P.L. 2009, c. 90, and developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2019. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the

business's credit amount remains uncertified after July 28, 2019, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

(e) If a business participating in a Business Employment Incentive Program agreement for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for urban transit hub tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act, as applicable.

## History

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### HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In (a)1, inserted "or" at the end; in (a)2, substituted a period for "; or" at the end; deleted (a)3; added new (c); recodified former (c) and (d) as (d) and (e); rewrote (d); and in (e), inserted "InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act," and "InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act," and substituted a comma for "or" following the second occurrence of "Business Employment Incentive Program".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (d), substituted "submitted" for the first occurrence of "applied for" and "business's" for "business" preceding "credit" throughout.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (d), substituted "eight-year" for "eighth year", and "developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it." for "be applied for within five years of July 28, 2009. A residential developer must submit its documentation for approval of its credit amount within eight years after July 28, 2009. The credit amount allowed for a tax period ending after July 28, 2017 during which documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it."

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)1 and (e), substituted "agreement" for "grant"; and, rewrote (d).

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End of Document

## **N.J.A.C. 19:31-9.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.5 Application submission requirements**

**(a)** Each application to the Authority made by an owner, tenant or residential developer shall include the following information in an application format prescribed by the Authority:

**1.** Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

- i.** The name of the business;
- ii.** The contact information of the business;
- iii.** Prospective future address of the business (if different);
- iv.** The type of the business;
- v.** Principal products and services and three-digit North American Industry Classification System number;
- vi.** The New Jersey tax identification number;
- vii.** The Federal tax identification number;
- viii.** The total number of employees in New Jersey;
- ix.** The total list of New Jersey operations;
- x.** A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;
- xi.** Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 12A:4-12;
- xii.** Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
- xiii.** A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;
- xiv.** In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners'

distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

**xv.** Any other necessary and relevant information as determined by the Authority for a specific application;

**2.** Project information shall include the following:

**i.** An overall description of the proposed project;

**ii.** A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility; and if the business is a residential developer, a description of the capital investment planned to be made or acquired in a qualified residential project;

**iii.** The estimated value of the capital investment;

**iv.** A certification from the owner, with supporting evidence, that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit, equaling 110 percent of the requested tax allocation amount, to the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment or the term of the tenant's lease, not to exceed 20 years, taking into account the criteria listed at N.J.A.C. 19:31-9.7(c). The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

**v.** If the capital investment is a qualified residential project, a pro forma analysis demonstrating that the project is likely to be realized with the provision of the tax credits at the level requested to be realized but is not likely to be accomplished by private enterprise without the credits;

**vi.** A description of how the green building standards to be set forth in the green building manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6) are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

**vii.** Identification of the site of the proposed qualified business facility or qualified residential project, including the block and lot of the site as indicated upon the local tax map and evidence that the site is located wholly or partially (over 50 percent) within an urban transit hub in the form of a survey or other documentation acceptable to the Authority;

**viii.** A project schedule that identifies projected move dates for the proposed qualified business facility or qualified residential project;

**ix.** If the capital investment is a qualified business facility, a schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

**x.** The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business

is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the company and copies of all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and, to the extent they exist, for the potential out-of-State location alternatives;

**xi.** The total number of anticipated new full-time positions that would be created in New Jersey and occupy the qualified business facility and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity; and

**xii.** Any other necessary and relevant information as determined by the Authority for a specific application; and

**3.** Employee information shall include the following:

**i.** A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility and are subject to withholding as provided in the New Jersey Gross Income Tax Act;

**ii.** The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified business facility;

**iii.** To the extent a tenant is meeting the employment requirement together with up to two other tenants in the qualified business facility, a submission from the other tenants relating to (a)3i above;

**iv.** For the purpose of N.J.A.C. 19:31-9.3(g)2, a written certification by the chief executive officer, or equivalent officer, that the existing jobs are at risk of leaving the State and that the chief executive officer, or equivalent officer, has reviewed the information submitted that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility;

**v.** Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy such as the tax credits, pursuant to P.L. 2007, c. 200; and

**vi.** Any other necessary and relevant information as determined by the Authority for a specific application.

**(b)** A developer may apply to have a building approved as a qualified business facility by submitting the information required pursuant to (a)2i through ix above. Any tenant seeking an approval of tax credits for a qualified business facility so approved will be required to submit the information required pursuant to (a)1, 2v through ix and 3 above.

**(c)** The business or developer applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-2.7.

## History

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### HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted a comma for "or a" following "owner" and inserted "or residential developer"; in (a)1xiv, substituted "revenue realized from the sale of the tax credits" for "amount of credit" and a semi-colon for the comma following "require", and deleted "which at minimum must conform with N.J.A.C. 19:31-9.8(b)10" following "owners"; rewrote (a)2ii; added new (a)2iv through (a)2vi; recodified former (a)2iv through (a)2ix as (a)2vii through (a)2xii; in (a)2vii and (a)2viii, inserted "or qualified residential project"; in (a)2ix, substituted "If the capital investment is a qualified business facility, a" for "A"; in (a)3i, substituted "will be" for the first occurrence of "are" and "at the qualified business facility" for "as defined in this chapter"; in (a)3ii, substituted "at" for "that would occupy"; added new (a)3iii; and recodified former (a)3iii and (a)3iv as (a)3iv and (a)3v.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote (a)2x; added new (a)3iv; and recodified former (a)3iv and (a)3v as (a)3v and (a)3vi.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (a)1x.

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## **N.J.A.C. 19:31-9.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.6 Application and servicing fees**

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- (a)** A business applying for benefits under this program shall submit the following one-time non-refundable application fee, with payment in the form of a check, payable to the "New Jersey Economic Development Authority":
- 1.** If a business is an owner of the proposed qualified business facility, the application fee is \$ 5,000;
  - 2.** If a business is a tenant of the proposed qualified business facility wherein the owner has not made application for the approval of tax credits, the application fee is \$ 5,000; or
  - 3.** If a business is a developer of the proposed qualified business facility, the application fee of \$ 5,000.
- (b)** For a qualified business facility, a business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.
- (c)** A non-refundable fee of .5 percent of the approved tax credit, not to exceed \$ 300,000, shall be charged by the Authority upon the approval of the tax credit.
- (d)** A non-refundable fee of .5 percent of the tax credit, not to exceed \$ 300,000, shall be paid prior to the receipt of the tax credit certificate.
- (e)** A business shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual letter of compliance. The annual review fee shall be \$ 2,500 per year.
- (f)** A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-9.10 shall pay to the Authority a fee of \$ 2,500.
- (g)** For each project with approved tax credits of \$ 5,000,000 or less, a non-refundable fee of \$ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with approved tax credits in excess of \$ 5,000,000, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.



## History

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### HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In (a)2, inserted "wherein the owner has not made application for the approval of tax credits" and substituted "\$ 5,000" for "\$ 2,500"; added new (b); added (c), (d) and (f); recodified former (b) as (e); and rewrote (e).

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (c) and (d), substituted "non-refundable" for "non-fundable".

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added (g).

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Rewrote (b).

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## **N.J.A.C. 19:31-9.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.7 Review of application and certification of project completion**

**(a)** A business seeking an approval of tax credits for a qualified business facility may apply for tax credits for a qualified business facility that was commenced after January 13, 2008, within five years after January 13, 2008, the effective date of the Act. A residential developer may apply for tax credits for a qualified residential facility that was commenced after July 28, 2009, by December 21, 2012.

**(b)** The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be deemed complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

**(c)** In determining whether the company meets the net economic benefits test, as certified by the owner pursuant to N.J.A.C. 19:31-9.5(a)2iv and 3iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new or retained employees, and peripheral economic growth caused by the business's relocation to the urban transit hub, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

**(d)** In developing a recommendation for allocating credits to qualified residential projects, the chief executive officer shall take into account, together with other factors deemed relevant by the Executive Director:

1. An evaluation of the residential developer's pro forma analysis submitted pursuant to N.J.A.C. 19:31-9.5(a)2v;
2. Input from the municipality in which the project is located;

**3.** Whether the project furthers specific State or municipal planning and development objectives, or both; and

**4.** Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both.

**(e)** Upon completion of the review of an application pursuant to (b) through (d) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, in the case of a residential developer, the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State transfers pursuant to N.J.A.C. 19:31-9.3(g), the Board shall make a separate determination to verify and confirm that the jobs are at risk of leaving the State, which will consist of reviewing the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third party consultants, the cost of which will be paid by the applicant. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

**1.** If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the urban transit hub tax credits.

**2.** In the approval notice to the business, the Authority shall set a date by which its approval will expire.

**(f)** Within one year following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for and site control of the qualified business facility or qualified residential project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.

**(g)** Upon completion of the capital investment and employment requirements of the program, the business shall submit a certification of a certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements.

**1.** The certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified business facility, provided however that in no event will the amount of tax credits exceed the amount of tax credits previously approved by the Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project. If the certification indicates

that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

**2.** In general, this certification shall be submitted to the Authority no later than five years after the Authority's receipt of the progress information.

**3.** For project applications for a qualified business facility approved in the fifth year that the Act is in effect but prior to September 18, 2013, the certification shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For developer applications approved in the fifth year that the Act is in effect but prior to September 18, 2013, any tenant's application and certification relating to a qualified business facility so approved shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For project applications approved on or after September 18, 2013, and on or before December 31, 2013, the certification shall be submitted no later than April 26, 2019, and the credit amount for any tax period ending after July 28, 2019, during which the documentation of the business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it. Residential developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2019. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2019, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

**4.** The Authority may seek additional information from the business and or information from the Department of Labor and Workforce Development to support the certification.

**(h)** Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

## History

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### HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote (a) and the introductory paragraph of (b); added new (c) and (d); recodified former (c) as new (e) and former (d) as (g); rewrote (e) and (g); added (f); recodified former (e) as (h); and rewrote (h).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (e)1, substituted "approval letter" for "project agreement".

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (c), inserted "and 3iv"; and in the introductory paragraph of (e), inserted the second sentence.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In the introductory paragraph of (b), inserted "completed" and the next to last sentence.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a), inserted a comma following the first occurrence of "2008", and substituted ", by December 21, 2012" for "within five years after July 28, 2009, the effective date of P.L. 2009, c. 90 (that is, by July 28, 2014)"; in (g), inserted a comma following "accountant"; and rewrote (g)3.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote (g)3.

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## N.J.A.C. 19:31-9.8

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.8 Tax credit certificate**

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(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the eligibility period;
2. The amount of the tax credits;
3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;
4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;
5. Events that would trigger reduction and forfeiture of tax credit amounts;
6. Reporting requirements and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

### **History**

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#### **HISTORY:**

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Project agreement". Rewrote the section.

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## **N.J.A.C. 19:31-9.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.9 Tax credit amount; application and allocation of the tax credit**

**(a)** The amount of tax credit allowed shall be equal to the lesser of the amount which satisfies the net benefit test pursuant to N.J.A.C. 19:31-9.7(c), or either the capital investment made by the business or the capital investment represented by the business's leased area, or area owned by the business as a condominium, subject to any reduction or disqualification provided in the Act and this subchapter and, provided that in no event will the amount of tax credits exceed the amount of tax credits previously approved by Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project as follows:

- 1.** If the owner uses space in a qualified business facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified business facility not leased to tenants and the denominator of which is the total net leaseable area. For purposes of this calculation, unless the business that owns or operates the residential space qualifies under N.J.A.C. 19:31-9.3, residential space leased or offered for lease or sale shall not be included in the numerator.
- 2.** In order to determine the amount of the tenant's or condominium's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in N.J.A.C. 19:31-9.3(b) to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further provided that such tenant allowance or tenant improvements meet the definition of capital investment.

**(b)** For the 10 consecutive years following the notification pursuant to N.J.A.C. 19:31-9.7(h), a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, beginning with the tax period in which the business is first certified by the Authority as having met the investment capital and employment qualifications, subject to the provisions of the Act and this subchapter.

**(c)** The business may apply the credit against their corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as subsequently adjusted pursuant to N.J.A.C. 19:31-

9.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

**(d)** The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business' total lease payments for occupancy for the tax period.

**(e)** The tax credits are not refundable and shall not result in a refund in the event that they do not equal or exceed a business's tax liability.

**(f)** The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the business does not take more than one-tenth of its approved credit amount in any tax period and the value of all credits approved by the Authority against tax liabilities pursuant to P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.), in any fiscal year, shall not exceed \$ 150,000,000.

**(g)** For applications submitted to and approved by the Authority prior to September 18, 2013, the amount of credit for any tax period ending eight years after the effective date of P.L. 2007, c. 346 (N.J.S.A. 34:1B-207) (that is January 13, 2008) during which the documentation of a business' credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year eligibility period shall remain available to it. For commercial development applications approved on or after September 18, 2013, and on or before December 31, 2013, the credit amount for any tax period ending after July 28, 2019, during which the documentation of the business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it. With respect to residential development, the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2019, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

## History

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### HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the introductory paragraph of (a); in (a)2, inserted "or condominium's"; rewrote (b); deleted former (c); recodified former (d) through (h) as (c) through (g); and rewrote (c).

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote (f).

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In the introductory paragraph of (a), inserted "the lesser of the amount which satisfies the net benefit test pursuant to N.J.A.C. 19:31-9.7(c), or either"; in the introductory paragraph of (b), inserted "beginning with the tax period in which the business is first certified by the Authority as having met the investment capital and employment qualifications,"; and rewrote (g).



Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote (g).

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## **N.J.A.C. 19:31-9.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.10 Application for tax credit transfer certificate**

**(a)** Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, in an amount not less than \$ 25,000 of tax credits, pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business' right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

**(b)** The initial sale or assignment of any amount of tax credits allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted.

**(c)** In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-9.5(a).

**(d)** Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to

N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

## History

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### HISTORY:

New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.10, Reduction and forfeiture of tax credits, recodified to N.J.A.C. 19:31-9.12.

Repeal and New Rule, R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Section was "Application for tax credit transfer certificate".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a), inserted "in an amount not less than \$ 25,000 of tax credits," , inserted the sixth occurrence of "the", and deleted the former fourth sentence; and rewrote (b).

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## **N.J.A.C. 19:31-9.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.11 Cap on total credits**

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The value of all credits approved by the Authority shall not exceed \$ 1,500,000,000 of which the Authority may approve up to \$ 150,000,000 in credits in the aggregate for residential developers making capital investments in qualified residential projects, provided that for each qualified residential facility, the residential developer shall be allowed tax credits of no more than 35 percent of its capital investment. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the \$ 150,000,000 cap be exceeded for allocation to qualified residential projects, as is deemed reasonable, justified and appropriate.

### **History**

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#### **HISTORY:**

New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.11, Reporting requirements, recodified to N.J.A.C. 19:31-9.14.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Substituted "35" for "20".

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## **N.J.A.C. 19:31-9.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM***

### **§ 19:31-9.12 Reduction and forfeiture of tax credits**

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- (a)** Unless excepted pursuant to (a)2 below, the amount of the annual credit otherwise available shall be reduced by 20 percent for that tax period if:
- 1.** Fewer than 200 full-time employees at the qualified business facility or, if the applicant is a tenant and has qualified under N.J.A.C. 19:31-9.3(a)2iii, fewer than 200 full-time employees in the aggregate are employed in new full-time positions in any tax period.
    - i.** This reduction will remain for each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility has been reviewed and approved by the Authority.
    - ii.** Once documentation restoring the 200 full-time employees employed in new full-time positions has been approved, for the current tax period and each subsequent tax period the full amount of the annual credit shall be allowed.
  - 2.** For businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or locations in the same municipality.
- (b)** If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under N.J.A.C. 19:31-9.7(e), then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the 250 full-time employees at the qualified business facility.
- (c)** If, in any tax period, the number of full-time employees employed by the business at the qualified business facility drops below 250 or the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to N.J.A.C. 19:31-9.3(g)1, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under N.J.A.C. 19:31-9.7(e), then the business shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating

the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

**(d)** If in any year in which the residential components of the qualified residential project no longer constitutes the preponderance thereof as it existed at the time of certification of the tax credit amount, the residential developer or his assignee shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating that the qualified residential project consists of the preponderance of residential units as existed at the time of certification of the tax credit amount has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed. Additions of commercial space to the project shall not be considered in this determination.

## History

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### HISTORY:

Recodified from N.J.A.C. 19:31-9.10 and amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted "available" for "determined pursuant to final calculation of the award of tax credits"; rewrote the introductory paragraph of (a)1, and (b) and (d); and in (a)2, substituted "For businesses applying before January 1, 2010, there" for "There". Former N.J.A.C. 19:31-9.12, Events of default, repealed.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (b), substituted "N.J.A.C. 19:31-9.7(e)" for "this section"; and rewrote (c) and (d).

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## N.J.A.C. 19:31-9.13

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### **§ 19:31-9.13 Effect of sale or lease of qualified facilities**

---

**(a)** The tax credit amount shall be forfeited in the event of sale of the qualified business facility or sublease of the business's tenancy as follows:

1. If the qualified business facility is sold in whole or in part during the 10-year eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

2. If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period, the sublessee shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods, except that if the sublessor tenant retains sufficient capital investment and employment to remain eligible for the program, the forfeiture shall affect only the credits attributable to the subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the sublessee shall be subtracted.

**(b)** In the event of sale of the qualified residential facility in whole or in part, the seller may either retain the tax credit amount or assign to the new owner a tax credit amount equal to the amount of the capital investment that is sold, provided that the capital investment sold represents at least \$ 17,500,000 of the capital investment in the facility. In order to determine the amount of capital investment sold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the square footage of the portion of the qualified residential facility that is sold and the denominator of which is the total square footage of the qualified residential facility.

**(c)** Tenants in a qualified residential project are not eligible to apply for tax credits and an owner may not assign tax credits to a tenant.

### **History**

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#### **HISTORY:**

Repeal and New Rule, R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Remedies".

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## **N.J.A.C. 19:31-9.14**

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### **§ 19:31-9.14 Reporting requirements; letter of compliance**

**(a)** After notification pursuant to N.J.A.C. 19:31-9.7(h):

**1.** In the case of a qualified business facility, the business shall furnish to the Authority an annual report certified by a certified public accountant in a format as may be determined by the Authority which shall contain the following information:

- i.** The number of full-time employees and new full-time positions employed at the qualified business facility, the number pertaining to the business's Statewide employment, total lease payments and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and, failure to submit the certified report within 120 days will result in forfeiture of the tax credit for that privilege period; and
- ii.** A certification indicating whether or not the business is aware of any condition, event, or act which would cause the business not to be in compliance with the approval, the Act or this subchapter; and

**2.** In the case of a qualified residential project, either the owner of the project or a tax credit transferee shall furnish to the Authority a report in a format as may be determined by the Authority which shall contain the following information:

- i.** Documentary evidence that a deed restriction has been recorded against each residential component of the qualified residential project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired; and
- ii.** Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by a MAI appraiser or governmental official. Failure to submit a copy of the annual report or submission of the annual report, without the information required above, will result in forfeiture of any annual tax credits to be received by the business or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the business or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

**(b)** The tax credit certificate may provide for additional reporting requirements.

**(c)** Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the

relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

## History

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### HISTORY:

Recodified from N.J.A.C. 19:31-9.11 and amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Section was "Reporting requirements". Rewrote the introductory paragraph of (a) and (a)2; in (c), substituted "tax credit certificate" for "project agreement"; added new (d); and recodified former (d) as (e). Former N.J.A.C. 19:31-9.14, Appeals, recodified to N.J.A.C. 19:31-9.15.

Repeal and New Rule, R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Section was "Reporting requirements; letter of compliance".

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## **N.J.A.C. 19:31-9.15**

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### **§ 19:31-9.15 Approval process**

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- (a)** All completed applications for eligibility in the program shall be presented to the Board for approval or denial.
- (b)** When the members act to approve or deny a request, the minutes of the public meeting at which such determination occurs are submitted to the Governor.
- (c)** The Board's action shall be effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued.
- (d)** An applicant may challenge the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such challenges are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (e)** Challenges that are timely submitted in accordance with (d) above shall be handled by the Authority as follows:
  - 1.** The chief executive officer shall designate an employee of the Authority to serve as a hearing officer for the challenge and to make a recommendation on the merits of the challenge to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer shall have sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the challenge. In the case of an application submitted in response to a competitive solicitation, the Authority shall not consider any new evidence or information about the project, but must consider only evidence or information submitted as of the solicitation submission deadline. In the case of an application submitted other than in response to a competitive solicitation, the Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the challenge. The hearing officer's report shall be advisory in nature. The chief executive officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within a reasonable amount of time from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the chief executive officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the challenge. Such decision shall become effective 10 working days after the Governor's receipt of the minutes of the public meeting at which such decision occurs, provided no veto has been issued. The applicant shall have the opportunity to attend the public meeting at which the Board considers its challenge.
4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

## History

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### HISTORY:

Recodified from N.J.A.C. 19:31-9.14 by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.15, Severability, recodified to N.J.A.C. 19:31-9.16.

Repeal and New Rule, R.2013 d.076, effective May 6, 2013.

See: 45 N.J.R. 110(a), 45 N.J.R. 1139(d).

Section was "Appeals".

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## **N.J.A.C. 19:31-9.16**

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### **§ 19:31-9.16 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-9.15 by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

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## **N.J.A.C. 19:31-10.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.26, as amended by P.L. 2003, c.166. This Act establishes the Business Employment Incentive Program, a special business assistance program to provide grants to businesses located in, or relocating to, New Jersey that create new jobs in New Jersey.

### **History**

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#### **HISTORY:**

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Added ", as amended by P.L. 2003, c.166" at the end of the first sentence.

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## **N.J.A.C. 19:31-10.2**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1 et seq. as amended and supplemented.

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

"Advanced computing company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

"Advanced materials company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced materials for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Authority" means the New Jersey Economic Development Authority.

"Base employment number" shall mean the number of full-time employees the business has employed in the State of New Jersey at the time of application for the grant, including all full-time employees at entities under the business's direct control, defined as 50 percent or greater ownership, and excluding employees of any related affiliate(s) and parent business and employees at any point-of-final purchase retail facilities.

"Base years" means the first two complete calendar years following the effective date of an agreement, except that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

"Biotechnology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production, or provision.

"Bonds" means bonds, notes, or other obligations issued by the Authority pursuant to the Act.

"Business" means a corporation, sole proprietorship; partnership, corporation that has made an election under Subchapter S corporation, or any other business entity through which income flows as a distributive share to its owners; limited liability company; a nonprofit corporation; or any other form of business organization located within or outside this State. A grant received by a partnership, Subchapter S corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed. Business shall also include co-employers pursuant to an employer leasing agreement in accordance with N.J.S.A. 34:8-67 et seq., between an entity that qualifies as a business hereunder and a professional employment organization; provided, however, that for purposes of paying the grant, payment shall be made solely to the entity and not to the professional employment organization.

"Business Employment Incentive Commitment Letter" or "Commitment Letter" means the written commitment issued by the Authority which sets forth the terms and conditions that must be met by the business in order to receive the grant.

"Commitment duration" means 1.5 times the term of the grant.

"Consumer Price Index" means the consumer price index developed by the United States Bureau of Labor Statistics for Urban Wage Earners and Clerical Workers using the Metropolitan Statistical Area (MSA) by county as developed by the United States Census Bureau in its most recent census. The MSA by county for New Jersey divides the State into northern and southern areas. If the project is located in an area designated as a northern county, the northern index shall be used and if the project location is in an area designated as a southern county, the southern index shall be used.

"Department" means the Department of Commerce and Economic Development.

"Designated industry" means a business engaged in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology.

"Director" means the Director of the Division of Taxation in the Department of Treasury.

"Division" means the Division of Taxation in the Department of Treasury.

"Effective date" means the date of approval of the grant by the Authority's governing board.

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

"Electronic device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of electronic device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.



"Eligible partnership" means a partnership or limited liability company that is qualified to receive a grant as established in the Act.

"Eligible position" means a new full-time position created by a business in New Jersey or transferred from another state by the business during the base years or subsequent years of a grant. For grants awarded on or after July 1, 2003, eligible position includes only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes."Eligible position" also includes all current and future partners or members of a partnership or limited liability company created by a business in New Jersey or transferred from another state by the business pursuant to the conditions set forth in the act during the base years or in subsequent years of a grant. An "eligible position" shall also include a position occupied by a resident of this State whose position is relocated to this State from another state but who does not qualify as a "new employee" because prior to relocation his or her wages or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to relocation, were not subject to income taxes imposed by the state or municipality in which the position was previously located. An "eligible position" shall also include a position occupied by a resident of another state whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. An "eligible position" shall not include any position located within New Jersey, which, within a period either three months prior to the business' application for a grant under the Act or six months after the date of application, ceases to exist or to be located within New Jersey.

"Employment incentive" means the percentage and term of a grant.

"Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

"Environmental technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of environmental technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Estimated tax" means an amount calculated for a partner in an eligible position equal to 6.37 percent of the lesser of:

1. The amount of the partner's net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner's Schedule NJK-1 of the application year less the amount of the partner's net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner's Schedule NJK-1 in the foundation year; or
2. The net of all items of partnership income upon which tax has been paid as reflected on the partner's New Jersey Gross Income Tax return in the application year.

"Foundation year" means the year immediately prior to the creation of the eligible position.

"Full-time employee" means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages is subject to withholding as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive

share of income, gain, loss or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and who is certified by the applicant to be employed in a permanent position. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

"Grant" means a business employment incentive grant provided by the Authority to eligible businesses based on the withholdings of the New Jersey Gross Income Tax collected by that business annually resulting from eligible positions for new employees.

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the Federal Food and Drug Administration.

"Medical device technology company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of medical device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Net income" means the net combination of a partner's distributive share of the eligible partnership's income, gain, loss, deduction, or guaranteed payments.

"Net income from the eligible partnership" means the net combination of a partner's distributive share of the eligible partnership's income, gain, loss, deduction, or guaranteed payments.

"New employee" means a full-time employee first employed in an eligible position by a business at the project which is the subject of an Agreement or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, (N.J.S.A. 54A:1-1 et seq.); except that such a New Jersey resident whose position is relocated to this State shall not be classified as a "new employee" unless his or her wages, or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to the relocation, were subject to income taxes imposed by the State or municipality in which the position was previously located. "New employee" also may include an employee rehired or called back from a bona fide layoff during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years. "New employee" shall not include: any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of an Agreement unless the employee's position at his or her previous employer is filled by a new employee. "New employee" shall also not include a child, grandchild, parent, or spouse of an individual associated with the business who has direct or indirect ownership of at least 15 percent of the profits, capital or value of the business, provided, however, that "new employee" shall include any person who was previously co-employed in New Jersey by a professional employment organization and a business if the employee is co-employed by the same professional employment organization and a different business. "New employee" shall also include an employee whose position is relocated to this State but whose income is not subject to

the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. In addition, if a business receiving a grant merges, consolidates, or otherwise combines with another business entity and the resulting company employs former employees in eligible positions on the project, then such employees shall be deemed new employees, except for any employee who was employed by a business entity or entities merging, combining or consolidating with the business receiving a grant who would have not qualified as a new employee if the merging, combining or consolidating business entity had applied for a grant.

"New employment commitment" shall mean the number of new employees projected at the time of application or if this projected number has not been reached by the end of the base years, the number of employees actually hired at the end of the base years but in no case shall it exceed the number of new employees which the business has represented at application that it will employ and maintain during and throughout the commitment duration. New employment commitment shall also have the meanings set forth in N.J.A.C. 19:31-10.5(c) and (d).

"Non-resident New Jersey employee" means a new employee who lives outside New Jersey and who is not subject to any withholding tax under the laws of the State of New Jersey, such that the withholding for such employee must be computed pursuant to N.J.A.C. 18:35-7.8 as the hypothetical amount of withholding that would occur if the employee were to move to New Jersey.

"Partner" means a person who is entitled to either a distributive share of a partnership's income, gain, loss or deduction or guaranteed payments, or any combination thereof, by virtue of holding an interest in the partnership. Partner also includes a person who is a member of a limited liability company which is treated as a partnership, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54:1-1 et seq.

"Point-of-purchase retail facility" means a business wherein the normal and customary method of patronizing the business conducted at the facility requires the retail consumer to travel to the location to purchase the goods or professional or consumer services of that business. "Point-of-purchase retail facilities" shall not include catalog distribution centers for the purposes of this program.

"Professional employment organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to N.J.S.A. 34:8-67 et seq.

"Project" means the relocation and/or expansion of a business in New Jersey that is creating new employment opportunities; the wages of which are subject to the provisions of the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.). Project may constitute multiple locations of a business within New Jersey, but each location must meet the requirements of N.J.A.C. 19:31-10.3.

"Residual withholdings" means for any period of time, the excess of the estimated cumulative withholdings for all executed agreements eligible for payments under the Act over the cumulative anticipated grant amounts.

"Schedule NJK-1" means Schedule NJK-1 as the form existed for taxable year 1997.

"Targeted industry" means a business engaged in the field of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology or medical device technology.

"Withholdings" means the amount withheld by a business from the wages of new employees or estimated taxes paid by, or on behalf of, partners that are new employees, or any combination thereof, pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq., and, if the new employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., the amount of withholding that would occur if the employee were to move to New Jersey. Withholdings shall not

include amounts withheld by a business from stock options, money or other payments given to a new employee pursuant to the termination of employment of the new employee. Withholdings shall include amounts withheld by a business from stock options, money or other payments given to a new employee pursuant to a bonus for commencing employment or for services rendered by the new employee.

## History

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### HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Amended "Eligible position".

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote the section.

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

Rewrote "Business", "New employee", and "Withholdings"; added "Base employment number", "Commitment duration", "New employment commitment", and "Professional employment organization".

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote "New employee" definition.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Added definitions "Consumer Price Index", "Effective date" and "Non-resident New Jersey employee"; and rewrote definition "New employment commitment".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Added definition "Full-time employee at the qualified business facility".

Amended by R.2013 d.076, effective May 6, 2013.

See: 45 N.J.R. 110(a), 45 N.J.R. 1139(d).

Rewrote definition "Base employment number".

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End of Document

## **N.J.A.C. 19:31-10.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.3 Eligibility**

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- (a) A business may apply to the Authority for a grant if the Authority finds that:
1. The project proposed by the business shall result in a net increase in new employment at the project during the term of the agreement, and the business shall:
    - i. Create at least 25 eligible positions in the base years; or
    - ii. Create at least 10 eligible positions in the base years if the business is a targeted industry;
  2. In the case of a business which is a landlord, the landlord may apply to the Authority in one consolidated application for a Business Employment Incentive Grant for any project which creates at least 25 eligible positions in the base years, and in which the tenants of members of the cooperative association have agreed to assign to the landlord any claim of right that they may have individually to a grant and have agreed to cooperate with the landlord in providing to the Authority all information required for the initial application, the Agreement and annually thereafter any other information which may be required by the Authority.
    - i. In the event the tenants individually meet the eligibility standards set forth herein, the tenant may elect to submit its own application for a grant rather than through its landlord;
  3. The project is economically sound and will benefit the people of New Jersey by increasing opportunities for employment and by strengthening the State's economy;
    - i. The Authority will evaluate the financial statements and projections of the business and the proposed sources and uses of funds to ensure that the proposed project is economically viable; and
  4. The Authority determines that the receipt of the business employment incentive grant will be a material factor in the business's decision to go forward with the project.
- (b) Projects which consist solely of point-of-final-purchase retail facilities shall not be eligible for a grant.
1. For projects consisting of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant, and only withholdings from new employees which are employed in the portion of the project which represents non-retail facilities shall be used to determine the grant.
  2. If warehouse facilities are part of a point-of-final purchase retail facility and the warehouse facilities supply only the retail facility, the warehouse facility shall not be eligible for a grant.

(c) A business which is receiving a Business Relocation Assistance Grant pursuant to P.L. 1996, c.25 shall not be eligible for a Business Employment Incentive Grant, except upon written approval by the State Treasurer.

(d) A business shall not be eligible to be approved for a grant on or after July 1, 2003 unless the business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes.

## History

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### HISTORY:

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (a) and added (d).

NEW JERSEY ADMINISTRATIVE CODE

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## **N.J.A.C. 19:31-10.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.4 Amount/term of grant**

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**(a)** The amount of the business employment incentive grant in each case shall be not less than 10 percent and not more than 50 percent of the withholdings of the eligible positions for new employees or not less than 10 percent and not more than 30 percent of the estimated tax of a partner of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of such partner's account, or any combination thereof. In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of \$ 50,000 per new employee for all new employees over the term of the grant. The average for all new employees over the term of the grant shall be determined based on annual reports submitted by the applicant, certifying the number of new employees.

1. The Authority will review the certified reports annually to determine whether the applicant has reached or exceeded the \$ 50,000 per new employee limit. To the extent that the applicant has received grant funds in excess of \$ 50,000 per new employee, the Authority will reduce the grant proportionally.

EXAMPLE: Company A receives a grant in the aggregate amount of \$ 1,500,000 for calendar years 1 through 5. The Company certifies that it has 2,000 full-time new employees as of December 31 of Year 5. In Year 6, Company A reduces its workforce, such that it has only 25 full-time new employees as of December 31 of that year. Subsequently, in Year 7, Company A hires new employees and certifies that, as of December 31 of Year 7, it has 1,000 employees.

Based on these facts, in Year 5 of the grant term, the Authority concludes that Company A's aggregate grant amount does not exceed the \$ 50,000 per new employee limitation, because the aggregate annual amount for each new employee equals \$ 750.00 ( $\$ 1,500,000/2,000 = \$ 750.00$ ). However, in Year 6 of the term, the Authority concludes that the company is not eligible for the grant, because the company's per new employee average exceeds the maximum \$ 50,000 in that year ( $\$ 1,500,000/25 = \$ 60,000$ ). In Year 7, the Authority concludes that Company A is again eligible for a grant, because the per employee amount does not exceed \$ 50,000 ( $\$ 1,500,000/1,000 = \$ 1,500$ ).

The failure of Company A to qualify for a grant in Year 6 will not extend the term of the grant.

**(b)** A business may be eligible to be awarded a grant of up to 80 percent of the withholdings of the business or up to 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) as determined by and based upon criteria promulgated by the Authority following



consultation with the Department of Community Affairs, Office of Smart Growth and set forth in (c) below.

**(c)** The following criteria shall be considered when determining the grant amount and term that a business will be eligible to receive:

1. The number of eligible positions created for new employees and the expected duration of those positions;
2. The total number of existing employees of the business;
3. The type of contribution the business can make to the long-term growth of the State's economy;
4. The amount of other financial assistance the business will receive from public sources versus private investment;
5. The total dollar investment the business is contributing to the project;
6. The type of industry that the business is involved in;
7. The location of the project;
8. The type of jobs to be created and the associated wages, with priority given to those companies that create full-time positions that average at least 1.5 times the minimum hourly wage;
9. Whether the business is a designated industry;
10. The impact of the business on State tax revenues. For the period of the grant during which the Authority remits payments to the grantee, the amount of the grant allocable to eligible employees that are residents of another state whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., shall not exceed the amount allocable to such employees at the time of the Authority's approval of the grant;
11. Whether the business is located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan;
12. Whether the business is located in a former Urban Coordinating Council or other distressed municipality as defined by the Department of Community Affairs;
13. Whether the business is located in a brownfield site, defined as the first occupants of the site after issuance of a new no-further action letter;
14. Whether the business is located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan;
15. Whether 10 percent of the employees of the business receive a "qualified transportation fringe" in a minimum amount of \$ 30.00 pursuant to Title 26 of the United States Internal Revenue Code Section 132(f)(1)(a) for transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment or Section 132(f)(1)(b) for any transit pass, as such commuter highway vehicle and transit pass are defined in Section 132(f) of the Internal Revenue Code;
16. Whether the business is located in an area designated by the locality as an "area in need of redevelopment";
17. Whether the project is linked with housing production or renovation (market or affordable) utilizing at least 25 percent of the total buildable area of the site;

- 18.** Whether the business is working cooperatively with a public or non-profit university on research and development;
- 19.** Whether the business is within a designated industry and is located within a New Jersey Economic Development Authority Innovation Zone;
- 20.** Whether the business is located within Federally-owned or former Federally-owned land recommended for closure by the Base Realignment and Closing Commission and approved by the President on September 8, 2005 and U.S. House of Representatives on October 27, 2005 or within a facility used as a base for military activity that may include Federal offices and private businesses; and
- 21.** Such factors as presented by a specific applicant.

**(d)** The term of a grant may be for a period up to 10 years as approved by the Authority. Grant payments shall be issued by the Authority, subject to either annual appropriation from the General Fund to the Authority or issuance of a bond, the proceeds of which are intended for grant payments, beginning the next calendar year following achievement of the employment conditions and other conditions set forth in the Agreement and annually thereafter only if the State Treasurer has certified that the amount of withholdings received in the previous year by the Division from the business equals or exceeds the amount of the grant.

**(e)** Payment of a grant shall be subject to a certified copy of the business's prior year's payroll categorized by employees not subject to the grant and new employees subject to the grant. The certification shall identify the number of employees and partners in each category, the salary of each employee, the estimated tax paid by each partner in the foundation year, the date of hire, and withholding taxes paid for each employee.

- 1.** Upon receipt from the Division Director of a certification of the available withholdings of the new employees and a determination by the Authority that all requirements of the agreement have been met, the Authority shall calculate the annual grant by multiplying the withholdings attributable to eligible positions for new employees by the grant percentage.

- 2.** In the event the business creates in excess of the new employee commitment, the business may be eligible to receive an adjustment in its grant to include the lesser of the dollar amount equal to the amount of withholdings paid for the additional eligible positions above the new employment commitment multiplied by the grant award percentage; or a dollar amount which shall be a 20 percent cap above the dollar amount of the withholdings attributed to the new employment commitment adjusted annually by the Consumer Price Index, with the exception of the following which, in the discretion of the Authority, may receive the full dollar amount of withholdings paid for the additional eligible positions multiplied by the grant award percentage:

- i.** A business with a total of 100 employees or less at the time of application for the grant;
- ii.** A business making significant leasehold improvements or renovations to accommodate additional growth at the project; or
- iii.** A manufacturing business making a significant capital investment such as investment in a new product line or model or providing sufficient evidence that it plans a significant increase in production from existing equipment, such as higher utilization rates.

- 3.** The business shall be awarded a grant percentage at the time of approval based on the criteria set forth in this section. On an annual basis, when determining the amount of the grant to be awarded to the business for each calendar year, the Authority shall review the annual

reports submitted by the business pursuant to N.J.A.C. 19:34-10.6. If the business has not met the new employment commitment, but has achieved the minimum eligibility threshold or the business has exceeded the new employment commitment, the amount of the grant shall be based on the actual amount of eligible positions created and Authority shall adjust the awarded grant percentage for the applicable calendar year pursuant to the criteria set forth in this section and subject to N.J.A.C. 19:31-10.4(e)2.

**(f)** A business that is receiving any other grant by operation of State law is limited to a Business Employment Incentive Grant which annual value when combined with the other grants cannot exceed 80 percent of the business's withholdings or 50 percent of the estimated tax of partners of an eligible partnership, except upon the written approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to N.J.S.A. 34:15D-1 et seq. shall be excluded from the calculation.

**(g)** A business that qualifies under N.J.S.A. 34:1B-129b for a grant of up to 80 percent of its withholdings or up to 50 percent of its estimated tax that is receiving any other grant by operation of State law is limited to a Business Employment Incentive Grant which annual value when combined with the other grants cannot exceed 80 percent of the business's withholdings or 50 percent of the estimated tax of partners of an eligible partnership; except upon the written approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to N.J.S.A. 34:15D-1 et seq. shall be excluded from the calculation.

**(h)** A grant received under the Act by a partnership, Subchapter S-corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S-corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

## History

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### HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Substantially amended (c); in (d), deleted "existing" following "categorized by", and substituted "salary of each employee" for "base salary of each employee and separately any overtime paid during the grant"; in (d)1 and (d)2, substituted "new employees" for "eligible positions"; and in (d)2 substituted "are filled by new employees" for "qualify as full-time" and deleted "in either event" following "the business may".

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), added "or not less than 10 percent and not more than 50 percent of the estimated tax of a partner in an eligible position" at the end; in (d)2, deleted a former first sentence; and in (e), inserted "or 50 percent of the estimated tax" following "withholdings".

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (a); added new (b); recodified (b) through (f) as (c) through (g); deleted former (g); and amended new (c), (d), (e) and (f).

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

In (e), rewrote 2, added 3.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Rewrote (a) and (c)15; in (c)18, deleted "and" from the end; added new (c)19; recodified former (c)19 as (c)20; in (e)2, substituted "which shall be a 20 percent cap" for "equal to up to 20 percent"; in (f), inserted "annual"; added new (g); and recodified former (g) as (h).

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (c)18, deleted "is located within five miles of and" following "business".

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

In (c)19, inserted "and" at the end; added new (c)20; and recodified former (c)20 as (c)21.

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## **N.J.A.C. 19:31-10.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.5 Business expansion or relocation**

**(a)** For businesses that are locating in the State from outside New Jersey, only new employees in eligible positions created in the base years and thereafter may be considered for grant purposes.

1. Upon Authority Board approval, the business's payroll/number of employees shall be registered, including the number of existing employees in New Jersey. Upon occupancy of the project, the business shall have until the end of the base years to achieve the number of employees as represented at application. Only those new employees in eligible positions shall be considered when determining a grant.
2. The business may receive a grant for the new employees in eligible positions represented at application and any additional new employees in eligible positions that are created during the base years and thereafter.
3. Grant payments shall be issued by the Authority subject to annual appropriation from the General Fund to the Authority or upon issuance of a bond, the proceeds of which are intended for grant payments beginning the next calendar year following achievement of the employment conditions and other conditions set forth in the Agreement and annually thereafter only if the State Treasurer has certified that the amount of withholdings received in the previous year by the Division from the business equals or exceeds in the amount of the grant.

**(b)** For businesses expanding in New Jersey through relocation from an existing site to a new location or expansion at its existing location, only those new employees in eligible positions to be created in the base years and thereafter may be considered when determining a grant. Grant payments shall be issued during the next calendar year upon occupancy of the project and achievement of the employment conditions set forth in the Agreement.

**(c)** If a business is expanding through a merger or consolidation with one or more companies, only the eligible positions created or transferred from outside New Jersey after board approval and the official date of the merger or consolidation shall be considered when determining a grant. The Authority's approval of the merger or consolidation will be conditioned on the growth of the number of new employees under the grant being subject to N.J.A.C. 19:31-10.4(e)2.

**(d)** To the extent a business requests to add an additional site to an existing BEIP, the Authority's approval of the new site will be conditioned on the growth of the number of new employees under the grant being subject to N.J.A.C. 19:31-10.4(e)2. The additional site will be required to meet or to have met the material factor test, unless the additional site is directly related to growth at the original project site.

## History

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### HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (a), substituted "new employees in eligible positions created in the base years and thereafter may be considered" for "the new employees subject to withholding shall be considered as eligible positions"; in (a)1, substituted "Authority Board approval" for "application to the Authority" and inserted "new" in the third sentence; in (a)2, inserted "new employees in"; substantially amended (a)3; in (b), inserted "new employees"; and in (c), deleted "eligible" following "only the new".

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), inserted ", including the number of existing employees in New Jersey" at the end of the first sentence in 1, and inserted "or estimated taxes of partners" following "withholdings" and inserted ", partnership or cooperative association" following "business" in 3; and rewrote (c).

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

In (a)3, inserted "or upon issuance of a bond, the proceeds of which are intended for grant payments" preceding "beginning the next calendar year".

Administrative correction.

See: 40 N.J.R. 809(a).

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## **N.J.A.C. 19:31-10.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.6 Grant conditions**

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- (a) The business shall maintain the project, the required minimum number of eligible positions in New Jersey and at least 80 percent of the Base Employment Number for the commitment duration. Businesses which are tenants applying individually to the program may be restricted by the term of their lease.
- (b) The Authority shall apply any job creation above the new employment commitment at the project against any losses in the base employment number when determining whether a business has fallen below 80 percent of the base employment number.
- (c) By March 1st of the year after the grant year in which the business commences the grant term, the business shall submit an annual payroll report containing one section for new employees in eligible positions whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. and one section for all other new employees in eligible positions and indicating the following information for the business and the project for the grant year in which the business commenced the grant term:
1. The total amount of withholdings during the grant year for each new employee in an eligible position;
  2. The eligible positions which were created during the preceding grant year;
  3. The names of each new employee in an eligible position;
  4. The date of hire of each new employee in an eligible position;
  5. The actual salary of each new employee in an eligible position, or if the new employee is a partner of an eligible partnership, the amount of estimated taxes paid by the partner;
  6. The amount of withholdings of each new employee in an eligible position;
  7. The termination date, if applicable, of each new employee in an eligible position;
  8. The social security numbers of each new employee in an eligible position;
  9. A certification stating that no new employees are related persons of the owners of the business; and
  10. A certification identifying the eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company.
- (d) The Authority shall be entitled to audit the payroll records of the business, to require the business to submit detailed payroll reports and to make adjustments as necessary to the amount

of any future grant payment at any time during the term of the grant as the Authority deems necessary.

**(e)** If the business receiving a grant should generate significant new employment beyond the base years that was not originally anticipated at application, the Authority may amend the agreement to increase the annual grant percentage or term amount to reflect said increased employment subject to N.J.A.C. 19:31-10.4(e)2.

**(f)** If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the grant agreement for any two consecutive years, the Authority may terminate the agreement.

**(g)** If the business does not maintain operations at the project location or another location approved by the Authority for at least 1.5 times the term of the grant, the Authority may recapture all or part of the grant in its discretion.

**(h)** As a condition for its continuation in the grant program, no later than March 1 of the year following the first grant year, every business which is awarded a grant from the Business Employment Incentive Program shall submit to the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within six months after the date of the application.

**(i)** As a condition of its continuation in the grant program no later than March 1 of each year, for the preceding grant year, every business which is awarded a grant from the Business Employment Incentive Program shall submit to the Authority, on a form provided by the Authority:

- 1.** A copy of its applicable New Jersey and Federal tax returns showing business income and withholdings and a copy of the New Jersey partnership return for eligible partnerships including Schedule NJK-1, within 30 days of filing;
- 2.** A certification form containing one section for new employees in eligible positions whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. and one section for all other new employees in eligible positions and indicating:
  - i.** The total amount of withholdings for new employees in eligible positions for the grant year;
  - ii.** The total amount of new employees in eligible positions for the grant year;
  - iii.** The total amount of new employees in eligible positions who were terminated in the grant year;
  - iv.** A statement that no new employees are related persons of the owners of the business;
  - v.** A copy of the NJ-W-3, annual reconciliation of tax withheld for the grant year; and
  - vi.** With respect to all non-resident New Jersey employees, on a form provided by the Authority, a list of all such employees, with a computation of the hypothetical withholding tax in the amount that would be attributable to each such employee, calculated pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. as if the non-resident New Jersey employees are subject to New Jersey gross income tax. The computation of withholding under this subparagraph shall be based on income as reported on each non-resident employee's Federal Form W-2, Wage and Tax Statement and in accordance with the instructions and methods prescribed by the current employer instruction booklet (Form



NJ-WT). The approved method for computing withholdings for single employees shall be pursuant to the Taxation Division Director's table, in effect at the time of calculation, for Percentage Method of Withholding, "Rate A," weekly payroll period. The approved method for computing withholdings for married persons or heads of household shall be pursuant to the Taxation Division Director's table, in effect at the time of calculation, for Percentage Method of Withholding, "Rate B," weekly payroll period. Each applicant business must submit copies of the Federal Form W-2 with the list required by this subsection for each non-resident New Jersey employee identified on the list;

3. A certification stating the amount, date received and provider for any grant received under State law, including the Business Relocation Assistance Grant;
4. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award;
5. A copy of the business's W-3 form for the reporting year; and
6. For each new employee in an eligible position whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., a copy of the W-2 form.

(j) Should any business which is awarded a grant under the Act fail to submit to the Authority a copy of its annual certification or submit its annual certification without the information required by the time periods specified in (g) and (g)1 above, any grant payment to be received by any such business shall be forfeited for the applicable reporting year unless the Chief Executive Officer of the Authority determines that there are extenuating circumstances excusing the timely filing required herein. For purposes of this subsection (h), "extenuating circumstances" means the destruction of the business's payroll records due to a fire, earthquake, flood, acts of terrorism, infestation, or the complete loss of the business's computer records.

## History

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### HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (g)2i through iii and v, deleted "with social security numbers" following "eligible positions"; in (g)2i, substituted "base years" for "years just ended"; and in (g)2ii, inserted "from the base years."

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote the section.

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

Rewrote (a) and (b); in (e), added the N.J.A.C. reference.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

In the introductory paragraph of (i), inserted ", on a form provided by the Authority"; in (i)2iii, deleted "and" from the end; and added (i)2v and (i)2vi.

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## **N.J.A.C. 19:31-10.7**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.7 Application procedures**

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**(a)** A business shall apply to the Authority for a grant on a form prescribed by the Authority which requires the following:

1. The name and address of the business;
2. A history and description of the applicant's business;
3. A detailed description of the proposed project, including the location and type of activity which the business will be engaged in at the project site;
4. A detailed breakdown of the total project cost indicating sources and uses of any financial assistance for the project;
5. A complete schedule of all officers, directors and stockholders owning 15 percent or more of the stock;
6. Annual financial statements for the two most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
7. A current interim statement, if the most recent annual financial statement is more than six months old;
8. The estimate of eligible positions to be created during the base years and thereafter;
9. An estimate of total withholdings to be generated from these new positions;
10. A written certification by the chief executive officer, or equivalent officer for North American operations, stating:
  - i. The amount, date received and provider of any grant received under State law, including the Business Retention and Relocation Assistance Grant Program; and
  - ii. That the business applying for the program is not in default with any other program administered by the State of New Jersey, and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;
11. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award;
12. Whether the business is located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan;

- 13.** Whether the business is located in a brownfield site, defined as the first occupants of the site after issuance of a new no-further action letter;
  - 14.** Whether the business is located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan;
  - 15.** Whether 10 percent of the employees of the business receive a "qualified transportation fringe" in a minimum amount of \$ 30.00 pursuant to Title 26 of the United States Internal Revenue Code Section 132(f)(1)(a) for transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment or Section 132(f)(1)(b) for any transit pass, as such commuter highway vehicle and transit pass are defined in Section 132(f) of the Internal Revenue Code;
  - 16.** Whether the business is located in an area designated by the locality as an "area in need of redevelopment";
  - 17.** Whether the project is linked with housing production or renovation (market or affordable) utilizing at least 25 percent of the total buildable area of the site;
  - 18.** Whether the business is located within five miles of and is working cooperatively with a public or nonprofit university on research and development;
  - 19.** Whether the business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes; and
  - 20.** For publicly traded businesses, a copy of the businesses' form 10K; and
  - 21.** Any additional information deemed necessary to evaluate a specific application including, but not limited to, the certified annual statement required by N.J.A.C. 19:31-10.4(a), and the type and form of records required to be submitted to the Director pursuant to N.J.A.C. 18:35-7.1 through 7.8, as amended from time to time by the Director pursuant to N.J.S.A. 34:1B-137.
- (b)** A landlord shall file the information set forth in (a) above, in addition to the following:
- 1.** A copy of the assignment by each tenant to forego any claim of right it may have to a grant; and
  - 2.** A copy of the agreement between the landlord and tenants which establishes the tenants agreed to cooperation to annually submit to the Authority its:
    - i.** Number of new employees in eligible positions;
    - ii.** Total employees at commencement of the Agreement between the Authority and landlord;
    - iii.** Payroll records; and
    - iv.** Any withholdings during the grant year.
- (c)** A business shall submit on a form prescribed by the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within three months of the date of the application.

**(d)** If the applicant meets all of the program criteria set forth in the rules, the grant shall be recommended for consideration and official actions by the members of the Authority at a public meeting. The applicant has no right to have its application presented to the members of the Authority for consideration.

## History

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### HISTORY:

Amended by R.1997 d.270, effective July 7, 1997.

See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

In (a)5, deleted ", including resumes and signed, dated personal financial statements" following "more of the stock".

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

In (a), inserted new 12 through 19 and recodified existing 12 as 20; rewrote (b); inserted new (c); recodified and amended existing (c) as (d).

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

In (a), added a new 20 and recodified existing 20 as 21.

Amended by R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Rewrote (a)15 and (a)21; and in (a)20, substituted "; and" for a period at the end.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (a)10.

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## **N.J.A.C. 19:31-10.8**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.8 Evaluation process**

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**(a)** When all of the required information is received, the Authority staff shall review the materials to determine what percentage and term of grant, if any, the applicant would be eligible to receive based on the eligible positions for new employees. This evaluation shall be based on an evaluation of the application and an analysis of historic and projected financial statements and a comparison to industry peers (primary emphasis will be placed on the record of profitability and financial stability for the past two years and projections of profitability and financial stability over the term of the grant) solely for the purpose of potential disqualification, debarment, and conflict of interest, providing a grant to an applicant shall constitute "financial assistance" under N.J.A.C. 19:30-2.2(a), and the terms and conditions of N.J.A.C. 19:30-2 shall apply to an applicant for a grant.

**(b)** If a positive determination is made, the requested business employment incentive grant request shall be presented to the members of the Authority for approval.

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## N.J.A.C. 19:31-10.9

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### **§ 19:31-10.9 Approval process**

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- (a) Only the members of the Authority can approve a business employment incentive grant.
- (b) When the members of the Authority approve a request, the minutes of the meeting at which such approval occurs shall be submitted to the Governor.
- (c) The members' approval shall become effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of the action has occurred.
- (d) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.
- (e) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.
- (f) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.
- (g) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

### **History**

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#### **HISTORY:**

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 New Jersey Register 5047(a), 35 New Jersey Register 5369(a), 36 New Jersey Register 1198(b).

Rewrote (d) and (e); inserted new (f) and (g).

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## N.J.A.C. 19:31-10.10

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### **§ 19:31-10.10 Rescission and withholding of grant payments**

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(a) Defaults under the grant agreement may include, but not be limited to:

1. Failure to comply with the requirements of this subchapter or other applicable State laws or rules;
2. Failure to comply with any condition or requirement of the Grant Agreement;
3. Failure to maintain the stipulated employment levels;
4. Submission of false or misleading information, or failure to submit relevant information; or
5. Insolvency, bankruptcy or other conditions which affect the financial integrity of the business.

(b) Upon a default under the grant agreement, in addition to any other remedies in the grant agreement and available under this section and under the Act, the Authority may withhold any payment not yet paid at the time of the default under the grant agreement. The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant is solely within the Authority's discretion.

(c) Upon failure to maintain the minimum eligibility threshold or 80 percent of the base employment number, the Authority may suspend the grant agreement for a period of two years, provided the company can demonstrate during that period a continued effort and commitment to growth in New Jersey. An additional one year of suspension may be granted upon application to the Authority. Any suspension shall not extend the term of the grant.

(d) Upon termination of the grant agreement, in addition to any other remedies in the grant agreement and available under this section and under the Act, the Authority may require repayment of an amount of the grant based on the period of time the business complied with the grant, provided, however, that the Authority may require repayment of the total amount paid to the business over the term of the grant if the default results from the business moving the project out of the State of New Jersey or the business being sold and moved out of the State of New Jersey.

### **History**

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#### **HISTORY:**

Amended by R.2005 d.97, effective March 21, 2005.

See: 36 N.J.R. 5663(a), 37 N.J.R. 904(b).

Rewrote the section.

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

Deleted (e).

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## **N.J.A.C. 19:31-10.11**

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### **§ 19:31-10.11 Prevailing wage and affirmative action**

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The business shall comply with the Authority's prevailing wage requirements, N.J.A.C. 19:30-4, and affirmative action requirements, N.J.A.C. 19:30-3, in the performance of the construction contract for the project, provided that prevailing wage shall not be required for construction commencing more than two years after an entity has executed with the Authority a commitment letter and the first payment or other provisions of assistance is received.

### **History**

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#### **HISTORY:**

Repeal and New Rule, R.2008 d.18, effective January 7, 2008.

See: 38 N.J.R. 5341(a), 40 N.J.R. 195(b).

Section was "Prevailing wage".

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Rewrote the section.

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## **N.J.A.C. 19:31-10.12**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.12 Fees**

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- (a)** A non-refundable application fee of \$ 1,000 shall accompany every application for grant assistance.
- (b)** A non-refundable commitment fee of \$ 1,000 is charged with the acceptance by an applicant for a BEIP grant.
- (c)** A non-refundable Commitment Letter extension fee of \$ 1,000 shall be paid for every extension of a Commitment Letter expiration date beyond the initial expiration date.
- (d)** A non-refundable fee of \$ 1,000 shall be paid at closing.
- (e)** For each project with total grant disbursements, as projected at the time of approval, of \$ 1,000,000 or less, a non-refundable fee of \$ 1,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 2,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total grant disbursements, as projected at the time of approval, of \$ 1,000,000 to \$ 5,000,000, a non-refundable fee of \$ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 7,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total grant disbursements, as projected at the time of approval, in excess of \$ 5,000,000, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.
- (f)** A non-refundable fee of \$ 750.00 shall be paid for any extension to the expiration date of a grant.
- (g)** An annual servicing fee shall be paid to the Authority by the business and shall be deducted from the annual grant payment to the business. The servicing fee shall be two percent of the annual grant disbursement with an annual cap of \$ 75,000.
- (h)** A non-refundable post-benefit retention equaling 20 percent of the final award shall be deducted at the time of disbursement for costs associated with monitoring annual job creation reports which, if all post award reporting is done pursuant to the grant agreement, shall be refunded at the end of the required reporting period with EDA retaining one percent per year for servicing costs.

(i) The full amount shall be paid of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

## History

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### HISTORY:

Amended by R.1998 d.150, effective March 16, 1998.

See: 29 N.J.R. 5236(a), 30 N.J.R. 1053(b).

In (b), decreased the floor from \$ 1,500 to \$ 500.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), inserted "and an annual cap of \$ 10,000" following "\$ 500.00".

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Added (c) though (e).

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Substituted "non-refundable" for "nonrefundable" throughout; in (a), substituted "\$ 1,000" for "\$ 500.00"; rewrote (b); in (c), substituted "\$ 1,000" for "\$ 750.00"; added new (d); recodified former (d) and (e) as (e) and (f); in (e), inserted "administrative" and "; and a non-refundable fee of \$ 1,500 shall be paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval"; and added (g) and (h).

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (e).

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Added (i).

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## **N.J.A.C. 19:31-10.13**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM***

### **§ 19:31-10.13 Attorney General review**

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All documents, including the application, for the program are subject to review by the Attorney General's office.

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## **N.J.A.C. 19:31-11.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE, AND CLOSURE FUND***

### **§ 19:31-11.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.), as amended, which pertain to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. The act established the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, a special revolving fund for the purpose of financing remediation due to the discharge of petroleum from a petroleum underground storage tank or for the costs of upgrade and closure of a regulated tank.

### **History**

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#### **HISTORY:**

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Inserted "and P.L. 2003, c.148" preceding ", which pertain" and substituted "The former Act" for "This Act" at the beginning of the second sentence.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Substituted ", as amended," for "and P.L. 2003, c.148," and "act" for "former Act".

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## **N.J.A.C. 19:31-11.2**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE, AND CLOSURE FUND***

### **§ 19:31-11.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.).

"Applicant" means a corporation, partnership, limited liability corporation, individual, society, association, consortium, joint venture, commercial entity, county, municipality, or public school district which has been determined by the Department to be eligible for financial assistance or a grant.

"Authority" means the New Jersey Economic Development Authority.

"Department" means the Department of Environmental Protection.

"Discharge" means the intentional or unintentional release by any means of petroleum from a petroleum underground storage tank into the environment.

"Eligible owner or operator" means:

1. Any owner or operator, other than the owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building, who owns or operates less than 10 petroleum underground storage tanks in New Jersey, who has a net worth of less than \$ 3,000,000 and who demonstrates to the satisfaction of the Authority, the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs ("Category 1");
2. The owner or operator of a petroleum underground storage tank storing heating oil for onsite consumption in a residential building located in New Jersey ("Category 2");
3. A public entity who owns or operates a petroleum underground storage tank in New Jersey;
4. An independent institution of higher education that owns or operates a petroleum underground storage tank ("Category 4");
5. A nonprofit organization, corporation, or association located in New Jersey with not more than 100 paid employees, that is qualified for exemption from Federal taxation pursuant to section 501(c)(3) of the Federal Internal Revenue Code, 26 U.S.C. § 501(c)(3), who demonstrates to the satisfaction of the Authority the inability to qualify for and obtain a commercial loan for all or part of the eligible project costs ("Category 5"); or
6. A duly incorporated volunteer fire, ambulance, first aid, emergency, or rescue company or squad located in New Jersey ("Category 6").



"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance.

"Eligible project costs" means the reasonable costs for equipment, work or services required to effectuate a remediation, an upgrade or a closure which equipment, work or services are eligible for payment from the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

"Estate applicant" means an eligible owner or operator that applies through an executor or administrator with the authority to incur debt on behalf of the estate. The administration of the estate must not yet be settled.

"Facility" means one or more operational or nonoperational petroleum underground storage tanks under single ownership at a common site.

"Financial assistance" means a grant or loan or a combination of both.

"Fund" means the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund.

"Independent institution of higher education" means those institutions of higher education incorporated and located in the State, which, by virtue of law or character or license, are nonprofit educational institutions empowered to grant academic degrees and which provide a level of education which is equivalent to the education provided by the State's public institutions of higher education as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which are eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey. "Independent institution of higher education" does not include any educational institution dedicated primarily to the preparation or training of ministers, priests, rabbis, or other professional persons in the field of religion.

"Non-residential building" means any building that is not a residential building.

"Operator" means any person in control of, or having responsibility for, the daily operation of a facility at the time that the application for financial assistance is submitted. The term "operator" also includes a person who, prior to the time that the application for financial assistance is submitted, sold a facility for which the person had daily operational control or responsibility for its daily operation, and who, in order to meet the person's obligation under State or Federal law to remediate contamination caused by the discharge of hazardous substances from the facility, contracts with the buyer to conduct the remediation of the contamination subsequent to the closing of the sale of the facility.

"Owner" means any person who owns a facility.

"Paid employees" means:

1. All persons in an employment position in New Jersey certified by the applicant as permanent, which position provides for employment for compensation for at least 35 hours per week where the wages for such position are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.; or
2. Persons holding such other employment arrangement approved in writing by the Authority. Paid employees shall not include temporary or seasonal employees or those employed by a vendor, independent contractor, consultant, agent or other entity doing business with the applicant unless approved in writing by the Authority.

"Pension" means a sum of money, usually funded fully or in large part by an employer, or in the case of the self-employed, by the pension recipient, set aside for the recipient as a retirement benefit. This includes, but is not limited to, all plans as defined by 26 U.S.C. § 401.

"Petroleum underground storage tank" means a tank of any size, including appurtenant pipes, lines, fixtures, and other related equipment that normally and primarily stored petroleum, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more below the ground.

"Primary residence" means a homestead actually and continually occupied by an applicant as the applicant's permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the applicant, and other secondary real property holdings. For an estate applicant, the primary residence shall be determined based on the facts as of the time of the decedent's death. An applicant can have only one primary residence for purposes of this subchapter.

"Public entity" means any county, municipality, or public school district, but shall not include any authority created by those entities.

"Regulated tank" means a petroleum underground storage tank that is required to be upgraded pursuant N.J.S.A. 58:10A-21 et seq. or 42 U.S.C. §§ 6991 et seq.

"Remediation" means all necessary actions to investigate and clean up any known, suspected, or threatened discharge of petroleum, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in N.J.S.A. 58:10B-1.

"Residential building" means a dwelling and not ancillary structures.

"State" means State of New Jersey.

"Unregulated tank" means a petroleum underground storage tank that is not required to be upgraded pursuant to N.J.S.A. 58:10A-21 et seq. or 42 U.S.C. §§ 6991 et seq.

"Upgrade" means the replacement of a regulated tank, the installation of secondary containment, monitoring systems, release detection systems, corrosion protection, spill prevention, or overfill prevention thereof, or any other necessary improvement to the regulated tank in order to meet the standards for regulated tanks adopted pursuant to section 5 of P.L. 1986, c.102 (N.J.S.A. 58:10A-25) and 42 U.S.C. §§ 6991 et seq.

## History

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### HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In "Applicant", inserted a reference to limited liability corporations.

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote "Eligible owner or operator" and "Eligible project costs", and added "Independent institution of higher education", "Paid employees", "Pension" and "Primary residence".

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Rewrote definitions "Eligible owner or operator", "Eligible project costs" and "Operator"; in definition "Independent institution of higher education", substituted "the" for "this" following "located in"; in definition

"Primary residence", inserted the last sentence; and added definitions "Non-residential building", "Residential building", "State" and "Unregulated tank".

Amended by R.2019 d.099, effective September 16, 2019.

See: 51 N.J.R. 982(a), 51 N.J.R. 1473(b).

Added definition "Estate applicant"; and in definition "Primary residence" inserted the second sentence.

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## **N.J.A.C. 19:31-11.3**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE, AND CLOSURE FUND***

### **§ 19:31-11.3 Eligibility**

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(a) Financial assistance from the fund may be made for eligible projects to:

1. Eligible owners or operators to finance eligible project costs of an upgrade or closure of a regulated tank pursuant to 42 U.S.C. §§ 6991 et seq. or N.J.S.A. 58:10A-21 et seq., provided that they owned or operated the subject tank as of December 1, 2002 and continually thereafter or inherited the property from a person who owned the property as of that date;
2. Eligible owners or operators to finance eligible project costs of remediation due to the discharge of petroleum from one or more tanks, provided that, in the case of regulated tanks, they owned the tank(s) at the time of closure;
3. Eligible owners or operators of regulated tanks that are not operational to finance the closure and remediation of those tanks for 18 months after the date of discovery of the tank, or June 30, 2010, whichever is later;
4. Eligible owners or operators of regulated tanks to finance eligible project costs of closure and remediation if the application is filed with the Department by June 30, 2010, and the application fee is received by the Authority and the application is deemed complete by December 31, 2010;
5. Eligible owners or operators of regulated tanks who have met the upgrade requirements pursuant to 42 U.S.C. §§ 6991 et seq. or P.L. 1986, c. 102 (N.J.S.A. 58:10A-21 et seq.) may qualify for a loan in order to finance an improvement or replacement of a regulated tank to meet State and Federal standards;
6. Category 5 and 6 eligible owners or operators of petroleum underground storage tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building where no remediation is required may qualify for a grant to finance eligible project costs of closure and replacement, provided that the tank was not previously replaced with a grant from the Fund;
7. Eligible owners or operators in Category 5 and 6 may qualify for a grant to finance eligible project costs of closure or remediation of a petroleum underground storage tank; and
8. Eligible owners or operators of petroleum underground storage tanks used to store heating oil for onsite consumption in a residential building may qualify for a grant to finance eligible project costs of closure or closure and replacement. To the maximum extent possible, the eligible owner or operator shall replace the tank with an aboveground tank.

## History

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### HISTORY:

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

In (a), added 3.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Rewrote the section.

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## **N.J.A.C. 19:31-11.4**

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### **§ 19:31-11.4 Amount of financial assistance**

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**(a)** Financial assistance may be for 100 percent of the eligible project costs, subject to any dollar limitations as may otherwise be set forth in this subchapter. Loans for upgrade, remediation or closure, or any combination, for any one facility, shall not exceed \$ 2,000,000, except as provided in (a)1 and 2 below:

- 1.** In the case of an eligible owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.), or the Highlands Region designated pursuant to section 7 of P.L. 2004, c. 120 (N.J.S.A. 13:20-7), the eligible owner or operator may receive a loan in an amount not to exceed \$ 3,000,000; and
- 2.** A loan that an applicant may receive from the fund for a remediation of a discharge that poses a threat to a drinking water source may not exceed \$ 3,000,000.

**(b)** Grants for upgrade, remediation, closure, or replacement or any combination, for any one facility, shall not exceed \$ 500,000 except as provided in (b)1 and 2 below.

- 1.** In the case of an eligible owner or operator of a facility located within an area designated as a Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center as designated pursuant to the "State Planning Act," sections 1 through 12 of P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.), or the Highlands Region designated pursuant to section 7 of P.L. 2004, c. 120 (N.J.S.A. 13:20-7), the eligible owner or operator may receive a grant in an amount not to exceed \$ 1,000,000 for each facility so located.
- 2.** In the case of a closure, or closure and replacement, of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required, an eligible owner or operator may receive a grant for the eligible project costs consistent with the cost guidelines established by the Department pursuant to section 4 of P.L. 2009, c. 134 (N.J.S.A. 58:10A-37.5b) and in effect at the time the closure is performed.
- 3.** In the case of an emergency remediation of a discharge from a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building, an eligible owner or operator may receive a grant in an amount equal to the actual costs incurred by the Department or its authorized agents (excluding administrative costs), and borne by the eligible owner or operator.

4. In the case of a closure or replacement of a petroleum underground storage tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a nonresidential building that is owned or operated by those in either Category 5 or Category 6, where no remediation is required, the eligible owner or operator may receive a grant for the eligible project costs of the closure or replacement in an amount consistent with the cost guidelines developed by the Department pursuant to section 4 of P.L. 2009, c. 134 (N.J.S.A. 58:10A-37.5b) and in effect at the time the closure or replacement is performed, provided that the petroleum underground storage tank was not previously replaced with a grant from the Fund.
5. A Category 4 eligible owner or operator may receive a grant in an amount up to \$ 1.5 million per institution to fund the remediation costs.

## History

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### HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote the section.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Section was "Amount and terms of financial assistance and conditional hardship grants". Rewrote the section.

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## **N.J.A.C. 19:31-11.5**

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### **§ 19:31-11.5 Eligible project costs**

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(a) Financial assistance from the Fund may be made for eligible projects, as follows:

1. In the case of an upgrade or closure of a regulated tank, eligible project costs are limited to the cost of the minimal effective system necessary to meet all the regulatory requirements of Federal and State law, except that an eligible owner or operator who has met the upgrade requirements pursuant to 42 U.S.C. §§ 6991 et seq. or P.L. 1986, c. 102 (N.J.S.A. 58:10A-21 et seq.) may be awarded a loan which shall not be limited to the cost of a minimal effective system, in order to finance the costs of the improvement or replacement of tanks to meet State and Federal standards as provided in subsection g. of section 5 of P.L. 1997, c. 235 (N.J.S.A. 58:10A-37.5). The limitation of eligible project costs to the minimal effective system shall not be construed to deem ineligible those project costs expended to replace a regulated tank rather than to improve the regulated tank. An owner or operator may perform an upgrade or a closure beyond the minimal effective system in which case the eligible project costs that may be awarded from the Fund as financial assistance in the form of a grant shall be that amount that would represent the cost of a minimal effective system.
2. In the case of a remediation, replacement, or closure of an unregulated tank, eligible project costs shall include the cost to replace a tank with an aboveground or underground storage tank.
3. In the case of a remediation, eligible project costs shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances adopted pursuant to the "Municipal Land Use Law," P.L. 1975, c. 291 (N.J.S.A. 40:55D-1 et seq.) does not allow for residential use.
4. No financial assistance may be awarded from the Fund for remediation if the discharge began after completion of an upgrade intended to meet all applicable upgrade regulations of the Department.
5. Except as set forth below in this subsection, no award of financial assistance shall be made from the Fund for the otherwise eligible project costs of a remediation, closure or an upgrade, or parts thereof, completed prior to an award of financial assistance from the Fund:
  - i. Eligible project costs may include the cost of a preliminary assessment and site investigation, even if performed prior to the award of financial assistance from the Fund, if the preliminary assessment and site investigation were performed after August 30, 1997;
  - ii. Eligible project costs may include reimbursement of expenditures incurred by eligible owners or operators, from their own funds, for remediation efforts undertaken after filing



an application for financial assistance from the Fund for the eligible project costs of the remediation;

iii. Eligible project costs may include reimbursement of expenditures incurred by independent institutions of higher education that have expended their own funds on a remediation prior to filing an application for financial assistance from the Fund for expenditures for the eligible project costs of the remediation made on or after December 1, 1996, in an amount not to exceed \$ 500,000 for each institution;

iv. Eligible project costs may include reimbursement of expenditures incurred by owners and operators for closure, or closure and replacement, of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required prior to the completion of such work if the applicant submits all of the information required pursuant to N.J.A.C. 19:31-11.8 to the Authority within 45 days of issuance by the Authority of a preliminary approval letter;

v. Eligible project costs may include reimbursement of expenditures incurred by an applicant for remediation of a tank at the applicant's primary residence prior to filing an application;

vi. Eligible project costs may include reimbursement of expenditures incurred by an eligible owner or operator in the case of an emergency remediation of a discharge from a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building paid to the Department or its agent (except for administrative costs); and

vii. Eligible project costs may include reimbursement of expenditures made by Category 5 and 6 applicants for remediation of a discharge caused by a tank with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a non-residential building on or after October 1, 2009, but prior to the filing of an application.

6. Once financial assistance for an upgrade or closure is awarded for a facility, no additional award of financial assistance for upgrade or closure costs may be made for that facility. However, if an applicant discovers while performing upgrade or closure activities that a remediation is necessary at the site of a facility, and if financial assistance was previously awarded for that site only for an upgrade or closure of a regulated tank, the applicant may amend its application and apply for financial assistance for the required remediation subject to the limitations enumerated in section 5 of P.L. 1997, c. 235 (N.J.S.A. 58:10A-37.5).

7. An applicant shall not receive financial assistance from this Fund if assistance was previously made under the Hazardous Discharge Site Remediation Fund at that site.

8. No person shall be eligible for a grant from the Fund to replace a petroleum underground storage tank that stores heating oil for onsite consumption in a residential building if the tank that stores heating oil for that residential building was previously replaced using a grant from the Fund.

## History

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### HISTORY:

New Rule, R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

N.J.A.C. 19:31-11.5

Former N.J.A.C. 19:31-11.5, Priority system for financial assistance, recodified to N.J.A.C. 19:31-11.7.

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## **N.J.A.C. 19:31-11.6**

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### **§ 19:31-11.6 Terms of financial assistance**

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**(a)** An entity applying for financial assistance from the Fund may only be awarded financial assistance in the form of an interest free loan, as follows:

1. Loans from the Fund shall be for a term of not more than 10 years. Interest on loans from the Fund, except loans to public entities, shall be equal to an amount fixed between two percent and the prime rate at time of approval, or at the time of closing if the prime rate is lower. The Authority shall determine the interest rate based on the applicant's ability to repay the loan.
2. If the facility for which the loan was made is sold, the unpaid balance of the loan shall become immediately due and payable in full.
3. A loan shall be awarded only upon a finding that the applicant, other than a public entity, is able to repay the loan.
4. Except for eligible owners and operators in Categories 2, 4 and 6, applicants cannot be awarded a loan unless they show the inability to qualify for a conventional loan for all or part of the eligible project costs.

**(b)** An applicant, other than a public entity, may apply for and receive a conditional hardship grant based on Authority findings under all of the following three criteria:

1. Eligibility:
  - i. In order to be eligible for a conditional hardship grant for closure or upgrade, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank as of December 1, 2002 and continually thereafter or shall have inherited the property from a person who owned the regulated tank as of that date; and not have a taxable income of more than \$ 250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$ 500,000 taxable income derived from the tax return in the year prior to making application.
  - ii. In order to be eligible for a conditional hardship grant for remediation, in the case of a regulated tank, the applicant shall have owned or operated the subject regulated tank at the time of tank closure; and not have a taxable income of more than \$ 250,000 or a net worth, exclusive of the applicant's primary residence and pension, of over \$ 500,000 taxable income derived from the tax return in the year prior to making application.

iii. The eligibility requirements for net worth and taxable income are not applicable to applicants qualifying as eligible owners or operators under Categories 4, 5 or 6 and seeking grant monies for closure or remediation costs;

**2. Financial hardship:**

i. A finding of financial hardship by the Authority shall be based on a review of the applicant's financial condition at the time of application to the Authority and a determination that an applicant cannot reasonably be expected to repay all or a portion of the eligible project costs if the financial assistance were to be awarded as a loan. Review of the applicant's financial condition shall include the criteria set forth in N.J.S.A. 58:10A-37.5.c(2) and include liabilities and any other financial information the Authority deems relevant. The following are examples of whether an applicant cannot reasonably be expected to repay all or a portion of eligible project costs if assistance is awarded as a loan:

- (1) An applicant for eligible project costs for remediation of a property at which it does business and whose debt service coverage ratio does not exceed 1:1 will be considered to be able to repay at least a portion of the eligible project costs if assistance is awarded as a loan;
- (2) An applicant for eligible project costs for remediation at a primary residence whose expenses do not exceed 51 percent of its taxable income will be considered will be able to repay at least a portion of the eligible project costs if assistance is awarded as a loan; and
- (3) An estate applicant for eligible project costs for remediation whose liabilities do not exceed its qualified assets will be considered able to repay eligible project costs if assistance is awarded as a loan.

ii. The amount of an award of a conditional hardship grant shall be the amount of that portion of the eligible project costs the Authority determines the applicant cannot reasonably be expected to repay; however, any applicant with a taxable income of more than \$ 200,000 who qualifies for a grant shall be required to pay no more than \$ 1,000 of the eligible project costs; and

**3. Satisfaction of statutory criteria at N.J.S.A. 58:10A-37.5(c).**

(c) Upon the sale of the facility for which a conditional hardship grant was made, the conditional hardship grant shall become immediately payable in full, to the extent required by N.J.S.A. 58:10A-37.16. No repayment of a conditional hardship grant shall be required for a remediation necessitated by a discharge at the applicant's residence, nor shall repayment be required if the sale is pursuant to a condemnation proceeding or the exercise of the power of eminent domain.

(d) Conditional hardship grants shall be subject to the lien provisions set forth in the Act. The determination of the use and status as a primary residence of the property at which the facility is located will be based on the facts as of the time of application to the Authority, except that for estate applicants, the determination will be based on the facts as of the time of the decedent's death.

(e) An application for financial assistance from the Fund for an upgrade or closure of a regulated tank shall include all regulated tanks at the facility for which the applicant is seeking financial assistance.

(f) An application for financial assistance for an upgrade or closure of a regulated tank shall be conditioned upon the applicant agreeing to perform, at the time of the upgrade or closure, any remediation necessary as a result of a discharge from the regulated tank and commencement of the remediation within the time prescribed and in accordance with all appropriate rules and regulations.

## History

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### HISTORY:

New Rule, R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Former N.J.A.C. 19:31-11.6, Application for financial assistance, recodified to N.J.A.C. 19:31-11.8.

Amended by R.2019 d.099, effective September 16, 2019.

See: 51 N.J.R. 982(a), 51 N.J.R. 1473(b).

Rewrote (b)2i; and in (d), added the second sentence.

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## **N.J.A.C. 19:31-11.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE, AND CLOSURE FUND***

### **§ 19:31-11.7 Priority system for financial assistance**

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(a) Upon the Authority's approval of an application for financial assistance, the Authority shall award financial assistance upon availability of sufficient monies in the fund. When monies in the fund are not sufficient at any time to fully fund all applications for financial assistance that have been approved by the Authority, the Authority shall award financial assistance to approved applicants, notwithstanding the date of application in the following priority as determined by the Department.

1. Upgrades of regulated tanks required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;
2. Closure of any regulated tank required to be upgraded pursuant to 42 U.S.C. §§ 6991 et seq., including necessary remediation at the site of the regulated tank;
3. Upgrades of regulated tanks requiring upgrade pursuant to N.J.S.A. 58:10A-21 et seq. but not pursuant to 42 U.S.C. §§ 6991 et seq. and necessary remediation at the site of the regulated tank;
4. Any necessary remediation at the sites of petroleum underground storage tanks other than those given priority in (a)1, 2 and 3 above;
5. Closure of any regulated tank required to be upgraded pursuant to N.J.S.A. 58:10A-21 et seq., but not pursuant to 42 U.S.C. §§ 6991 et seq.

(b) Notwithstanding the priority for the award of financial assistance, whenever there has been a discharge, and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area, an approved application shall be given priority over all other applications.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-11.5 by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Former N.J.A.C. 19:31-11.7, Evaluation process for financial assistance, recodified to N.J.A.C. 19:31-11.9.

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## **N.J.A.C. 19:31-11.8**

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### **§ 19:31-11.8 Application for financial assistance**

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- (a) Upon determination of eligibility by the Department, the Department shall notify the Authority of the eligibility of the applicant, and the total amount of eligible project costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source.
- (b) The applicant will be given priority for financial assistance based on the date of receipt by the Authority of a completed application, subject to the priority system set forth in N.J.A.C. 19:31-11.5.
- (c) If the application is determined by the Authority to be incomplete, the applicant shall have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority.
- (d) If the applicant fails to file the additional information within the 30 day period, the filing date for the application shall be the date the additional information is received by the Authority.
- (e) A change in the filing date resulting from failure to submit a completed application or from failure to submit the application fee in a timely fashion for applications filed for financial assistance for a regulated tank to meet the upgrade or closure requirements pursuant to 42 U.S.C. §§ 6991 et seq. or P.L. 1986, c.102 (N.J.S.A. 58:10A-21 et seq.) or for the remediation of a discharge from any such regulated tank shall not render the application ineligible for financial assistance as long as the initial date of application is prior to June 30, 2010, or for a regulated tank that is not operational, 18 months from the date of discovery of the tank or June 30, 2010, whichever is later.
- (f) A completed application from an applicant shall include, if applicable as determined by the Authority:
1. A history and description of the applicant's business;
  2. A description of the proposed project and a detailed breakdown of the use of the financial assistance proceeds;
  3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of Federal income tax returns for the three most recent years;
  4. A current personal financial statement, if the most recent annual financial statement is more than six months old;



5. Three years of projections, including the balance sheet, operating statement, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
  6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
  7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;
  8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements, EDA application, tax clearance certificate and property deed; and
  9. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101.
- (g)** The Authority may also require:
1. Appraisal(s) on real property and/or machinery and equipment;
  2. Aging of accounts receivable;
  3. Aging of accounts payable;
  4. Submission of documentation or other information on the nature and scope of the work to be performed, cost estimates, and proofs of the actual costs of all work performed;
  5. Demonstration of an ability to repay the amount of any loan and to provide adequate collateral to secure the loan; and/or
  6. Submission of documentation and a certification as applicable that the applicant was unable to qualify for and obtain a commercial loan for all or part of the eligible project costs.
- (h)** Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the members of the Authority or deny the application. The applicant has no right to have its application presented to the members of the Authority.
- (i)** In the case of a closure or a replacement and closure of a petroleum underground storage tank used to store heating oil for onsite consumption in a residential building where no remediation is required, if an applicant submits a complete application package to the Authority prior to the completion of the project and the Authority determines that the applicant qualifies for the grant, the Authority shall issue written confirmation that the applicant will receive a grant upon completion of the project, subject to the applicant's submission of the following to the Authority within 45 days from the issuance date of the written confirmation: invoices; executed General Non-Leaking Tank Certification; executed Contractor Non-Leaking Tank Certification; executed Financial Assistance Agreement; copy of the deed for the subject property; and a valid Business Tax Clearance Certificate. For purposes of this subsection, a complete application package shall include all of the following: non-refundable application fee; completed Non-Leaking Tank Application; executed Frequently Asked Questions; current Personal Financial Statement; and Federal Income Tax Returns for the last three years.
- (j)** The written confirmation shall be valid for 45 days from the date of issuance. Any applicant, who has received written confirmation pursuant to this subsection and fails to submit the documentation, certification, or other information required by this subsection before the expiration date of confirmation, shall be required to submit a new application for review.

## History

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### HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (e), substituted a reference to applicants for a reference to businesses in the introductory paragraph, and deleted a former 9.

Amended by R.2004 d.347, effective September 20, 2004.

See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Added a new (e) through (g), and recodified former (e) through (g) as (h) through (j).

Recodified from N.J.A.C. 19:31-11.6 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (b), inserted ", subject to the priority system set forth in N.J.A.C. 19:31-11.5"; in (e), substituted "2010" for "2005" and "June 30, 2010" for "February 15, 2005"; deleted former (f) and (g); recodified former (h) as (f); in (f)2, substituted "financial assistance" for "loan"; in (f)3, inserted "Federal income"; in (f)4, substituted "personal financial" for "interim"; in (f)7, deleted "and" from the end; in (f)8, substituted ", EDA application, tax clearance certificate and property deed; and" for a period at the end; added (f)9; recodified former (i) and (j) as (g) and (h); and added new (i) and (j). Former N.J.A.C. 19:31-11.8, Approval process for financial assistance, recodified to N.J.A.C. 19:31-11.10.

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## **N.J.A.C. 19:31-11.9**

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### **§ 19:31-11.9 Evaluation process for financial assistance**

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- (a) When all of the required information is received, the Authority shall perform its own credit evaluation based on the following, as applicable:
1. Visitation to the applicant's place of business;
  2. An analysis of historic and projected financial statements and a comparison to industry peers;
  3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard and Poor's Industry Survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;
  4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;
  5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;
  6. Contact with applicant's suppliers to ascertain credit history and an opinion of the applicant's management;
  7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and
  8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.
- (b) After completing (a) above, a determination shall be made as to the merits of the request and, if a loan, the likelihood of repayment, and the adequacy of the collateral available to secure the loan.
- (c) If a positive determination is made, the requested financial assistance shall be presented to the members of the Authority for approval, or considered by authorized Authority staff through delegated authority, if applicable.

### **History**

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**HISTORY:**

Recodified from N.J.A.C. 19:31-11.7 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In the introductory paragraph of (a), inserted ", as applicable"; in (a)6, substituted "suppliers" for "bank(s)"; in (b), inserted "and, if a loan,", and substituted "loan" for "requested financial assistance" following "secure the"; and in (c), inserted ", or considered by authorized Authority staff through delegated authority, if applicable". Former N.J.A.C. 19:31-11.9, Disbursement of financial assistance, recodified to N.J.A.C. 19:31-11.11.

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## **N.J.A.C. 19:31-11.10**

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### **§ 19:31-11.10 Approval process for financial assistance**

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- (a)** Only the members of the Authority can approve financial assistance from the Fund, unless the authority to approve certain types of transactions has been expressly delegated by the members to Authority staff.
- (b)** When the members approve financial assistance, the minutes of the meeting at which such approval occurs are submitted to the Governor.
- (c)** The members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.
- (d)** If there has been no veto, or if Authority staff has rendered its approval under delegated authority, a formal commitment letter, notice of approval of financial assistance shall be issued to the applicant.
  - 1.** The notice of approval shall contain all terms, conditions and collateral required by the Authority and in the case of a loan may include, among other things, that:
    - i.** Life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's financial assistance. The life insurance must name the Authority as collateral assignee; and
    - ii.** Personal or corporate guarantees of owners of 10 percent or more of the applicant are required, and there may be a requirement for collateral apart from the applicant's collateral to secure the guarantees, based on the amount to be loaned.
- (e)** Within 120 calendar days of receipt of the notice of approval of financial assistance, an applicant shall submit to the Authority an executed contract for the remediation upgrade and/or closure activities for which the financial assistance was approved. The contract shall indicate the nature and scope of the work to be performed, cost estimates of the work, and, as available, proofs of the actual costs of all work performed. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance.
- (f)** When the notice of approval has been accepted by the applicant and returned to the Authority, a list of closing instructions shall be mailed to the applicant or attorney for the applicant.
- (g)** When all required documentation is prepared, in form and content satisfactory to the Authority, a closing for financial assistance shall be scheduled and the funds made available to the applicant, subject to any preconditions to disbursement imposed thereon by the Authority.

## History

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### HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (d)1, substituted "in the case of a loan may" for "will" following "Authority and" in the introductory paragraph, and inserted a references to corporate guarantees in ii; in (e), rewrote the first sentence; and in (f), inserted "applicant or" preceding "attorney".

Recodified from N.J.A.C. 19:31-11.8 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted ", unless the authority to approve certain types of transactions has been expressly delegated by the members to Authority staff"; in the introductory paragraph of (d), inserted "or if Authority staff has rendered its approval under delegated authority,"; and in (g), inserted ", subject to any preconditions to disbursement imposed thereon by the Authority". Former N.J.A.C. 19:31-11.10, Attorney General review, recodified to N.J.A.C. 19:31-11.12.

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## N.J.A.C. 19:31-11.11

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### **§ 19:31-11.11 Disbursement of financial assistance**

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**(a)** All requests for disbursements of the financial assistance shall be submitted by the applicant to the Department with a certification from the contractor or consultant that the requested moneys have been or will be spent in accordance with a Department approved scope of work. The Authority will disburse funds only upon written approval by the Department. Notwithstanding the foregoing, the Authority will disburse funds for closure or closure and replacement of a non-leaking tank upon satisfactory review and approval of a completed application and imposition of a statutory lien, if applicable.

**(b)** The recipient of financial assistance must provide access to the Authority and the Department, at reasonable times, to the subject property to determine compliance with the terms and conditions of the financial assistance.

**(c)** In the case of a grant, payment shall be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other responsible party.

**(d)** Where financial assistance to a person other than a public entity, is for a portion of the remediation cost, the applicant shall provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance shall be disbursed.

**(e)** If a combination loan and grant is awarded, the Authority shall release the loan monies prior to the release of the grant monies, and only release the grant monies upon closure and complete disbursement of the loan.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (b), deleted a reference to grants.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (a), inserted "or will be" preceding "spent in accordance".

N.J.A.C. 19:31-11.11

Recodified from N.J.A.C. 19:31-11.9 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a), inserted "to the Department" and inserted the last two sentences; and added (e). Former N.J.A.C. 19:31-11.11, Fees, recodified to N.J.A.C. 19:31-11.13.

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## **N.J.A.C. 19:31-11.12**

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### **§ 19:31-11.12 Attorney General review**

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All financing documents, including the application, are subject to review by the Attorney General's Office.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-11.10 by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Former N.J.A.C. 19:31-11.12, Public record, recodified to N.J.A.C. 19:31-11.14.

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## N.J.A.C. 19:31-11.13

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### **§ 19:31-11.13 Fees**

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(a) An application fee shall be charged as follows:

1. \$ 250.00 for tanks in residential buildings;
2. \$ 500.00, at application, for tanks in nonresidential buildings; \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, upon the acceptance of financial assistance under the Fund; and \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, at closing; and
3. \$ 1,000 for seven or more tanks in nonresidential buildings.

(b) An annual surcharge as set forth in (b)1 through 3 below shall be imposed upon the owner or operator of a facility who does not maintain evidence of financial responsibility in accordance with N.J.S.A. 58:10A-25 or pursuant to 42 U.S.C. §§ 6991. et seq., as determined by the Department.

1. Facilities with one or two petroleum underground storage tanks shall pay \$ 1,500.
2. Facilities with three to six petroleum underground storage tanks shall pay \$ 3,500.
3. Facilities with more than seven petroleum underground storage tanks shall pay \$ 6,000.

(c) Payment shall be due within 30 days of receipt of an invoice.

(d) The full amount shall be charged of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-11.11 and amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

In (a)1 and (a)3, inserted "tanks in" and substituted "buildings" for "tanks per facility"; and rewrote (a)2.

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Added (d).

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## **N.J.A.C. 19:31-11.14**

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### **§ 19:31-11.14 Public record**

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All information submitted to the Department and/or the Authority as part of an application for financial assistance shall be deemed a public record subject to the provisions of N.J.S.A. 47:1A-1 et seq.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Deleted a reference to grants.

Recodified from N.J.A.C. 19:31-11.12 by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

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## **N.J.A.C. 19:31-12.1**

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### **§ 19:31-12.1 Applicability and scope**

---

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1997, c. 334, as amended by P.L. 2009, c. 90, P.L. 2010, c. 10, P.L. 2020, c. 156, and P.L. 2021, c. 160. This Act establishes a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in New Jersey.

### **History**

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#### **HISTORY:**

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Substituted "c. 334, as amended by P.L. 2009, c. 90 and P.L. 2010, c. 10" for "c.334".

Amended by R.2022 d.052, effective April 18, 2022.

See: 54 N.J.R. 122(a), 54 N.J.R. 718(b).

Substituted a comma for "and" following "90", and inserted ", P.L. 2020, c. 156, and P.L. 2021, c. 160".

## **N.J.A.C. 19:31-12.2**

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### **§ 19:31-12.2 Definitions**

---

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Allowable expenditures" means costs incurred in connection with the operation of the new or expanding emerging technology or biotechnology business in the State, including, but not limited to, the expenses of fixed assets, such as the construction, acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, and research and development expenditures.

"Authority" means the New Jersey Economic Development Authority.

"Biotechnology" means the continually expanding body of fundamental knowledge about the function of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to the body of fundamental knowledge.

"Biotechnology business" means an emerging corporation that has a headquarters or base of operations located in New Jersey that owns, has filed for, or has a license to use protected, proprietary intellectual property and whose primary business is the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes.

"Board" means the Board of the New Jersey Economic Development Authority, established at section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Buying business" means a business with the financial ability to purchase the unused net operating loss carryover and/or unused research and development tax credits from an unaffiliated selling business. For the purpose of this definition, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.

"Camden innovation zone" means the innovation zone in the southern part of the State bounded as follows: in the north by the Ben Franklin Bridge, in the east by Interstate 676, in the south by Kaighns Avenue, and in the west by the Delaware River.

"Certificate" means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused net operating loss carryover and/or unused research and development tax credit carryovers.

"Financial statements" means a statement prepared by an independent Certified Public Accountant (CPA), which shall include an opinion letter indicating the scope of the services performed (compilation, review, or audit) in accordance with Generally Accepted Accounting Principles (GAAP) as determined by the Financial Standards Accounting Board (FASB) and shall include a balance sheet, statement of income and expenses, cash flow statement, other statements as determined by the independent CPA, and footnotes where applicable.

"Full-time employee" means a person employed by a new or expanding emerging technology or biotechnology company on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a new or expanding emerging technology or biotechnology company who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is employed under a formal written agreement with an institution of higher education, whereby the institution's students are employed by the technology or biotechnology company on a permanent basis within a single position and in compliance with all other requirements of this definition. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under a health benefits plan authorized pursuant to State or Federal law. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business; or any person who works as an intern, as a temporary employee, or in a temporary position.

"Full-time employee working in this State" means a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

"Greater New Brunswick innovation zone" means the innovation zone bounded as follows: in the north by Route 287 to Stelton Road to Metlars Lane to Route 18, in the east by Route 1, in the south by Suydam Road/Claremont Road/Finnegan's Lane, and in the west by the Millstone River and Raritan River, which includes parts of North Brunswick, New Brunswick, Piscataway and Franklin Township and Rutgers University's Livingston campus.

"Innovation zone" means any of the three zones located in the northern, central and southern portions of New Jersey designated by the Authority as the Newark innovation zone, North/New Brunswick innovation zone and Camden innovation zone, respectively.

"License" means an agreement that states therein that it is granting an exclusive license that authorizes the applicant to control aspects of the development of the protected proprietary intellectual property. License shall not include an agreement, such as an exclusive distribution agreement or similar business arrangement that is not registered with the U.S. Federal Government, such as the U.S. Patent and Trademark Office, that does not grant the applicant control of the protected proprietary intellectual property.

"Net operating loss" means the excess of the deductions over the gross income used in computing entire net income in a specific year without regard to the net operating loss carryover to that year and the dividend exclusion, as provided in N.J.S.A. 54:10A-4(k)(6)(C).

"New or expanding" means a technology or biotechnology company that:

1. On June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L. 1997, c. 334 (N.J.S.A. 34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate, has fewer than 225 employees in the United States of America;
2. On June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for less than three years, has at least five full-time employees working in this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for more than three years but less than five years, and has at least 10 full-time employees working in this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for more than five years; and
3. On the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in paragraph 2 above.

In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.

"Newark innovation zone" means the innovation zone in the northern part of the State bounded as follows: in the north by Interstate 280, in the east by McCarter Highway (Route 21) and the Pennsylvania Railroad, in the south by Market Street to South Orange Avenue, and in the west by Bergen Street.

"Opportunity zone" means a Federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400.Z-1.

"Program" means the Technology Business Tax Certificate Transfer Program.

"Protected proprietary intellectual property" means intellectual property that is the technology of the applicant's primary business as a technology or biotechnology business that is also protected via a patent pending, patent awaiting approval, approved patent, or registered copyright.

"Research and development tax credits" means a tax credit against corporation business tax liabilities for taxpayers who have performed qualified research activities in New Jersey, calculated in the manner as the Federal tax credit for increasing research activities. The credit is based on qualified expenditures in New Jersey beginning on or after January 1, 1994. It provides a credit of 10 percent of the excess qualified research expenses over a base amount plus 10 percent of the basic research payments. Taxpayers must complete New Jersey Division of Taxation--Corporate Business Tax Form 306 to claim their credit. The amount of credit claimed for any single tax year cannot exceed 50 percent of that year's tax liability prior to the consideration of this credit and it cannot reduce the tax liability below the statutory minimum, as set forth in N.J.S.A. 54:10A-5.24.

"Selling business" means a new or expanding technology and/or biotechnology business that has unused net operating loss carryover and/or unused research and development tax credits which it wishes to "sell."



"Technology business" means an emerging corporation, that has a headquarters or base of operations located in New Jersey, that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. Examples of activities satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provision of materials with engineered properties created through the company's development of specialized processing and synthesis technology and the research, development, production or provision of technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

"Unused net operating loss carryover" means net operating loss for any tax year as defined in N.J.S.A. 54:10A-4(k)(6)(B).

"Unused research and development tax credits" means the amount of tax credit otherwise allowable which cannot be applied because it would reduce the tax liability below 50 percent of the liability prior to consideration of the credit or it reduces the tax below the statutory minimum, as provided in N.J.S.A. 54:10A-5.24(b).

## History

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### HISTORY:

Amended by R.2003 d.297, effective July 21, 2003.

See: 35 N.J.R. 1655(a), 35 N.J.R. 3393(a).

Added "New applicant", "Re-certification applicant", "Returning applicant".

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Added "Camden innovation zone", "Innovation zone", "Newark innovation zone" and "North/New Brunswick innovation zone" definitions.

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In definition "Biotechnology business", substituted "corporation" for "company" and inserted "that owns, has filed for, or has a license to use protected, proprietary intellectual property"; in definition "New or expanding", added the last sentence; and rewrote definition "Technology business".

Amended by R.2008 d.164, effective June 16, 2008.

See: 40 N.J.R. 1630(a), 40 N.J.R. 3748(a).

Rewrote definition "New or expanding".

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In definition "Allowable expenditures", substituted "business" for "company" and inserted "and" preceding "research"; rewrote definitions "Biotechnology business", "New or expanding" and "Unused net operating loss carryover"; in definition "Camden innovation zone", substituted "Bridge" for "bridge"; added definitions "Financial statements", "Full-time employee", "Greater New Brunswick innovation zone", "License" and "Protected proprietary intellectual property"; and deleted definitions "New applicant", "North/New Brunswick innovation zone", "Re-certification applicant" and "Returning applicant".

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

Added definition "Full-time employee working in this State"; and in paragraph 2 of definition "New or expanding", inserted "or formed, irrespective of corporate structure or tax status," three times.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

Rewrote definitions "Full-time employee", "License", and "Protected proprietary intellectual property".

Amended by R.2022 d.052, effective April 18, 2022.

See: 54 N.J.R. 122(a), 54 N.J.R. 718(b).

Added definitions "Board" and "Opportunity zone"; and in definition "Full-time employee", inserted a comma following "education", and substituted "a health benefits plan authorized pursuant to State or Federal law" for "a group health plan as defined under section 14 of P.L. 1997, c. 146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes".

## N.J.A.C. 19:31-12.3

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-12.3 Eligibility**

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- (a) A business shall be eligible to apply to the program if the Authority finds that the business:
1. Meets the definition of a technology or biotechnology business;
  2. Has unused amounts of research and development tax credits and/or unused net operating loss carryover; and
  3. Meets the definition of new or expanding.
- (b) No application shall be approved in which the business:
1. Has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements;
  2. Is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliated corporations, as filed for Federal income tax purposes, that in aggregate has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements. For purposes of this paragraph, a corporation that directly or indirectly owns or controls at least 50 percent of the applicant and a corporation that is part of a consolidated group of affiliated corporations with the applicant shall be considered to have net operating income only if the corporation must report net operating income in its financial statements; or
  3. Filed its application, such that the Authority received the application after June 30 of the program cycle year.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a)3, inserted "or no" following "negative net".

Amended by R.2003 d.443, effective November 3, 2003.

See: 35 N.J.R. 3466(a), 35 N.J.R. 5162(a).

In (a)4, inserted last sentence.

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In (a)2, inserted "and" at the end; rewrote (a)3; deleted (a)4; and added (b) and (c).

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a)3, deleted ", provided that returning applicants are not required to meet this condition of eligibility"; in (b)1, inserted "operating" and "or"; deleted former (b)2; recodified former (b)3 as (b)2; in (b)2, inserted "operating" twice; and deleted (c).

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

In (b)1, deleted "or" from the end; in (b)2, substituted "; or" for a period at the end; and added (b)3.

Amended by R.2015 d.135, effective August 17, 2015.

See: 47 N.J.R. 987(a), 47 N.J.R. 2186(a).

Rewrote (b)2.

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## **N.J.A.C. 19:31-12.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-12.4 Application to the program**

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**(a)** Each application submitted by a selling business to the program shall be accompanied by a non-refundable \$ 1,000 application fee. Complete applications must be received by June 30 for each State fiscal year.

**(b)** In order for the Department of Treasury, Division of Taxation to issue a certificate, each application submitted to the program shall include: a selling business application which includes the information set forth in (c) below; a spending certification form attesting to having spent the proceeds of the prior year's sale of tax benefits in accordance with the definition of allowable expenditures; a Buying Business Information Sheet which identifies the buying business name, address, telephone number, the estimated value of benefits to be transferred in an amount equal to at least 80 percent of the surrendered tax benefit and from whom and a business certification; an agreement between the buying and selling business defining the terms of the sale of the certificate; and the Tax Benefit Identification Form which summarizes the accumulated net operating losses and research and development credits authorized to be sold and the value intended to be sold. For determination of eligibility for the program, the initial application package shall also include a selling business application and a spending certification form.

**(c)** In addition to the material specified in (b) above, a completed application shall include, but is not limited to:

1. A description of the nature of the business conducted by the company;
2. A company business plan;
3. Financial statements for the two most recent full years of operation;
4. A list of all affiliates and subsidiaries as reflected on the consolidated financial statements of the applicant and the number and location of all employees of such corporation(s);
5. A list of all entities and affiliated groups of corporations that directly or indirectly own or control 50 percent or greater of the selling business, the number and location of all employees of any such entity and affiliated group of corporations, and the two most recent full years of financial statements for each such entity and affiliated group of corporations that must report net operating income in its financial statements;
6. A list of all entities that form a consolidated group of affiliated corporations, as filed for Federal income tax purposes, the number and location of all employees of such corporation(s), and financial statements for the two most recent full years of operation;

7. A representation as to the location of the applicant's primary place of business in an Innovation Zone;
  8. A description of the applicant's technology or biotechnology business which shall demonstrate that such business is the primary business of the applicant and that the applicant meets the other criteria of the definition of technology or biotechnology business. Where applicable, documentation of protected proprietary intellectual property must be provided;
  9. A list of all full-time employees employed in this State, including Social Security number for each, address on record with the applicant for each employee, whether the employee has submitted a Certificate of Non-residence for an exemption from the New Jersey Gross Income Tax, whether any employee is pursuing a higher education degree, if so known to the applicant, whether any employee is related, as defined in Section 152(d)(2) of the Internal Revenue Code, to any other employee, shareholder, or investor if so known to the applicant, and copies of most recent year's Federal and New Jersey W-3 forms for applicant, parent company, and all related entities, or documentation from a professional employer organization summarizing W-2 forms issued on behalf of the applicant, parent company, and all related entities in New Jersey and in the United States for the calendar year prior to the year in which the company files its application and at the time of the application;
  10. The employment offer letter, resume, and job description for every employee hired in the current year;
  11. A list of 100 percent of ownership of the applicant by percentage;
  12. A copy of the certificate of incorporation/formation for the applicant and its earliest predecessor entity; and
  13. Any other supplemental information required by the Authority.
- (d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the Board.
- (e) The Division of Taxation, Department of the Treasury separately reviews applicants and may make recommendations regarding program eligibility.

## History

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### HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), rewrote the second sentence.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (a), deleted "July 28, 1999 for consideration in State FY 00 and by" preceding "June 30"; in (c)3, inserted "and/or tax returns for the same periods" at the end of the paragraph.

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (c), substituted "three" for "two" in 3, rewrote 4 and 5, deleted former 10 and 11, recodified former 12 as 10 and deleted "and projected two years", and recodified former 13 as 11.

Amended by R.2003 d.297, effective July 21, 2003.

See: 35 N.J.R. 1655(a), 35 N.J.R. 3393(a).

Rewrote (a).

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In (a)1 and (a)2, substituted "\$ 1,500" for "\$ 1,000"; rewrote (a)3; and rewrote (c).

Amended by R.2008 d.164, effective June 16, 2008.

See: 40 N.J.R. 1630(a), 40 N.J.R. 3748(a).

In the introductory paragraph of (a), inserted ", including new, recertification and returning applications," and "\$ 2,500", and deleted "as outlined in (a)1 through (a)3 below" following "fee"; and deleted (a)1 through (a)3.

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a), deleted ", including new, recertification and returning applications," following "program"; in (b), inserted "in an amount equal to at least 80 percent of the surrendered tax benefit"; rewrote (c)3; deleted former (c)4 and (c)5; recodified former (c)6 through (c)8 as (c)4 through (c)6; in (c)6, inserted "financial statements for" preceding "the two most" and substituted "operation" for "financial statements for each"; deleted former (c)9 through (c)12; recodified former (c)13 as (c)7; in (c)7, deleted "or a state-sponsored incubator site" following "Zone"; added new (c)8 through (c)11; deleted (c)14; and recodified former (c)15 as (c)12.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

Rewrote (c)4 and (c)9; in (c)5 and (c)6, substituted "entities" for "corporations"; added new (c)10; recodified former (c)10 through (c)12 as (c)11 through (c)13; in (c)11, deleted "percent" following "ownership"; rewrote (c)12; and in (e), inserted "the".

Amended by R.2015 d.135, effective August 17, 2015.

See: 47 N.J.R. 987(a), 47 N.J.R. 2186(a).

Rewrote (c)5.

Amended by R.2022 d.052, effective April 18, 2022.

See: 54 N.J.R. 122(a), 54 N.J.R. 718(b).

In (a), substituted "\$ 1,000" for "\$ 2,500"; and in (d), substituted "Board" for "Authority's Board of Directors at its scheduled public meeting".

## **N.J.A.C. 19:31-12.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-12.5 Evaluation process**

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**(a)** When all of the required information is received, the Authority shall perform its own review based on the standards set forth in N.J.A.C. 19:31-12.3.

**(b)** After completing its review under (a) above, a preliminary determination shall be made by the Authority as to the merits of the request and its adherence to the statutory requirements of the program. Upon this determination, the applicant will receive notification of preliminary approval that will state the conditions that must be met before the Authority will issue final approval. The notification of preliminary approval will state that the Authority will forward the application to the Division of Taxation only upon receipt of the following:

1. A Buying Business Information Sheet which identifies the buyer, the amount of tax benefits to be sold and the selling price;
2. A Tax Benefit Identification Form on which the applicant lists the amount of tax benefits they wish to sell and the years that the Net Operating Loss's and/or Research and Development tax credits were incurred;
3. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the operations of the company;
4. An executed form of the standard selling agreement, with the Private Financial Assistance Form attached as an exhibit; and
5. If the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification that attests that the applicant spent the proceeds of the prior year's sale of tax benefits in accordance with the prior year's Private Financial Assistance Form.

**(c)** After approval of the tax benefit by the Division of Taxation as evidenced by the issuance of a tax certificate which will be sent to the Authority, the Authority will issue final approval of the grant only upon the receipt of a certificate from the applicant, dated the date of the closing of the sale of the tax benefit certificate that states, among other matters, the number of employees employed on that date by the applicant in the United States of America and in New Jersey, and that as of the date of the certificate, the company is operating as a new or expanding emerging biotechnology or technology business and has no current intention to cease operating as a new or expanding emerging biotechnology or technology business.

**(d)** Upon the final approval of the tax benefit by the Division of Taxation, a non-refundable fee of one percent of the amount of the final allocation of tax benefit less the application fee of \$ 1,000 shall be charged prior to approval by the Authority.



## History

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### HISTORY:

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (a), rewrote 4 and 5i.

Amended by R.2002 d.334, effective October 7, 2002.

See: 34 N.J.R. 2414(a), 34 N.J.R. 3531(b).

Rewrote (b) and (c).

Amended by R.2003 d.443, effective November 3, 2003.

See: 35 N.J.R. 3466(a), 35 N.J.R. 5162(a).

Rewrote (c).

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

Rewrote (a)4 through (a)6.

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a), substituted "the standards set forth in N.J.A.C. 19:31-12.3." for "the following minimum criteria:"; deleted (a)1 through (a)6; and in (c), inserted "the number of employees employed on that date by the applicant in the United States of America and in New Jersey, and" and deleted the last sentence.

Amended by R.2022 d.052, effective April 18, 2022.

See: 54 N.J.R. 122(a), 54 N.J.R. 718(b).

Added (d).

## **N.J.A.C. 19:31-12.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-12.6 Approval process**

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- (a)** All applications for eligibility in the program shall be presented to the members of the Authority for approval or denial.
- (b)** When the members approve or deny a request, the minutes at which such determination occurs are submitted to the Governor.
- (c)** The members' action is effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued.
- (d)** An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. The Authority cannot consider any new evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the June 30 deadline. Appeals will be handled by the Authority as follows:
  - 1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his/her finding(s) and recommendation(s) on the merits of the appeal; and
  - 3.** The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final decision on the appeal.

### **History**

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#### **HISTORY:**

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Rewrote the section.

Amended by R.2001 d.242, effective July 16, 2001.

See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (d), rewrote the first sentence.

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In the third sentence of (d), inserted "which" and substituted "considered" for "reconsidered".

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Rewrote (a); in (b), inserted "approve or" and substituted "determination" for "denial"; rewrote the introductory paragraph of (d); and added (d)1 through (d)3.

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## **N.J.A.C. 19:31-12.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-12.7 Allocation of tax benefits**

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(a) The Program is authorized to provide no more than \$ 75,000,000 of tax benefits over each State fiscal year. Of the \$ 75,000,000 of transferable tax benefits authorized for each State fiscal year, \$ 15,000,000 shall be allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application, except as provided at (a)2ii below. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of \$ 20,000,000.
2. The Authority shall allocate the \$ 15,000,000 designated for eligible companies in innovation zones or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application, as follows:
  - i. For eligible companies in innovation zones or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application, each company is eligible for an allocation of the lesser of \$ 250,000 or the value of their eligible benefits. After these allocations are made to these companies from the \$ 15,000,000 innovation zone/new or expanding emerging technology and biotechnology allocation, any remaining balance of the \$ 15,000,000 shall be apportioned among eligible companies in innovation zones with unmet eligible benefits on a pro rata basis;
  - ii. If, in any State fiscal year, there is an unused portion of the \$ 15,000,000 allocated exclusively for companies in innovation zones or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application, that portion shall be available for that State fiscal year for the surrender of transferable tax benefits by new and/or expanding emerging technology and biotechnology businesses that do not operate within the boundaries of an innovation zone or that are new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application; and
  - iii. The eligible companies in innovation zones or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a

woman- or minority-owned business at the time of program application with remaining unmet eligible benefits shall participate in the allocation of the remaining pool as set forth at (a)3 below.

**3.** The Authority shall allocate the remaining tax benefits as follows:

- i.** Businesses with less than \$ 250,000 in tax benefits will be authorized to sell all of their benefits in the current year;
- ii.** Businesses with more than \$ 250,000 in tax benefits will be authorized to sell at least \$ 250,000 of their benefits in the current year; and
- iii.** If the total amount of benefits authorized at (a)2 and 3i and ii above exceeds \$ 75,000,000, each applicant shall receive a lesser amount on an apportioned basis, otherwise after the dollars are set aside in the amounts provided at (a)2 and 3i and ii above, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than \$ 250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

$$\frac{\text{Numerator of Fiscal Year Dollar Authorization less Total Minimum Tax Benefits Authorized over denominator of Total Tax Benefits Requested to be Transferred less Total Minimum Tax Benefits Authorized.}}{\text{Total Minimum Tax Benefits Authorized.}}$$

The total minimum tax benefits authorized is the amount authorized for businesses with less than \$ 250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than \$ 250,000 of tax benefits. The total tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.

## History

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### HISTORY:

Amended by R.2000 d.297, effective July 17, 2000.

See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), deleted "\$ 50,000,000 of tax benefits over State fiscal year 2000 and" following "provide" in the introductory paragraph.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (a), rewrote the introductory paragraph and added new 4, recodified 4 as 5.

Administrative correction.

See: 37 N.J.R. 3724(a).

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In the introductory paragraph of (a), deleted ", \$ 10 million shall be so allocated for eligible companies that operate within the boundaries of the innovation zones in each respective State fiscal year thereafter"

from the end of the second sentence; in (a)3, inserted "also" in the second sentence, and added the last sentence; and in (b), substituted "applicants" for "applications".

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Rewrote the section.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

In (a)1, substituted "\$ 15,000,000" for "\$ 15 million"; in the introductory paragraph of (a)2, and in (a)2i and (a)2ii, substituted "\$ 10,000,000" for "\$ 10 million" throughout; and in (a)3iii, substituted "\$ 60,000,000" for "\$ 60 million".

Amended by R.2022 d.052, effective April 18, 2022.

See: 54 N.J.R. 122(a), 54 N.J.R. 718(b).

Rewrote the section.

## **N.J.A.C. 19:31-12.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-12.8 Recapture of tax benefits**

---

**(a)** Unless excepted pursuant to (b) below, if a selling business fails to use the private financial assistance received for the surrender of tax benefits as required by this subchapter or fails to maintain a headquarters or a base of operation in the State during the five years following receipt of the private financial assistance, the seller shall forfeit and remit the face value of the tax credit certificate received for the surrender of tax benefits to the Department of Treasury in accordance with the provisions in subsections (c) and (d) below. The face value of the tax credit certificate is the amount of surrendered tax benefits.

**(b)** The forfeiture requirement in (a) above pertaining to the failure to maintain a headquarters or a base of operation in this State shall not be applicable if the failure is due to the liquidation of the new or expanding emerging technology or biotechnology business.

**(c)** In the event a selling business fails to maintain a headquarters or base of operation in the State during the five years following the receipt of the private financial assistance, the Authority will allow the selling business to retain 20 percent of the face value of the tax credit certificate for each full year the business remained in New Jersey providing the business forfeits and remits to the Department of Treasury 20 percent per year on a cumulative basis for each year the business had remaining on the five year requirement to maintain a headquarters or base of operation in New Jersey.

Examples:

Move within one year of disbursement, recapture percentage equal to 100 percent of the face value of the tax credit certificate

Move within two years of disbursement, recapture percentage equal to 80 percent of the face value of the tax credit certificate

Move within three years of disbursement, recapture percentage equal to 60 percent of the face value of the tax credit certificate

Move within four years of the disbursement, recapture percentage equal to 40 percent of the face value of the tax credit certificate

Move within five years of the disbursement, recapture percentage equal to 20 percent of the face value of the tax credit certificate

**(d)** In the event a selling business fails to use the tax benefits or cash benefits as required by the Act, the Authority shall require the selling business to remit to the Department of Treasury 100 percent of the amount of the unallowable expenditures.

## History

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### **HISTORY:**

New Rule, R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Amended by R.2015 d.135, effective August 17, 2015.

See: 47 N.J.R. 987(a), 47 N.J.R. 2186(a).

In (a), inserted "in subsections (c) and (d)" and the last sentence.

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## **N.J.A.C. 19:31-13.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM***

### **§ 19:31-13.1 Applicability and scope**

---

The rules in this subchapter were promulgated by the New Jersey Commerce, Economic Growth and Tourism Commission (the "Commission") to implement P.L. 2004, c.65 (the "Act"), and specifically, section 23 of the Act (N.J.S.A. 52:27H-87.1). Section 23 of the Act establishes an energy sales tax exemption program (the "Program") to provide for an exemption of sales and use tax for retail sales of electricity and natural gas and their transport to a qualified business in a New Jersey urban enterprise zone for consumption in the zone, or a vertically integrated combination of qualified businesses manufacturing a single product within a single redevelopment area within an enterprise zone, that employs at least 250 people at least 50 percent of whom are directly employed in a manufacturing process. The program was established under the jurisdiction of the Commission, and was administered by the Commission, in accordance with the procedures for obtaining the exemption as may be provided under the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303, the Sales and Use Tax Act, P.L. 1966, c.30, and this subchapter. Effective July 1, 2008, jurisdiction and administration of the program was transferred to the New Jersey Economic Development Authority, pursuant to P.L. 2008, c.27, §10.

### **History**

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#### **HISTORY:**

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

Substituted "250" for "500" and "whom" for "which".

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## **N.J.A.C. 19:31-13.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM***

### **§ 19:31-13.2 Definitions**

---

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Application" means the authorized application form submitted to the Authority from a business for approval of an energy sales tax exemption.

"Authority" means the New Jersey Economic Development Authority.

"Directly employed" means employed as an employee, and not as an independent contractor, and directly involved in the manufacturing process of the business applying for the energy sales tax exemption.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Employ" means for purposes of this subchapter, utilize the productive services of people as full-time employees. "Full-time employee" is defined at N.J.A.C. 12A:2-1.2.

"Energy sales tax exemption" means the energy sales and use tax exemption for retail sales of energy and utility service approved by the Chief Executive Officer pursuant to the Act and this subchapter.

"Enterprise zone" or "urban enterprise zone" or "UEZ" means an urban enterprise zone designated by the New Jersey Urban Enterprise Zone Authority created by the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303.

"Family of products" means a group of products that, when taken together, are primarily (at least 60 percent) used, purchased and sold as a single product, product line, or brand marketing.

"Manufacturing" means the performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition or character different from that in which they were acquired. The change must be substantial and must result in a transformation of property into a different or substantially more useable product.

"New Jersey Urban Enterprise Zone Program" or "UEZ Program" means the program administered by the UEZ Authority pursuant to P.L. 1983, c.303.

"Qualified business" means a qualified business as defined at N.J.S.A. 52:27H-62.

"Qualified group" means a group of businesses that consist of a group of two or more persons:

1. Each of which is a qualified business and all of which are located within a single redevelopment area adopted pursuant to the "Local Redevelopment and Housing Law," P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.);

2. That collectively employ at least 250 people within a single redevelopment area within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process;
3. Are each engaged in a vertically integrated business, evidenced by the manufacture and distribution of a product or family of products that, when taken together, are primarily used, packaged and sold as a single product;
4. Each use the energy and utility service for the exclusive use or consumption of each of the persons that comprise a group within an enterprise zone; and
5. Each of which contributes at least 60 percent of its product towards the manufacture of the single, integrated product.

"Redevelopment area" means an area determined to be in need of redevelopment or to be a blighted area as further defined at N.J.S.A. 40A:12A-3.

"UEZ Authority" means the New Jersey Urban Enterprise Zone Authority created pursuant to P.L. 1983, c.303, which is in the Department of Community Affairs.

## History

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### HISTORY:

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

Inserted definition "Qualified business"; and in paragraph 2 of definition "Qualified group", substituted "250" for "500".

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## N.J.A.C. 19:31-13.3

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM***

### **§ 19:31-13.3 Eligibility criteria**

---

(a) To qualify for energy sales tax exemption for the retail sale, transmission, or distribution of electricity and natural gas, an applicant shall be required to be certified by the Authority to receive the benefits of the New Jersey Urban Enterprise Zone Program pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303, and the applicable rules of the Authority; and shall be further required to be either:

1. A qualified business that employs at least 250 people within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process, for the exclusive use or consumption of such business within the enterprise zone; or
2. A group of two or more persons:
  - i. Each of which is a qualified business and all of which are located within a single redevelopment area adopted pursuant to the "Local Redevelopment and Housing Law, P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.);
  - ii. That collectively employ at least 250 people within a single redevelopment area within an enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process;
  - iii. That are each engaged in a vertically integrated business, evidenced by the manufacture and distribution of a product or family of products that, when taken together, are primarily used, packaged and sold as a single product, product line or brand marketing; and
  - iv. That collectively use the energy and utility service (which may be in separate accounts) for the exclusive use or consumption of each of the persons that comprise a group within a single redevelopment area within an enterprise zone.

### **History**

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#### **HISTORY:**

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

In (a)1 and (a)2ii, substituted "250" for "500".



## **N.J.A.C. 19:31-13.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM***

### **§ 19:31-13.4 Requests for applications**

---

**(a)** The Authority shall process applications for the energy sales tax exemption through its New Jersey Urban Enterprise Zone Program. Initial application requests shall be to the New Jersey Economic Development Authority, PO Box 990, Trenton, New Jersey 08625.

**(b)** Annual renewal for applicants satisfying the criteria of N.J.A.C. 19:31-13.3(a) will be made during the annual re-certification process in accordance with UEZ Program procedures at N.J.A.C. 5:120-2. For applicants approved within six months prior to their next re-certification date, the requirement for annual renewal shall be deferred to the following re-certification date provided such date is not more than 18 months hence.

**(c)** Renewal applications by applicants satisfying the criteria for N.J.A.C. 19:31-13.3(b)2 shall be required to be submitted annually within 45 days prior to the expiration date of the energy sales tax exemption.

### **History**

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#### **HISTORY:**

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Codified the former first through third sentences as present (a) through (c), respectively; added the second sentence in (b); and in (c) substituted "Renewal" for "Certificate" and "by" for "for".

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## **N.J.A.C. 19:31-13.5**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM***

### **§ 19:31-13.5 Submission requirements**

---

**(a)** Each application for the energy sales tax exemption submitted to the Authority shall include the following:

1. The name, address and Employer Identification Number (EIN), also known as a Federal tax identification number of the applicant;
2. The address of the facility which is the subject of this application;
3. The number of total employees at the site for which the exemption application is being submitted;
4. The number of full-time employees that are directly employed in the manufacturing process of the applicant;
5. The name and address of the company(ies) that supply, transmit, and distribute electricity and natural gas to the facility;
6. The account identification numbers and billing information including contact name for each account identified in (a)5 above;
7. An estimate of the facility's annual quantity use of electricity and natural gas in units and in dollars;
8. A description of the nature of the business and the facility for which this application is being made;
9. The North American Industrial Classification System identification number(s) applicable to the applicant;
10. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey; and
11. Such additional information as may required by the Chief Executive Officer to provide a complete and accurate description of the business that is applying for this exemption.

**(b)** Applicants seeking to qualify for the energy sales tax exemption as a qualified group shall first establish that they are engaged in a vertically integrated business activity. Such activity shall be evidenced by a thorough description of the principal business activity that will occur at each location in the single redevelopment area within the enterprise zone and an explanation, satisfactory to the Authority, of how these business activities are integrally connected to each other in a manner that produces a common, manufactured product(s). This description shall include at least one specific, verifiable, measure of how such integration shall be monitored. For

example, a business might submit that 90 percent of its manufactured output is physically packaged with the product made by another member of the vertically integrated group.

**(c)** Once the businesses seeking to qualify for the energy sales tax exemption as a qualified group are determined by the Authority to be a vertically integrated business activity, then the group application will be evaluated in combination with the other members of the group to determine if the group is eligible as a qualified group.

1. Each application submitted to the Authority by a group of vertically integrated qualified businesses shall include the submission requirements of (a) above for each individual business in the group.
2. In addition to (c)1 above, the application shall be required to provide evidence satisfactory to the Authority that all individual businesses in the group are located within a single redevelopment area.
3. The group as a whole, rather than each individual business, shall be considered in meeting eligibility requirements of directly employing at least 250 people within the single redevelopment area within the enterprise zone, at least 50 percent of whom are directly employed in a manufacturing process.

**(d)** In the case of a qualified group, each time an application from a new business seeking to be added to, or an existing business seeking to be deleted from, the qualified group, the submission requirements of this section shall be required to be satisfied promptly for the group as so changed. If no new businesses are added or existing business are deleted during the year, the annual renewal requirements of N.J.A.C. 19:31-13.4 for qualified groups shall apply.

## History

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### HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Inserted "including contract name" in (a)6; and in (c) substituted "the businesses" for "a business", "are" for "is" and "the group" for "its", inserted "a" preceding "vertically" and inserted "activity".

Amended by R.2006 d.323, effective September 5, 2006.

See: 38 N.J.R. 1524(a), 38 N.J.R. 3619(a).

In (a)7, inserted "in units and in dollars"; in the introductory paragraph of (c), inserted "a" preceding "vertically"; and in (c)3, substituted "250" for "500".

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## **N.J.A.C. 19:31-13.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM***

### **§ 19:31-13.6 Application and review procedures**

---

- (a)** Applicants shall submit to the Authority a completed Application for Energy Sales Tax Exemption. The application, signed by an authorized representative of the business, shall bear either a legible post-mark date or a date-received stamp from the Authority.
- (b)** The Authority shall conduct a review of the applications in the order received, commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application or may require the submission of the entire application, if incomplete. The Authority shall review the applications to determine whether:
1. The application complies with the eligibility criteria;
  2. The application satisfies the submission requirements; and
  3. The application adequately provides information for the subject applicants.
- (c)** Program staff, after reviewing the application, shall make a recommendation to the Chief Executive Officer, who after consideration of that recommendation, shall approve, approve with modifications, or deny an application in the program.
- (d)** Upon completion of the review of an application pursuant to (b) above, the Authority shall notify the applicant whether the application has been approved by the Chief Executive Officer.
1. In the event that an application is approved, the Chief Executive Officer will notify the applicant, the President of the Board of Public Utilities and the Director, that a qualified business or a qualified group has met the requirements for the energy sales tax exemption. In accordance with P.L. 1966, c.30 (N.J.S.A. 54:32B-1 et seq.). The Division of Taxation shall then issue an Exemption Certificate (UZ-6) to the qualified business or qualified group.
  2. In the event that an application is denied, the applicant shall be notified of the denial and the reasons for such denial.
  3. After notification of a denial, should the circumstances change so that the applicant reasonably believes its application will be approved, the applicant may reapply to the program no earlier than 90 days from the date the Chief Executive Officer issued the denial.
- (e)** Once a qualified group is approved, each member of the group shall be subject to all the same provisions and procedures as any other qualified manufacturing business that is not a member of a qualified group. However, if the Chief Executive Officer subsequently determines that a previously qualified group is no longer eligible for the energy sales tax exemption, then

each member of that group shall be required to immediately surrender its exemption certificate to the Chief Executive Officer.

## History

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### HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Inserted ", signed by an authorized representative of the business," in the second sentence of (a); inserted (c); and recodified former (c) and (d) as (d) and (e).

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## **N.J.A.C. 19:31-13.7**

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### **§ 19:31-13.7 Monitoring, inspection, and reporting**

---

**(a)** The Authority and agents of the State of New Jersey, shall monitor compliance with respect to the eligibility criteria for this energy sales tax exemption. An applicant or any business that is approved to receive this exemption benefit shall permit any agent of the State of New Jersey to enter said business during reasonable business hours to determine compliance with the eligibility criteria of the program. Failure to permit access to determine eligibility will result in the forfeiture of the exemption benefit and may require repayment of sales and use tax previously exempted from payment, as the Authority shall determine.

**(b)** Each qualified business and qualified group that receives this energy sales tax exemption shall be required to maintain records documenting all of its tax-exempt purchases. This information must be supplied to the Authority upon request. In addition, a report summarizing the totals of all exempt energy purchases must be provided for the prior year as a component of the annual renewal or recertification application.

**(c)** Each qualified business and qualified group that receives approval of its application for the energy sales tax exemption shall notify the Authority if it ceases to meet the manufacturing and employment requirements for the energy sales tax exemption for more than a total of three weeks in any two consecutive months.

### **History**

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#### **HISTORY:**

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Added (c).

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## **N.J.A.C. 19:31-13.8**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM***

### **§ 19:31-13.8 Rescission**

---

**(a)** The Chief Executive Officer, in addition to any other rights or remedies available pursuant to law, may withhold, reduce, or terminate this sales and use tax exemption or any portion thereof for good cause. The circumstances under which this may occur include, but are not limited to:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules;
2. Failure to comply with any condition or requirement of the Urban Enterprise Zone Program;
3. Failure to maintain the employment levels stipulated in the Urban Enterprise Zone Program;
4. Submission of false or misleading information, or failure to submit relevant or complete information to the Authority;
5. Any act of insolvency, the filing of a petition in bankruptcy (voluntary or involuntary) or the existence of other conditions affecting the financial integrity of the applicant; or
6. Failure to comply with any condition, term, or requirement of the Authority relating to this program.

**(b)** The Chief Executive Officer shall provide written notice to the business of its intent to rescind the applicant's qualification status for the energy sales tax exemption benefit. The determination to rescind the benefit shall be solely within the Chief Executive Officer's discretion.

**(c)** The Chief Executive Officer shall provide notice of the determination to rescind to the Director, who shall rescind the sales and use tax exemption certificate issued to the business.

**(d)** Any rescission of the energy sales tax exemption will require repayment by the business or group of all exempted tax payments, and such penalties as may be assessed in accordance with the State Uniform Tax Procedure Law, R.S. 54:48-1 et seq. from the effective date of the rescission as determined by the Authority.

## **N.J.A.C. 19:31-13.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM***

### **§ 19:31-13.9 Appeals**

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Appeals under this subchapter shall be subject to the appeals procedures governing the subchapter on sales and use tax exemption at N.J.A.C. 12A:2A-2.13.

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End of Document

## **N.J.A.C. 19:31-14.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM***

### **§ 19:31-14.1 Applicability and scope**

---

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (the "Act") and P.L. 2010, c. 123. The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program ("BRRAG Program" or "Program"), a tax credit certificate transfer program, a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones). The purpose of the BRRAG Program is to encourage economic development and to preserve jobs that currently exist in New Jersey, but which are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the Program is available, the Program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed the limitations set forth in this subchapter and further specified in the project agreement of an applicant for a grant of tax credits.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2-1.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')", deleted the fourth sentence, and inserted "BRRAG" preceding "Program is to encourage".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Inserted "(N.J.S.A. 34:1B-112 et seq.)" and "and P.L. 2010, c. 123".

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## **N.J.A.C. 19:31-14.2**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM***

### **§ 19:31-14.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). An entity may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes.

"Agreement" or "project agreement" means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c.25, as amended by P.L. 2004 c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123.).

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business. A business shall include an affiliate of

the business if that business applies for a credit based upon any capital investment made by an affiliate or based upon retained full-time jobs of an affiliate.

"Business employment incentive program grant" or "BEIP grant" means the grant made to a business by the New Jersey Economic Development Authority pursuant to the provisions of P.L. 1996, c.26 (N.J.S.A. 34:1B-124 et al).

"Business retention or relocation grant of tax credits" or "grant of tax credits" means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5) or credits against the taxes imposed on insurers pursuant to P.L. 1945, c.132 (N.J.S.A. 54:18A-1 et seq.), section 1 of P.L. 1950, c.231 (N.J.S.A. 17:32-15), and N.J.S.A. 17B:23-5, provided to fund a portion of retention and relocation costs pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

"Capital investment" means expenses that the business incurs following its submission of an application to the Authority pursuant to section 5 of P.L. 1996, c. 25 (N.J.S.A. 34:1B-116), but prior to the Capital Investment Completion Date, as shall be defined in the project agreement, for: the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property in this State; and obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility in this State. Provided, however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this definition, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 168). For the purposes of this definition, cubicles and cubicles that include office equipment shall constitute capital investment. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord, as the case may be.

"Certificate of compliance" means a certificate issued by the Authority pursuant to section 9 of P.L. 1996, c. 25 (N.J.S.A. 34:1B-120).

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Commitment duration" means the tax credit term and five years from the end of the tax credit term specified in the project agreement entered into pursuant to section 5 of P.L. 1996, c.25 (N.J.S.A. 34:1B-116), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

"Designated industry" means an industry identified by the Authority as desirable for the State to maintain, which may be designated and amended via promulgation of rules by the Authority to reflect changing market conditions.

"Designated urban center" means an urban center designated in the State Development and Redevelopment Plan adopted by the State Planning Commission, pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-200).

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligible position" means a full-time position retained by a business in this State for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997,



c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes.

"Fiscal year" means the State fiscal year of July 1 to June 30.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, as full-time employment, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or an employee who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

"New business location" means the premises to which a business will relocate that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than the commitment duration or eight years, whichever is greater, from the date of relocation. A "new business location" also means the business's current location or locations if the business makes a capital investment equal to the total value of the business retention or relocation grant of tax credits to the business at that location or locations. In the event the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness, such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

"Point-of-final purchase retail facility" means a business wherein the normal and customary method of patronizing the business conducted at the facility requires the retail customer to travel to the location to purchase the goods or services of that business. "Point-of-final purchase retail facilities" shall not include catalog distribution centers for the purposes of this program.

"Program" means the Business Retention and Relocation Assistance Grant Program created pursuant to P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123) and P.L. 2010, c. 123, and provided in this subchapter.

"Project" means the relocation or maintaining of retained full-time jobs at the approved site as improved by the new business location. In the event that the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing

interrelatedness such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

"Project agreement" means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount and tax credit term of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered the eligible positions of the business. A retained full-time job is one that will not be included in the calculation of a BEIP grant subsequent to being moved to the approved project site, under the agreement. The number of retained full-time jobs shall mean the business's number of permanent full-time jobs as referred to in the project description in the application and the agreement, which exist as of the effective date of the agreement. In order to demonstrate that a job meets this definition, a business must provide documentation that demonstrates the at-risk nature of these employees, which shall include a certification of the business's chief executive officer that the jobs are at-risk at being located outside of New Jersey. For the purposes of the certifications required pursuant to the incentive agreement, N.J.S.A. 34:1B-116 or 120, to the extent an eligible position that was the basis of the award no longer exists, a business may include as a retained full-time job a new eligible position that is filled by a full-time employee provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

"Retained State tax revenue" means either State tax revenue received in the most recently completed State tax period or State tax revenue projected to be received from the business by the State.

"Tax credit term" means the period of time commencing with the first issuance of tax credits and continuing during the period in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3).

"Tax period" means the 12-month period selected by the business for the purposes of determining annual taxable income.

"Yearly tax credit amount" means \$ 1,500 times the number of retained full-time jobs. "Yearly tax credit amount" does not include the amount of any bonus award authorized pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1).

## History

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### HISTORY:

Amended by R.2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Substituted ". For" for "for" in definition "Business"; and added the last sentence in definition "Project".

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Deleted definition "Construction contract; and rewrote definition "Project".

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition "Business", inserted ", such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder".

Recodified from N.J.A.C. 12A:2-1.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definition "Agreement", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; deleted definitions "Board of Directors", "Commission", and "Secretary"; and rewrote definition "Full-time employee".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Deleted definitions "Advanced computing", "Advanced computing company", "Advanced materials", "Advanced materials company", "Biotechnology", "Biotechnology company", "Electronic device technology", "Electronic device technology company", "Headquarters", "High-technology business", "Manufacturing facility", "Medical device technology", "Medical device technology company", "Research and development facility" and "Total allowable relocation costs"; added definitions "Affiliate", "Capital investment", "Certificate of compliance", "Project agreement", "Tax credit term", "Tax period" and "Yearly tax credit amount"; and rewrote definitions "Business", "Commitment duration", "Designated industry", "Full-time employee", "New business location", "Program", "Project" and "Retained full-time job".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In definition "Capital investment", inserted the last sentence; and added definition "Full-time employee at the qualified business facility".

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

In definition "Capital investment", rewrote the last sentence.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In definition "Retained full-time job", inserted a comma following "employees", and inserted the last sentence.

## **N.J.A.C. 19:31-14.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM***

### **§ 19:31-14.3 Eligibility criteria**

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**(a)** To qualify for the program, a business shall:

1. Enter into a project agreement with the Authority to undertake a project to:

- i. Relocate or maintain a minimum of 50 retained full-time jobs from one or more locations within this State to a new business location or locations in this State; and
- ii. Maintain the retained full-time jobs pursuant to the project agreement for the commitment duration.

**(b)** A project that consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant of tax credits.

1. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the retained full-time jobs housed in the project consisting of non-retail facilities shall be eligible for a grant of tax credits.
2. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the retained full-time jobs housed in the warehouse facility shall not be eligible for a grant of tax credits.

**(c)** A business shall demonstrate that the receipt of assistance pursuant to this program will be a material factor in the business' decision not to relocate the retained full-time jobs outside of New Jersey; except a business that relocates 1,500 or more retained full-time jobs covered by a project agreement from outside of a designated urban center to one or more new locations within a designated urban center shall not be required to make such a demonstration if the business applies for a grant of tax credits within six months of signing its lease or purchase agreement. A business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011 shall not be deemed ineligible for the grant due to the material factor requirement.

**(d)** A business shall demonstrate to the Authority, at the time of application, that the grant of tax credits and resultant retention of full-time jobs and any capital investment will yield a net positive benefit to the State equaling at least 110 percent of the requested tax credit allocation amount during the commitment duration. The net benefit resulting from the retention of full-time jobs and any capital investment by a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period

commencing May 1, 2010 until January 6, 2011, shall be calculated from the date of the initial grant pre-application meeting.

**(e)** A business shall provide evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of an application under this program.

## History

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### HISTORY:

Recodified from N.J.A.C. 12A:2-1.3 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a)1, substituted "Authority" for "Commission"; and in (a)1i, substituted "50" for "250".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a)1i, inserted "or maintain"; in (c), inserted "the retained full-time jobs" and inserted the last sentence; added new (d); and recodified former (d) as (e).

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (d), inserted "of" preceding "application", and substituted "requested" for the second occurrence of "grant of" and "credit allocation amount" for the second occurrence of "credits".

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## **N.J.A.C. 19:31-14.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM***

### **§ 19:31-14.4 Restrictions on eligibility**

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- (a) A business that is receiving a Business Employment Incentive Program grant shall not be eligible to receive a grant of tax credits under this program with respect to a job that is included in the calculation of a BEIP grant pursuant to P.L. 1996, c.26 subsequent to being moved to the approved project site.
- (b) A business that is receiving any other grant by operation of State law shall be eligible to receive a grant of tax credits under this program provided:
1. A business that is receiving another State grant shall not be eligible to receive assistance with respect to any job that is currently the subject of any other State grant, except for grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.).
  2. The State will realize a net positive benefit from the grant of tax credits and resultant retention of full-time jobs and any capital investment when combined with any other State grants equaling at least 110 percent of the grant of tax credits during the commitment duration but not less than eight years, except upon approval of the State Treasurer.
  3. Amounts received as grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.), shall be excluded from the calculation of the total amount permitted.
- (c) A business that is in default with any other program administered by the State of New Jersey shall not be eligible to receive a grant of tax credits under this program.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2-1.4 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In the introductory paragraph of (b), substituted "provided" for "except as follows"; rewrote (b)2; and in (b)3, deleted "under (b)2 above" from the end.

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End of Document

## **N.J.A.C. 19:31-14.5**

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### **§ 19:31-14.5 Requests for applications**

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All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625 on forms and/or in a manner prescribed by the Authority.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2-1.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote the section.

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## **N.J.A.C. 19:31-14.6**

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### **§ 19:31-14.6 Application submission requirements**

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**(a)** Each application to the Authority shall include the following information in an application format prescribed by the Authority:

- 1.** Business information shall include the following:
  - i.** The name of the business;
  - ii.** The address of the business;
  - iii.** The type of business;
  - iv.** Principal products and services;
  - v.** The contact person for this application;
  - vi.** The New Jersey tax identification number;
  - vii.** The Federal tax identification number;
  - viii.** The total number of employees in New Jersey;
  - ix.** The total number of years of operation in New Jersey including evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;
  - x.** A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for this program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;
  - xi.** Unless excepted under N.J.A.C. 19:31-14.3(c), certification that the availability of financial assistance from the State as provided in this program at the site proposed for approval is a material factor in the business' decision not to relocate outside of New Jersey and that the employees to be covered are at-risk of being relocated outside of the State, and instead, to undertake the project and to relocate the full-time jobs relating to the project in the State;
  - xii.** Indication of whether the business has applied for other State tax benefits, including, but not limited to, the programs authorized under P.L. 2004, c.65; and
  - xiii.** Any other necessary and relevant information as determined by the Authority for a specific application.

**2. Project information shall include the following:**

- i.** An overall description of the proposed project;
- ii.** The current location(s) (address(es)) and number of employees for each site that is subject to this application;
- iii.** The location(s) employees will be relocated from and identify the location(s) employees will be relocated to as per this application. Include number of employees for all sites;
- iv.** A description of the quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;
- v.** A description of any capital investments made by the business at the new business location;
- vi.** Identification of the site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan;
- vii.** A project schedule that identifies projected move dates for each site;
- viii.** A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;
- ix.** The terms of any lease agreements, either existing or proposed, or details of the purchase or building of the new business location;
- x.** An estimate of the projected retained State tax revenues resulting from the relocation. "State tax revenue" includes all taxes which for the business are due and paid to the State, including, but not limited to, the payroll withholding taxes. This term does not include that portion of taxes for which it is simply a registered collection agent;
- xi.** A description of employment, construction and related economic activity in order to inform the net benefit analysis and calculation of a bonus, if applicable;
- xii.** A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;
- xiii.** Unless excepted under N.J.A.C. 19:31-14.3(c), evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans; and
- xiv.** Any other necessary and relevant information as determined by the Authority for a specific application.

**3. The employee information shall include the following:**

- i.** A written certification that the employees that are the subject of this application are full-time employees and receive health care benefits;
- ii.** The number of employees at the project site that will be included in a BEIP grant calculation and the New Jersey Economic Development Authority BEIP project identification number;

- iii. Evidence of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee; and
- iv. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

## History

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### HISTORY:

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (b).

Recodified from N.J.A.C. 12A:2-1.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" twice; in (a)1xi and (a)2xiii, updated the N.J.A.C. references; in (a)1xiii, (a)2xiv and (a)3v, substituted "Chief Executive Officer" for "Secretary"; in (a)3iii, deleted "that the New Jersey Economic Development Authority has been notified" following "Evidence"; and deleted (b).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a)1xi, inserted "and that the employees to be covered are at-risk of being relocated outside of the State"; added new (a)1xii; recodified former (a)1xii and (a)1xiii as (a)1xiii and (a)1xiv; in (a)1xiv, substituted "Authority" for "Chief Executive Officer"; in (a)2ix, inserted ", either existing or proposed,"; rewrote (a)2xi; in (a)2xiv, substituted "Authority" for "Chief Executive Officer"; in (a)3iii, inserted "and" at the end; deleted former (a)3iv; and recodified former (a)3v as (a)3iv.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (a)1x; deleted former (a)1xii; and recodified (a)1xiii through (a)1xiv as (a)1xii through (a)1xiii.

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## **N.J.A.C. 19:31-14.7**

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### **§ 19:31-14.7 Review of application**

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**(a)** Applicants shall submit to the Authority a completed BRRAG Program application at least 45 days prior to moving to the new business location; provided, however, a business relocating 1,500 or more retained full-time jobs to one or more new locations within a designated urban center shall, if relocating to a leased location, submit an application within six months of executing its lease. A company that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until the enactment of P.L. 2010, c. 123 shall not be deemed ineligible for the grant due to the requirement to apply 45 days before moving to the new business location. The application shall bear either a legible post-mark date or a date-received stamp from the Authority.

**(b)** The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Authority shall review, and provide a recommendation to the Chief Executive Officer regarding, the applications to determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

**(c)** In determining whether the company meets the net benefit analysis, as detailed in N.J.A.C. 19:31-14.3(d), the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the business, and taxes paid directly or generated indirectly by new or retained employees caused by the business's relocation or maintaining of full-time jobs. For a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011, such determination shall be calculated from the date of the initial grant pre-application meeting.

**(d)** The Board shall approve, approve with modifications, or deny an application in the program.

**(e)** When the Board approves or denies a request, the minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.

**(f)** If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the

Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

**(g)** When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

**(h)** If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

**(i)** If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

**(j)** If the application has been approved or approved with modification, the Chief Executive Officer shall notify the Director of the terms and conditions of the approval. Any approval or approval with modification shall be subject to completion of the project.

## History

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### HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Substituted "moving to" for "commencing construction or acquisition of" in the first sentence of (a).

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (f)1, deleted "and relocation of the retained full-time jobs" following "project".

Recodified from N.J.A.C. 12A:2-1.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Chief Executive Officer" for "Secretary" and "Authority" for "Commission" throughout; in (c), deleted "Secretary after receipt and consideration of the recommendation from the" preceding and "of Directors," following "Board"; in (d), substituted "approves or denies a request" for "of Directors recommends to either approve or deny a request"; rewrote (e); added new (f), (g) and (h); recodified former (f) as (i); and in the introductory paragraph of (i), deleted "pursuant to (d) and (e) above" following "modification" and substituted "Chief Executive Officer" for "Secretary" and the first occurrence of "approval" for "project agreement".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a), substituted "Authority" for "Chief Executive Officer", and inserted the next-to-last sentence; in the introductory paragraph of (b), deleted ", including those applications submitted to the Authority prior to May 16, 2005" following "date"; added new (c); recodified former (c) through (i) as (d) through (j); and rewrote (j).

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## **N.J.A.C. 19:31-14.8**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM***

### **§ 19:31-14.8 Determination of grant amount**

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- (a) Subject to the limitation set forth in N.J.A.C. 19:31-14.11(c) and (d), grants of tax credits shall be approved for qualifying businesses according to the following schedule, and shall be issued upon the execution and satisfaction of the requirements of the project agreement between the Authority and the business with an approved project:
1. For a project that covers a business relocating or retaining 50 to 250 full-time employees, a grant of tax credits shall be for the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued;
  2. For a project that covers a business relocating or retaining 251 to 400 full-time employees, a grant of tax credits shall be for two times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1), and may be applied against liability in the tax period in which the tax credit is issued and the following tax period, for one-half of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;
  3. For a project that covers a business relocating or retaining 401 to 600 full-time employees, a grant of tax credits shall be for three times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following two tax periods, for one-third of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;
  4. For a project that covers a business relocating or retaining 601 to 800 full-time employees, a grant of tax credits shall be for four times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following three tax periods, for one-fourth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance;
  5. For a project that covers a business relocating or retaining 801 to 1,000 full-time employees, a grant of tax credits shall be for five times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following four tax periods, for one-fifth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance; and

6. For a project that covers a business relocating or retaining 1,001 or more full-time employees, a grant of tax credits shall be for six times the yearly tax credit amount plus any applicable bonus award determined pursuant to section 5 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.1) and may be applied against liability in the tax period in which the tax credit is issued and the following five tax periods, for one-sixth of the total grant award per tax period, provided that the use of the credit must be accompanied by a certificate of compliance.

(b) In considering the award and the amount of any grant of tax credits, the Authority may consider, as part of the Authority's overall review process, the following factors:

1. The number of full-time jobs retained;
2. The quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;
3. Any capital investments made by the business at the new business location;
4. The nature of the business' operations, including, but not limited to whether the business is a designated industry;
5. The potential impact on the State if the business were to relocate to another state;
6. The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200);
7. Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration;
8. The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future; and
9. Any other necessary and relevant information as determined by the Authority for a specific application.

## History

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### HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In the introductory paragraph of (b), substituted ", up to" for "or", inserted "and" following "annual limit", deleted ", and considers the following factors:" following "12A:2-1.4"; and added last sentence.

Recodified from N.J.A.C. 12A:2-1.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), updated the N.J.A.C. references; in the introductory paragraph of (b) and in (b)9 substituted "Chief Executive Officer" for "Secretary"; and in the introductory paragraph of (b), substituted "50" for "250".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).



Rewrote the section.

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## N.J.A.C. 19:31-14.9

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### **§ 19:31-14.9 Bonus award**

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(a) In addition to any grant of tax credits determined pursuant to section 7 of P.L. 2004, c.65 (N.J.S.A. 34:1B-115.3), a bonus award equivalent to 50 percent of the amount of the original grant of tax credits shall be made to any business that relocates more than 2,000 full-time employees covered by the project agreement from one or more locations outside of a designated urban center into a designated urban center, provided as follows:

1. All other applicable requirements of the program are satisfied; and
2. No grant of tax credits shall be awarded pursuant to this section for any job that is moved from its current location in an urban enterprise zone designated pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.) to a location that is not within an urban enterprise zone.

(b) Notwithstanding (a)2 above, if the move from the urban enterprise zone is to a facility already owned or leased by the same business and that business already employs at least the same number of persons as those being relocated from the urban enterprise zone, a grant of tax credits may still be awarded pursuant to this section.

(c) In addition to any grant of tax credits determined pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3), and in addition to any bonus award pursuant to (a) above, a bonus award equivalent to 50 percent of the amount of the grant of tax credits pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) shall be made to any business that makes a capital investment in an amount that is at least twice that of the total value of the grant of tax credits granted pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) and the grant of tax credits pursuant to this subchapter. A bonus award made pursuant to this subsection may be limited, so that when added to the tax credits granted pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3), the total amount shall not exceed 50 percent of the amount of the capital investment in this State.

### **History**

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#### **HISTORY:**

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (b), substituted "section" for "subchapter".

N.J.A.C. 19:31-14.9

Recodified from N.J.A.C. 12A:2-1.9 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Added (c).

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## **N.J.A.C. 19:31-14.10**

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### **§ 19:31-14.10 Project agreement**

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- (a) All applicants shall execute an approval letter and a project agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of a project agreement.
- (b) The Authority staff may provide whatever assistance the Authority deems appropriate in the preparation of an application for approval of a project and may issue grants of tax credits pursuant to the project agreement entered between the Authority and the business.
- (c) The project agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer:
1. The month and year in which the business will relocate its employees, the month and year in which the business will submit information relating to the relocation of the required number of retained employees required by N.J.A.C. 19:31-14.11(b) and, if applicable, the certification required by (c)2 below, and the State fiscal years for which the tax credits are allocated, which will not be subject to change without written approval of the Authority. Failure to adhere to these dates may lead to forfeiture of all or a part of the tax credits;
  2. A requirement that a certification by a certified public accountant relating to the amount of eligible capital investment with supporting evidence satisfactory to the Authority shall be submitted by the business or, in the case of a tenant, the landlord prior to the commencement of the tax credit term. Provided that such certification and supporting evidence are satisfactory to the Authority, the tax credit certificate will be issued within 90 days of submission;
  3. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;
  4. Certifications by the business, including the following: eligibility for the program and participation in the program as a material factor in the business' decision not to relocate outside of New Jersey and to relocate the project in the State;
  5. Requirements for undertaking the project;
  6. Requirements on maintaining the existence of the business and not relocating the project;
  7. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

8. Indemnification and insurance requirements;
9. Limitations on the grant of tax credits;
10. Default and remedies; and
11. Reporting requirements.

(d) The project agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.)

## History

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### HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (c), substituted "The" for "In the case of a business relocating between 250 and 499 full-time employees, the" at the beginning.

Recodified from N.J.A.C. 12A:2-1.10 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Authority" for the first occurrence of "Secretary" and "Chief Executive Officer" for the second through fifth occurrences of "Secretary"; in the introductory paragraph of (b), substituted "Chief Executive Officer" for "Secretary"; and in (b)3, substituted "Certifications" for "Unless excepted under N.J.A.C. 12A:2-1.3(e)1, certifications".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote the section.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (a); deleted former (d); and recodified (e) as (d).

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## N.J.A.C. 19:31-14.11

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### **§ 19:31-14.11 Tax credit applicable; when effective; when adjusted**

---

**(a)** A tax credit issued pursuant to this program may be applied solely against liability in the tax period(s) and in the State fiscal year(s) prescribed in the project agreement and in the manner set forth in N.J.A.C. 19:31-14.8(a) and shall expire thereafter.

**(b)** By the date indicated in the project agreement, the applicant shall submit a certification to the Chief Executive Officer that it has relocated the retained employees. To the extent that the number of employees is less than the number indicated on its application but remains 50 or more, the award of tax credits shall be adjusted accordingly and the project agreement shall be amended to so reflect the reduction pursuant to N.J.A.C. 19:31-14.13(b).

**(c)** The total value of the grants of tax credits approved by the Authority pursuant to this program that may be applied against tax liability for any tax period shall not exceed an aggregate annual limit of \$ 20,000,000. If the approval of a grant of tax credits pursuant to N.J.A.C. 19:31-14.8(a) would exceed the \$ 20,000,000 aggregate annual limit, the Authority may award a smaller grant of tax credits, no grants of tax credits or may assign credits to be issued in subsequent years, as necessary to comply with the aggregate limit.

**(d)** The total value of the grants of tax credits, issued pursuant this program, that a single business may apply against its tax liability shall not exceed an aggregate annual limit of \$ 10,000,000 in a fiscal year. A tax credit issued pursuant to this program may be applied against liability in the single tax period in which the tax credit or portion of the tax credit may be applied as prescribed in the project agreement and as set forth in N.J.A.C. 19:31-14.8(a) and shall expire thereafter.

### **History**

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#### **HISTORY:**

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Section was "Tax credit applicable; when effective; when reduced". In (c), substituted "500 or more" for "over 500"; and in (e), substituted "(c)" for "(c) or (d)" preceding "above in a fiscal year", and substituted "(d)" for "(c) or (d)" preceding "above, exceeds".

Recodified from N.J.A.C. 12A:2-1.11 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (b), (c) and (e), substituted "Chief Executive Officer" for "Secretary" throughout; in (d), substituted "50" for "250"; and in (e), updated the N.J.A.C. reference.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote the section.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (c), substituted "for any tax period" for "in a fiscal year".

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## N.J.A.C. 19:31-14.12

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### **§ 19:31-14.12 New business location for the project**

---

- (a)** Once the project agreement is fully executed by the business and the Authority, the business shall complete the project and seek a temporary certificate of occupancy and such other permits and approvals as may be required for the new business location in a timely manner, as further described in the project agreement.
- (b)** The business shall design, acquire, install, and operate the new business location in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) related to zoning, building safety, and environmental quality.
- (c)** The business shall not use any hazardous substance on, from, or affecting the new business location in any manner which violates any environmental law, and shall keep or cause the new business location to be kept free of hazardous substances, except as provided in applicable environmental law.
- (d)** The business shall comply with the Authority's prevailing wage requirements, N.J.A.C. 19:30-4, and affirmative action requirements, N.J.A.C. 19:30-3, in the performance of the construction contract for the project, provided that prevailing wage shall not be required for construction commencing more than two years after an entity has executed with the Authority a commitment letter and the first payment or other provisions of assistance is received.

### **History**

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#### **HISTORY:**

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Section was "Undertaking the project". In (a), inserted "for the new business location"; in (b) and (c), substituted "new business location" for "project" throughout; rewrote (d); and added (e).

Recodified from N.J.A.C. 12A:2-1.12 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (e), substituted "Authority" for "Commission"; in (d), substituted "Authority's" for "Commission's" and "P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1)" for "(N.J.S.A. 52:27C-73.1 and implementing rules at N.J.A.C. 12A:2A-3)"; and in (e), substituted "Authority's affirmative action



requirements" for "Commission's set-aside program goals and targets" and "P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4)" for "N.J.A.C. 12A:10 and Executive Order No. 71 (October 2, 2003)".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Rewrote (d); and deleted (e).

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## **N.J.A.C. 19:31-14.13**

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### **§ 19:31-14.13 Reporting requirements and annual reports**

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**(a)** If requested by the Authority, a business which is awarded a grant of tax credits under this program shall submit a copy of the State tax return for the business showing business income or activity, appropriate to its form of ownership.

**(b)** As determined by the Authority, a business which is awarded a grant of tax credits under P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.) shall submit annually, no later than March 1st of each year, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment duration, a certification of compliance that indicates that the business continues to maintain the number of retained full-time jobs as specified in the project agreement. Retained full-time jobs shall be calculated by averaging the monthly average of the business' retained full-time jobs in the previous calendar year, provided if the previous calendar year is the year in which the business submitted the certificate required by N.J.A.C. 19:31-14.11(b), such calculation shall use only the months since the submission of the certificate. Upon receipt and review thereof during the tax credit term, the Authority shall issue a certificate of compliance indicating the amount of tax credits that the business may apply against liability pursuant to section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3). Any reduction in the number of retained full-time jobs below the number prescribed under the terms of the project agreement shall proportionately reduce the amount of tax credits the business may apply against liability in that tax period and the credits that may no longer be applied for that tax period shall be forfeited. However, if in any tax period, the number of retained full-time jobs drops below the minimum number of retained full-time jobs indicated in the paragraph of subsection b. of section 7 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-115.3) pursuant to which the project agreement was executed such that the business would no longer be eligible to apply the credits for the number of years for which it was approved, then the Authority shall reduce the amount of tax credits the business may apply against liability and the number of years in which the business may apply the tax credits. The grant shall be subject to recapture provisions pursuant to the project agreement.

**(c)** The project agreement may provide for additional reporting requirements.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2-1.13 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) through (c), substituted "Chief Executive Officer" for "Secretary" throughout.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a), substituted "Authority" for "Chief Executive Officer"; rewrote (b); deleted former (c); and recodified (d) as (c).

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### **§ 19:31-14.14 Fees**

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- (a)** A non-refundable application fee of \$ 1,000 shall accompany every application for assistance.
- (b)** A non-refundable commitment fee of two percent of the assistance not to exceed \$ 75,000 shall be charged with the acceptance by an applicant of the assistance.
- (c)** For each project with total approved tax credits of \$ 1,000,000 or less, a non-refundable fee of \$ 1,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 2,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total approved tax credits of \$ 1,000,000 to \$ 5,000,000, a non-refundable fee of \$ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 7,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total approved tax credits in excess of \$ 5,000,000, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.
- (d)** In addition to the fees in (a), (b) and (c) above, an annual servicing fee shall be paid to the Authority. The servicing fee shall be two percent of the annual tax credit amount that may be applied not to exceed \$ 75,000.
- (e)** The full amount shall be paid of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

### **History**

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#### **HISTORY:**

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.14, Events of default, recodified to N.J.A.C. 12A:2-1.15.

Recodified from N.J.A.C. 12A:2-1.14 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Added (d).

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (c).

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Added (e).

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## **N.J.A.C. 19:31-14.15**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM***

### **§ 19:31-14.15 Events of default**

---

**(a)** The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "event of default" under the project agreement:

- 1.** The business fails to strictly observe or comply with the limitations and conditions of the use of the grant of tax credits as set forth in this subchapter, the tax credit certificate and the project agreement;
- 2.** Any representation or warranty made by the business in its application or in the project agreement that is false, misleading, or inaccurate in any material respect;
- 3.** Failure to comply with any condition or requirement of the project agreement; or
- 4.** The business fails to serve or perform in any other material respect any other term, covenant or condition of the business under the project agreement and this subchapter and such failure shall have continued for 30 days after the earlier of delivery to the business of written notice thereof from the Authority or the business's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by the payment of money or by diligent efforts within such 30-day period, but diligent efforts are properly commenced within the cure period and business is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional 45 days and in no case to extend beyond the expiration of the project agreement. Violations of the "events of default" provision of the project agreement shall be cause for immediate termination of the tax credit certificate as provided by law and repayment of State tax.

**(b)** Upon a default under the project agreement, in addition to any other remedies in the project agreement and available under this subchapter and under the Act, the Authority may withhold any payment not yet paid at the time of the default under the project agreement. The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant of tax credits. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant of tax credits is solely within the Authority's discretion.

**(c)** Upon termination of the project agreement, in addition to any other remedies in the project agreement and available under this subchapter and under the Act, the Authority may require

repayment of an amount of the grant of tax credits based on the period of time the business complied with the grant, provided, however, that the Authority may require repayment of the total amount paid to the business during the commitment duration if the default results from the business moving the project out of the State of New Jersey or the business being sold and moved out of the State of New Jersey.

## History

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### HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Rewrote (a)4.

Recodified from N.J.A.C. 12A:2-1.14 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.15, Remedies, recodified to N.J.A.C. 12A:2-1.16.

Recodified from N.J.A.C. 12A:2-1.15 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)4, updated the N.J.A.C. reference and inserted a semicolon following "duration"; and in (a)5, substituted "Chief Executive Officer" for "Secretary" and "30-day" for "30 day".

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (a)3, inserted "or" at the end; deleted former (a)4; recodified former (a)5 as (a)4; in (a)4, substituted "Authority" for "Chief Executive Officer"; and added (b) and (c).

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## **N.J.A.C. 19:31-14.16**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM***

### **§ 19:31-14.16 Remedies**

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(a) Upon the occurrence of any event of default as described in N.J.A.C. 19:31-14.15 and the project agreement, the Authority may, so long as such event of default is continuing, do one or more of the following as the Chief Executive Officer in his or her sole discretion shall determine, without limiting any other right or remedy the Authority or the Division of Taxation may have on account of such event of default:

1. The Authority may require the surrender by the business to the Authority of the tax credit certificate for suspension or cancellation; and/or
2. The Authority may exercise any other right or remedy that may be available under applicable law or under the project agreement, including, without limitation:
  - i. Recapturing all (for example, if a business is unable to certify the minimum job threshold during the commitment duration) or a portion of the grant of tax credits upon failure of the business to maintain for the remainder of the commitment duration 80 percent of the retained full-time jobs that it had during the last year of the tax credit term;
  - ii. Notifying the Director, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance;
  - iii. Recovering damages for loss of a bargain for any default during the commitment duration;
  - iv. Terminating the project agreement; or
  - v. Proceeding by appropriate court action (legal or equitable) to enforce the terms of the project agreement.

(b) For the purposes of determining the amount of the grant of tax credits to be recaptured, the amount shall include the sum of the following:

1. A cash payment in the amount of tax credits which were applied by the business or its assignee which amount may be reduced as set forth in (a)2i above;
2. Interest on the repayment amount referred to in (b)1 above at the rate equal to the statutory rate for tax deficiencies plus any penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq.; and



3. All costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the sales tax repayment amount (including, but not limited to, counsel fees, court costs and other costs of collection).

(c) The rights and remedies of the Authority under this subchapter and the project agreement shall be cumulative and shall not exclude any other rights and remedies of the Authority or the Division of Taxation allowed by law with respect to any event of default under this subchapter of the project agreement.

## History

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### HISTORY:

Recodified from N.J.A.C. 12A:2-1.15 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

In the introductory paragraph of (a), updated the N.J.A.C. reference. Former N.J.A.C. 12A:2-1.16, Appeals, recodified to N.J.A.C. 12A:2-1.17.

Recodified from N.J.A.C. 12A:2-1.16 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer" for "Secretary" throughout; and in the introductory paragraph of (a), updated the N.J.A.C. reference.

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Substituted "Authority" for "Chief Executive Officer" throughout; rewrote (a)2; added new (b); and recodified former (b) as (c).

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## N.J.A.C. 19:31-14.17

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### **§ 19:31-14.17 Appeals**

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(a) The procedure for an appeal of the Board's action on an application to the program shall be as follows. An applicant may appeal the Board's action by submitting in writing to the Authority, within 30 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;
2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his/her finding(s) and recommendation(s) on the merits of the appeal; and
3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final agency decision on the appeal.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2-1.16 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.17, Severability, recodified to N.J.A.C. 12A:2-1.18.

Recodified from N.J.A.C. 12A:2-1.17 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer's" for "Secretary's", "Chief Executive Officer" for "Secretary", and "Authority" for "Commission" throughout; and in (a), deleted "of Director's" following "Board".

Repeal and New Rule, R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

Section was "Appeals".

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## **N.J.A.C. 19:31-14.18**

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### **§ 19:31-14.18 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2-1.17 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Recodified from N.J.A.C. 12A:2-1.18 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

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## N.J.A.C. 19:31-15.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 15. TAX CREDIT CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-15.1 Applicability and scope**

---

(a) The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 (the "Act"), and specifically section 17 of the Act (N.J.S.A. 34:1B-120.2). The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program, a tax credit certificate transfer program (the "BRRAG Tax Credit Certificate Transfer Program" or "Program"), a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones).

(b) The purpose of the BRRAG Tax Credit Certificate Transfer Program is to allow businesses in this State with unused amounts of BRRAG tax credit to surrender those tax credits to other corporations desiring such credits which in exchange will provide private financial assistance to assist in the funding of costs incurred by the relocating business. A BRRAG tax credit may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter. However, it is possible that unused credits that remain stranded in the allowable periods may be utilized in the event of future additional liability, like an audit assessment. Therefore, eligibility for this program will require the business to certify that, to the best of its knowledge, it cannot use the tax credits originally issued for the tax periods in which the credits are allowable.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-1.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')" and deleted the last two sentences; and in (b), inserted "BRRAG Tax Credit Certificate Transfer".

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## **N.J.A.C. 19:31-15.2**

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### **§ 19:31-15.2 Definitions**

---

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Agreement" or "project agreement" means an agreement between a business and the Authority that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123).

"Application" means the application submitted to the Authority from the seller of BRRAG tax credits, for approval of the BRRAG tax credit transfer certificate.

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority.

"BRRAG program" means the tax credit grant program created pursuant to P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123), and provided in N.J.A.C. 12A:2-1.

"BRRAG tax credit certificate transfer program" or "Program" means the Business Retention and Relocation Assistance Grant Tax Credit Transfer Program created pursuant to section 17 of the Act (N.J.S.A. 34:1B-120.2).

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes

paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business.

"Business retention or relocation grant of tax credits" or "grant of tax credits" means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5) or credits against the taxes imposed on insurers pursuant to P.L. 1945, c.132 (N.J.S.A. 54:18A-1 et seq.), section 1 of P.L. 1950, c.231 (N.J.A.C. 17:32-15), and N.J.S.A. 17B:23-5, provided to fund a portion of retention and relocation costs pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and pursuant to N.J.A.C. 12A:2-1.

"Business retention or relocation tax credit" or "BRRAG tax credit" means the tax credit that a business obtains through the BRRAG program.

"Buying business," means a business with the financial ability to purchase the unused BRRAG tax credits from an unaffiliated selling business. For the purpose of this definition, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the selling and buying businesses.

"Certificate" or "BRRAG tax credit transfer certificate" means the certificate issued by the Division of Taxation certifying to the selling business amounts of unused BRRAG tax credit. The certificates are issued in the form of corporation business tax credit and insurance premiums tax credit transfer certificates.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"New business location" means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation. A new business location may also include the premises from which the business moves on a temporary basis due to the rehabilitation of permanent premises that also qualifies as reconstruction as "reconstruction" is defined in the Uniform Construction Code, N.J.A.C. 5:23-6.3. In that case, the move to the permanent premises will trigger availability of the grant of tax credits.

"Private financial assistance" means the assistance that the buying business provides the selling business to assist in the funding of costs incurred by the relocating business.

"Project" means the construction, renovation or expansion of facilities at the approved site as described in the project description in the application and the agreement that will become the business's new business location.

"Selling business" means a business that has unused BRRAG tax credits issued under P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and otherwise allowable which it wishes to "sell."

"Total allowable relocation costs" means \$ 1,500 times the number of retained full-time jobs. "Total allowable relocation costs" does not include the amount of any bonus award authorized pursuant to section 5 of P.L. 2004, c.65 (N.J.S.A. 34:1B-115.1).

## **History**

**HISTORY:**

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition "Business", substituted ", such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For" for "for".

Recodified from N.J.A.C. 12A:2A-1.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definitions "Agreement" and "Application", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; and deleted definitions "Board of Directors", "Commission" and "Secretary".

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## **N.J.A.C. 19:31-15.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 15. TAX CREDIT CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-15.3 Eligibility criteria**

---

- (a) A business shall be eligible to apply to the program if the business:
1. Entered into a BRRAG project agreement pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2000, c.65 and N.J.A.C. 19:31-14 and is not in default of that BRRAG project agreement;
  2. Has unused amounts of BRRAG tax credits issued and otherwise allowable;
  3. Certifies, to the best of its knowledge, that it cannot use the BRRAG tax credits originally issued for the tax periods in which the credits are allowable; and
  4. Has incurred or will incur expenses in connection with the operation of the business in the State, including, but not limited to, the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the Chief Executive Officer to be necessary to carry out the purposes of the Act.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-1.3 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)1, updated the N.J.A.C. reference; and in (a)4, substituted "Chief Executive Officer" for "Secretary".

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## **N.J.A.C. 19:31-15.4**

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### **§ 19:31-15.4 Requests for applications**

---

All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625, in a manner prescribed and adopted by the Authority, after recommendation from the Director.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-1.4 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote the section.

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## **N.J.A.C. 19:31-15.5**

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### **§ 19:31-15.5 Submission requirements**

---

(a) Each application to the Authority by a selling company shall include the following information in a format prescribed by the Chief Executive Officer, after recommendation by the Board. Complete applications must be received by at least 120 days prior to the expiration of the second tax period, pursuant to N.J.A.C. 19:31-14.11.

1. The name and address of the applicant;
2. A statement that all terms and conditions of the selling business' BRRAG project agreement have been and/or are continuing to be met;
3. A list of all corporations and affiliated groups of corporations that directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of the selling business;
4. A statement that the selling business is operating and has no current intention to cease operating;
5. A certification that, to the best of the applicant's knowledge, the applicant cannot use the BRRAG tax credits originally issued for the tax periods in which the credits are allowable;
6. The proposed use of any private financial assistance that would be provided by a buying business, to assist in the funding of costs incurred by the relocating business;
7. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

### **History**

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#### **HISTORY:**

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (b).

Recodified from N.J.A.C. 12A:2A-1.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a) and (a)7, substituted "Chief Executive Officer" for "Secretary"; in the introductory paragraph of (a), substituted "Authority" for "Commission", deleted "of Directors" following "Board" and updated the N.J.A.C. reference; and deleted (b).

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## **N.J.A.C. 19:31-15.6**

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### **§ 19:31-15.6 Application and review procedures**

---

**(a)** Applicants shall submit to the Chief Executive Officer a completed BRRAG Tax Credit Transfer Program application. The application shall bear either a legible post-mark date or a date received stamp from the Authority.

**(b)** The Authority, in cooperation with the Director, shall conduct a review of the applications commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Authority, in cooperation with the Director, shall review the applications to determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

**(c)** Once the review in (b) above is completed, the Board shall either approve or deny a request. The minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.

**(d)** After action by the Board, the Chief Executive Officer shall issue a preliminary approval, approval with modifications, or denial of an application in the program and so notify the applicant.

**(e)** In the event that the applicant receives notification of preliminary approval, that notification will state the conditions that must be met before the Chief Executive Officer will issue a final approval. The notification of preliminary approval will state that the Chief Executive Officer will forward the application to the Division of Taxation only upon receipt of the following:

1. A statement, dated the date of the closing of the sale of the tax credit transfer certificate that states, among other matters, that as of the date of the certificate, the selling business is operating and has no current intention to cease operating;
2. A completed Tax Benefit Identification Form that identifies the accumulated BRRAG tax credits, the amount intended to be sold, and the years that the BRRAG tax credit were incurred;
3. A Buying Business Information Sheet that identifies the buying business' name, address, telephone number, the estimated value of the tax credits to be transferred, and from whom and a certification that the buying business is not an affiliate;

4. An executed form of standard selling agreement between the buying and selling business defining the terms and conditions of the sale of the tax certificate(s), with the Private Financial Assistance Form attached as an exhibit;
5. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the expenses incurred in by the selling business in connection with the operation of the business in the State; and
6. Information evidencing that the amount of private financial assistance to be made by the buying business is equal to at least 75 percent of the amount of the to be surrendered BRRAG tax credit of the selling business.

(f) In the event that an application is denied for either preliminary or final approval, the applicant shall be notified of the denial and the reasons for such denial.

## History

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### HISTORY:

Recodified from N.J.A.C. 12A:2A-1.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (e), substituted "Chief Executive Officer" for "Secretary" throughout; in (a) and the introductory of (b), substituted "Authority" for "Commission" throughout; in (c), deleted "of Directors" following "Board" and "recommend to" following "shall"; in (d), substituted "After action by the Board, the Chief Executive Officer" for "The Secretary, after receipt and consideration of the recommendation from the Board of Directors,"; deleted former (f); and recodified former (g) as (f).

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## N.J.A.C. 19:31-15.7

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 15. TAX CREDIT CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-15.7 Fees**

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- (a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable fee of \$ 2,500.
- (b) For each project with total approved tax credits of \$ 1,000,000 or less, a non-refundable fee of \$ 1,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 2,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total approved tax credits of \$ 1,000,000 to \$ 5,000,000, a non-refundable fee of \$ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 7,500 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval. For each project with total approved tax credits in excess of \$ 5,000,000, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the grant; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.
- (c) The full amount shall be paid of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

### **History**

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#### **HISTORY:**

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-1.7, Appeals, recodified to N.J.A.C. 12A:2A-1.8.

Recodified from N.J.A.C. 12A:2A-1.7 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (b).

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Added (c).

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End of Document



## **N.J.A.C. 19:31-15.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 15. TAX CREDIT CERTIFICATE TRANSFER PROGRAM***

### **§ 19:31-15.8 Appeals**

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The procedure for appeals arising from the Chief Executive Officer's action on an application to the program as well as appeals arising from other decisions of the Chief Executive Officer relating to the program shall be the procedures set forth at N.J.A.C. 19:31-14.17.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-1.7 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Updated the N.J.A.C. reference.

Recodified from N.J.A.C. 12A:2A-1.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer's" for "Secretary's" and "Chief Executive Officer" for "Secretary" and updated the N.J.A.C. reference.

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## **N.J.A.C. 19:31-16.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM***

### **§ 19:31-16.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority, after consultation with the Director of the Division of Taxation in the Department of the Treasury, to implement sections 19 through 22 of the Business Retention and Relocation Assistance Act, P.L. 2004, c.65 (the "Act"), which provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The purpose of the sales and use tax exemption program is to encourage economic development and to preserve jobs that currently exist in New Jersey. Qualifying businesses will be exempt from sales and use tax for eligible property located or placed at a business location for a construction and or renovation project pursuant to the terms and conditions of a project approval agreement. The sales tax exemption certificate, which applies only to property purchased for installation in that approved project will allow the business to purchase machinery, equipment, furniture and furnishings, fixtures and building materials other than tools and supplies for placement at the project location without the imposition of sales and use tax until the new facility is functional, as further specified in this subchapter.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-2.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Economic Development Authority" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')", deleted the second sentence and deleted "the Program" following "purpose of", and inserted "sales and use tax exemption program".

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## **N.J.A.C. 19:31-16.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM***

### **§ 19:31-16.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Agreement" or "project approval agreement" means the project approval agreement between a business and the Authority governing the terms and conditions of the project approval for the sales tax exemption program. The Agreement describes the project, the date the commitment duration shall commence, the extent of sales tax exemption, the conditions and limitations of the sales tax exemption, the representations and reporting obligations of the business, and other such provisions which further the purposes of P.L. 2004, c.65, §§ 19 through 22 (N.J.S.A. 34:1B-185 through 188).

"Application" means the application submitted by a business for the sales tax exemption program, pursuant to P.L. 2004, c.65 §§ 19 through 22.

"Approved site" means the site of the project in the New Jersey Development and Redevelopment Plan designated Planning Area 1 or 2 locations; however, if the site of the project is not located in either of such Planning Areas, the project involves renovation or expansion of an existing facility, and the project satisfies all other criteria of the program, as determined by the Secretary, the site may also be an approved site.

"Authority" means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business.

"BEIP grant" means the grant made to a business by the New Jersey Economic Development Authority pursuant to the provisions of P.L. 1996, c.26 (N.J.S.A. 34:1B-124 et al).

"Capital investment" means expenses that the business incurs following its submission of an application to the Authority pursuant to section 21 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-186) for:

1. The site preparation and construction, renovation, improvement, equipping of or obtaining and installing fixtures and machinery, apparatus or equipment, in a newly constructed, renovated or improved building, structure, facility or improvement to real property in this State; and
2. Obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure or facility in this State.

Provided however that "capital investment" shall not include soft costs, such as financing and design, furniture or decorative items, such as artwork or plants or office equipment, if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this definition, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with section 168 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 168). For the purposes of this definition, cubicles and cubicles that include office equipment shall constitute capital investment. If the business is a tenant, expenses incurred on behalf of the tenant by the landlord and financed through the lease shall constitute capital investment expenses incurred by the tenant provided that the capital investment shall relate solely to the tenant's leasehold space and not the common areas of the building and shall be supported by the documentation referenced in N.J.A.C. 19:31-16.5(a)2xiii and 16.7(a).

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Commitment duration" means five years from the later of the relocation of all of the retained full-time jobs included in the project, which shall not be more than one year from the issuance of a temporary certificate of occupancy, or the completion date specified in the project approval agreement entered into pursuant to section 19 through 22 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-185 through 188).

"Completion date" generally means the earlier of the date of the issuance of a temporary certificate of occupancy with respect to an approved site or in cases where no temporary certificate of occupancy is issued, one year from the project commencement date, as specifically set forth in the project approval agreement.

"Construction contract" means for purposes of undertaking the project, any contract for the acquisition, construction, improvement or installation of those portions of the project subject to sales tax or installation of eligible property. For purposes of this definition, the term "installation" means installation by a contractor, which involves access to pipes or wires within walls or any other alteration or modification of the project, but shall not include the delivery, locating, relocating, moving, assembling or setting up or eligible property by the provider of such property or the business's employees or any installation of such eligible property (including, but not limited to, machinery, apparatus and equipment) if such installation is made pursuant to a purchase contract by the provider of such property.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligible affiliate" means any person with respect to which the business:

1. Possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by contract or otherwise; and
2. Owns, either directly or indirectly, at least 51 percent of the voting stock or other equity or ownership interest of such person.

"Eligible property" means machinery, equipment, furniture and furnishings, fixtures, and building materials, but "eligible property" shall not include "motor vehicles" as defined pursuant to section 2 of P.L. 1966, c.30 (N.J.S.A. 54:32B-2), parts with a useful life of one year or less, or tools or supplies used in connection with the eligible property. Eligible property does not include machinery or equipment purchased, rented or leased by a project participant construction manager, contractor, or subcontractor under contract with the business for their own use on the project.

"Full-time employee" means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include a child, grandchild, parent or spouse of an individual who has direct or indirect ownership of at least five percent of the profits, capital, or value of the business.

"Headquarters" means the single location that serves as the national administrative center of a business or the worldwide administrative center of a key division of the business, at which the primary office of the chief executive officer or chief operating officer of the business or the key division of the business, as well as the offices of the management officials responsible for key businesswide functions such as finance, legal, marketing, and human resources, are located.

"Life sciences business" means a business engaged principally in the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products; or physical and biological research; or biotechnology.

"Manufacturing facility" means a business location at which more than 50 percent of the business personal property that is housed in the facility is eligible for the sales tax exemption pursuant to subsection a. of section 25 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.13) for machinery, apparatus or equipment used in the production of tangible personal property.

"New business location" means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation. A new business location may also include the premises from which the business moves on a temporary basis due to the rehabilitation of permanent premises that also qualifies as reconstruction as "reconstruction" is defined in the Uniform Construction Code, N.J.A.C. 5:23-6.3.

"Program" means the sales and use tax exemption program established under the jurisdiction of the Commission and administered by the Secretary, pursuant to P.L. 2004, c.65 §§ 19 through 22 and this subchapter.

"Project" means the construction, renovation or expansion of facilities at the approved site as described in the project description in the application and the agreement that will become the business's new business location and that will be related to retained full-time jobs. The eligible scope of the project shall accommodate no more than 20 percent above the number of retained full-time jobs. In the event that the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness, such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

"Project participant" means an eligible affiliate of the business or any construction manager, contractor or subcontractor that performs acquisition, construction, equipping, installation or improvements for the project and any other entities working on the project that use the sales tax certificate.

"Research and development facility" means a business location at which more than 50 percent of the business personal property that is purchased for the facility is eligible for the sales tax exemption pursuant to section 26 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.14) for property used in research and development.

"Retained full-time jobs" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563, shall be considered the eligible positions of a single employer. A retained full-time job is one that will not be included in the calculation of a BEIP grant subsequent to being moved to the approved project site.

"Sales tax certificate" means the sales and use tax exemption certificate issued by the Director to the business upon approval by the Secretary of the terms and conditions of the agreement.

"Sales tax exemption" means the sales and use tax exemption approved under an agreement pursuant to the Act, and for purposes of this program, the sales tax exemption shall be administered pro rata to reflect the eligible scope of the project, based on the number of retained full-time jobs increased no more than 20 percent (eligible scope) relative to the sum of the number of all of the jobs of all employers located at an approved project site during the commitment duration period.

"Sales tax recapture amount" means either:

1. If the event of recapture occurs during the commitment duration, provided the reduction of retained full-time jobs in the aggregate from execution of the project approval agreement until the event of recapture does not exceed 20 percent of the number of the retained full-time jobs: the sum of 1i, ii and iii below. To the extent the reduction of retained full-time jobs in the aggregate exceeds 20 percent of the number of retained full-time jobs, penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq., may also be imposed.

- i. A portion of the amount of the sales and use taxes, which would have been payable on all eligible property purchased for the project if the property was not

purchased with the sales tax certificate based upon the proportionate value of such amount that corresponds to the reduction of retained full-time jobs and the period of noncompliance;

ii. Interest on the amount referred to in 1i above at the rate equal to the statutory rate for sales tax deficiencies; and

iii. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax recapture amount (including, but not limited to, counsel fees, court costs and other costs of collection);

**2.** If the event of recapture occurs prior to the commitment duration, provided the reduction of retained full-time jobs in the aggregate from execution of the project approval agreement until the event of recapture does not exceed 20 percent of the number of retained full-time jobs: the sum of 2i, ii and iii below. To the extent the reduction of retained full-time jobs in the aggregate exceeds 20 percent of the number of retained full-time jobs, penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq., may also be imposed.

i. A portion of the amount of the sales and use taxes, which would have been payable on all eligible property purchased for the project if the property was not purchased with the sales tax certificate based upon the proportionate value of such amount that corresponds to the reduction of retained full-time jobs and the failure to comply for any portion of the commitment duration;

ii. Interest on the amount referred to in 2i above at the rate equal to the statutory rate for sales tax deficiencies; and

iii. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax recapture amount (including, but not limited to, counsel fees, court costs and other costs of collection); or

**3.** If the event of recapture, pursuant to N.J.A.C. 19:31-16.12(a)3, occurs during or prior to the commitment duration: the sum of 3i, ii and iii below and penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq. may also be imposed.

i. Repayment of the amount of the sales and use taxes, which would have been payable on the property purchased for the project if the property was not purchased with the sales tax certificate that is no longer eligible as a result of the calculation in N.J.A.C. 19:31-16.12(a)3;

ii. Interest on the amount referred to in 3i above at the rate equal to the statutory rate for sales tax deficiencies; and

iii. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax recapture amount (including, but not limited to, counsel fees, court costs and other costs of collection).

"Sales tax repayment amount" means the sum of:

**1.** The amount of sales and use taxes which would have been payable on all eligible property purchased for the project if the property was not purchased with the sales tax certificate; provided that if repayment is the result of a default of the agreement during the commitment duration, this amount shall be reduced by an amount allocable to the proportionate amount of the sales and

use tax that corresponds to the period of time in which the business was in compliance measured from the completion date until the date of default;

2. Interest on the repayment amount referred to in paragraph 1 above at the rate equal to the statutory rate for sales tax deficiencies plus any penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq.; and

3. All costs incurred by the Chief Executive Officer and the Division of Taxation in connection with the pursuit of the sales tax repayment amount (including, but not limited to, counsel fees, court costs and other costs of collection).

## History

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### HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

In definition "Business", in the first sentence substituted "Subchapter S of Chapter One" for "subchapter S of chapter one", inserted "of" preceding "1986" and substituted "either within or outside" for "within" and added the second sentence; and added the final sentence to definition "Project".

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In definition "Full-time employee", deleted "whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.," following "full-time employment,".

Amended by R.2008 d.38, effective February 19, 2008.

See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

In definition "Commitment duration", inserted "the later of the relocation of all of the retained full-time jobs included in the project, which shall not be more than one year from the issuance of a temporary certificate of occupancy, or"; in definition "Project", substituted "and that will be related to retained full-time jobs. The eligible scope of the project shall accommodate no more than 20 percent above the number of retained full-time jobs." for the period following the first occurrence of "location"; in definition "Sales tax exemption", inserted "to reflect the eligible scope of the project,", "increased no more than 20 percent (eligible scope)", "sum of the" and "of all employers" and substituted "all of the" for "total"; added definition "Sales tax recapture amount"; and in definition "Sales tax repayment amount", substituted "penalties pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:49-1 et seq." for "statutory penalties" in paragraph 2, and inserted "to" in paragraph 3.

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition "Business", inserted ", such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder".

Recodified from N.J.A.C. 12A:2A-2.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).



In definition "Agreement", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; deleted definitions "Board of Directors", "Commission" and "Secretary"; rewrote definition "Full-time employee"; in the introductory paragraphs of 1 and 2 of definition "Sales tax recapture amount", inserted a comma following "et seq."; and in paragraphs 1iii and 2iii of definition "Sales tax recapture amount" and in paragraph 3 of definition "Sales tax repayment amount", substituted "Chief Executive Officer" for "Secretary".

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

Added definition "Capital investment"; and in definition "Sales tax recapture amount", in 1iii, deleted "or" from the end, in 2iii, substituted "; or" for a period at the end, and added paragraph 3.

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## **N.J.A.C. 19:31-16.3**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM***

### **§ 19:31-16.3 Eligibility criteria**

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(a) Program eligibility requires that:

1. A business shall have operated continuously in New Jersey, in whole or in part, in its current form or as a predecessor entity, for at least 10 years prior to filing an application with the Authority;
2. A business certify and represent that the availability of financial assistance from the State as would be provided in the approval of the business's application for the program will be an important inducement to the business to undertake the project and to relocate full-time jobs in the State; and
3. A business shall satisfy at least one of the following four criteria:
  - i. The business has 1,000 or more full-time employees in the State and the project involves relocating 500 or more full-time employees into a new business location or locations;
  - ii. The business is a life sciences business or a manufacturing facility and the project is: constructing one or more new research and development facilities, constructing one or more new manufacturing facilities in this State, or relocating to a new headquarters in this State that will employ 250 or more full-time employees whose jobs are retained full-time jobs.
  - iii. The business is a life sciences business or a manufacturing business and the project is constructing a new, or substantially rehabilitating a vacant, property that will separately or collectively:
    - (1) Be predominantly a new research and development facility;
    - (2) Be predominantly a new manufacturing facility;
    - (3) House the headquarters of the business; or
    - (4) Separately or collectively be a combination of (a)3iii(1), (2) and (3) above; provided, that the new or substantially rehabilitated facility will house a minimum of 250 full-time employees whose jobs are retained full-time jobs. For the purposes of this sub-subparagraph, "predominantly" means a majority of the employees housed in the new facility are engaged in that activity; or a majority of the square footage of the new facility is used in that activity; or a majority of the total value of the investment made will be employed in that activity; or other measures of activity as may be

determined by the Secretary that demonstrate that a critical concentration of research and development, manufacturing, or both, will occur at the new facility; or

iv. The business was, at the time of enactment of P.L. 2004, c.65, § 21, receiving a structured finance special guarantee pursuant to N.J.A.C. 19:31-2.1(c)3ii(5) for the project.

**(b)** For the purposes of determining a number of full-time employees pursuant to this section, the full-time employees of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563, shall be considered the employees of a single employer.

**(c)** In addition to the eligibility criteria of (a) above, the project must be located at an approved site.

1. To be an approved site, the location for the project shall be situated in designated Planning Area 1 or 2, as defined in the State Development and Redevelopment Plan adopted by the State Planning Commission (pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et al.)).

2. Notwithstanding (c)1 above, a project involving the renovation or expansion of an existing facility that is not located in designated Planning Area 1 or 2 may be eligible to participate in the program, at the determination of the Secretary, if all other applicable criteria are satisfied.

3. A business located in an urban enterprise zone designated pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.) as of June 30, 2004 shall not be eligible to participate in this program if the relocation project is from a facility within the urban enterprise zone to a facility outside an urban enterprise zone.

4. Notwithstanding (c)3 above, if the relocation is to a facility already owned or leased by the same business and that business already employs at least the same number of persons as those being relocated from the urban enterprise zone, it may be eligible to apply.

**(d)** Program eligibility further requires that a business shall provide evidence and certify that it is not in default with any other program administered by the State of New Jersey.

**(e)** A project may be completed in up to two phases provided that it will be the national headquarters of a life sciences or manufacturing company, and will include a significant research and development, a significant manufacturing facility, or combination thereof if:

1. The first completed phase will house at least 200 full-time employees and the second phase will house at least 100 additional employees; and

2. The project is pre-approved for phases and that all phases are completed within 30 months of project approval.

**(f)** If a project consists of both point-of-purchase retail facilities, as defined at N.J.A.C. 19:31-14.2, and non-retail facilities, only the portion consisting of non-retail facilities shall be eligible for the sales tax exemption.

## History

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### HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Added (f).

N.J.A.C. 19:31-16.3

Recodified from N.J.A.C. 12A:2A-2.3 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)1, substituted "Authority" for "Commission"; and in (f), updated the N.J.A.C. reference.

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## **N.J.A.C. 19:31-16.4**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM***

### **§ 19:31-16.4 Requests for applications**

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All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625, on forms and/or in a manner prescribed by the Authority.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-2.4 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote the section.

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## **N.J.A.C. 19:31-16.5**

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### **§ 19:31-16.5 Submission requirements**

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**(a)** Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Business information shall include the following:

- i. The name of the business;
- ii. The address of the business;
- iii. The type of business;
- iv. Principal products and services;
- v. The contact person for this application;
- vi. The New Jersey tax identification number;
- vii. The Federal tax identification number;
- viii. The total number of employees in New Jersey;
- ix. The total number of years of operation in New Jersey including evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;
- x. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey;
- xi. Certification that the availability of financial assistance from the State as provided in this program at the site proposed for approval is an important inducement to the business to undertake the project and to relocate the full-time jobs relating to the project in the State; and
- xii. Any other necessary and relevant information as determined by the Secretary for a specific application.

2. Project information shall include the following:

- i. An overall description of the proposed project;
- ii. The current location(s) (address(es)) and number of employees for each site that is subject to this application;

- iii.** The location(s) employees will be relocated from and identify the location(s) employees will be relocated to as per this application. Include number of employees for all sites;
  - iv.** A description of the quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;
  - v.** A description of any capital investments made by the business at the new business location;
  - vi.** Identification of the site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan;
  - vii.** A project schedule that identifies projected move dates for each site;
  - viii.** A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;
  - ix.** The terms of any lease agreements or details of the purchase or building of the new business location;
  - x.** An estimate of the projected retained State tax revenues resulting from the relocation;
  - xi.** A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;
  - xii.** Evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans;
  - xiii.** If the applicant is a tenant with capital investment expenses incurred on behalf of the tenant by the landlord, the tenant's chief executive officer and the landlord shall certify to the amount of additional tenant improvements that the landlord is undertaking on behalf of the tenant and shall certify that the rent amortizes these tenant improvements over the term of the lease; and, the tenant shall provide evidence satisfactory to the Authority to support such certification, which may include evidence of comparable market rents; and
  - xiv.** Any other necessary and relevant information as determined by the Secretary for a specific application.
- 3.** The employee information shall include the following:
- i.** A written certification the employees that will be the subject of this application are full-time employees and receive health care benefits;
  - ii.** The number of employees at the project site that are included in a BEIP grant calculation. Compare this to the number of employees that are subject to an application made under this section. Include the New Jersey Economic Development Authority BEIP project identification number;
  - iii.** Evidence that the New Jersey Economic Development Authority has been notified of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee;

- iv. A certification that the business will maintain 95 percent of the retained full-time jobs for at least the first two years of the commitment duration, and will maintain a minimum of 90 percent of the retained full-time jobs for the remainder of commitment duration; and
- v. Any other necessary and relevant information as determined by the Chief Executive Officer for a specific application.

## History

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### HISTORY:

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (a)4.

Recodified from N.J.A.C. 12A:2A-2.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" twice; in (a)3v, substituted "Chief Executive Officer" for "Secretary"; and deleted (a)4.

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (a)2xii, deleted "and" from the end; added new (a)2xiii, and recodified former (a)2xiii as (a)2xiv.

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## **N.J.A.C. 19:31-16.6**

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### **§ 19:31-16.6 Application and review procedures**

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- (a)** Applicants shall submit to the Chief Executive Officer a completed Sales Tax Exemption Program application. The application shall bear either a legible post-mark date or a date received stamp from the Authority.
- (b)** The Authority shall conduct a review of the applications commencing with the application bearing the earliest submission date, including those applications submitted to the Authority prior to May 16, 2005. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Authority shall review the applications to determine whether the applicant:
1. Complies with the eligibility criteria;
  2. Satisfies the submission requirements; and
  3. Adequately provides information for the subject application.
- (c)** The Board shall approve, approve with modifications, or deny an application in the program.
- (d)** The minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.
- (e)** If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.
- (f)** When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.
- (g)** If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.
- (h)** If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of the grant upon request by the business.

(i) In the event that an application is approved, the Chief Executive Officer will notify the Director of the terms and conditions of the approval and the Director shall issue a certificate pursuant to the terms and conditions of the project agreement. In the event that an application is denied, the applicant shall be notified of the denial and the reasons for such denial.

## History

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### HISTORY:

Recodified from N.J.A.C. 12A:2A-2.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), substituted "Authority" for "Commission" throughout; in (a), substituted "Chief Executive Officer" for "Secretary"; in the introductory paragraph of (b), deleted ", and provide a recommendation to the Secretary regarding," following the second occurrence of "review"; in (c), substituted "Board" for "Secretary after receipt and consideration of the recommendation from the Board of Directors,"; in (d), substituted "The" for "When the Board of Directors recommends to either approve or deny a request, the"; rewrote (e); added new (f), (g) and (h); recodified former (f) as (i); and in (i), substituted "Chief Executive Officer" for "Secretary" and deleted "project" preceding and "agreement" following "approval".

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## **N.J.A.C. 19:31-16.7**

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### **§ 19:31-16.7 Project approval agreement**

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**(a)** If the Board approves the application to the program, participation in the program is conditioned upon the applicant executing a project approval agreement with the Chief Executive Officer to establish the terms and the conditions of the project approval, which shall include, but not be limited to:

1. For a tenant with capital investment expenses incurred on behalf of the tenant by a landlord, prior to execution of the project agreement, the tenant shall provide documentation satisfactory to the Authority consistent with the chief executive officer's certification in N.J.A.C. 19:31-16.5(a)2xiii, which may include, but not be limited to, a lease or letter of credit that demonstrates in the event of an early termination of the lease that the tenant is financially liable for the cost of the capital investment.

**(b)** The terms and conditions of the project approval agreement shall include, but not be limited to, the following:

1. Terms establishing the starting date, or event that will determine the starting date and ending date, of the commitment duration;
2. A requirement that a certification by a certified public accountant relating to the amount of eligible capital investment with supporting evidence satisfactory to the Authority shall be submitted by the business or, in the case of a tenant, the landlord prior to the commencement of the tax exemption term.
3. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of sales and use tax will be extended to the period of the commitment duration;
4. Certifications by the business, including the following: eligibility for the program and participation in the program as an important inducement in the business' decision not to relocate outside of New Jersey and to relocate the project in the State;
5. Requirements for undertaking the project;
6. Requirements on maintaining the existence of the business and not relocating the project;
7. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;
8. Indemnification and insurance requirements;
9. Limitations on the scope and use of the sales tax exemption;
10. Default and remedies; and

11. Reporting requirements.

## History

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### HISTORY:

Recodified from N.J.A.C. 12A:2A-2.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Board" for "Secretary" and "Chief Executive Officer" for "Secretary".

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

Rewrote (a); added new (b)2; and recodified former (b)2 through (b)10 as (b)3 through (b)11.

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## N.J.A.C. 19:31-16.8

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### **§ 19:31-16.8 Undertaking the project**

---

- (a)** Once the project approval agreement is fully executed by the business and the Chief Executive Officer, the business shall complete the project and seek a temporary certificate of occupancy and such other permits and approvals as may be required in a timely manner.
- (b)** The business shall design, acquire, install, and operate the project in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) related to zoning, building, safety, and environmental quality.
- (c)** The business shall not use any hazardous substance on, from, or affecting the project in any manner which violates any environmental law, and shall keep or cause the project to be kept free of hazardous substances, except as provided in applicable environmental law.
- (d)** To the extent that the business or its project participants (and not an unaffiliated third party who is not a project participant) have undertaken the construction of the project, the business shall comply with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), in the performance of construction contracts.
- (e)** The Authority encourages a business constructing a project to comply with the Authority's affirmative action requirements set forth at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4).

### **History**

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#### **HISTORY:**

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Rewrote (d); and added (e).

Recodified from N.J.A.C. 12A:2A-2.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a), substituted "Chief Executive Officer" for "Secretary"; in (d), substituted "Authority's" for "Commission's" and "P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1)" for "N.J.S.A. 52:27C-73.1 and implementing rules at N.J.A.C. 12A:2A-3"; and rewrote (e).

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End of Document

## **N.J.A.C. 19:31-16.9**

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### **§ 19:31-16.9 Sales and use tax exemption limitations**

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**(a)** The duration of the sales tax exemption shall be limited. In general, the sales tax certificate shall not apply to purchases initiated by the business after the date that the temporary certificate of occupancy is issued, or in cases where no temporary certificate of occupancy is issued shall not apply to purchases initiated by the business more than one year from the project commencement date; however, the duration of the sales tax certificate shall be pursuant to the terms and conditions of the project approval agreement.

**(b)** The scope of the sales tax exemption shall be limited. Any exemption from State sales and use taxes resulting from or occasioned by a business's use of the sales tax certificate shall be limited to purchases of eligible property that will be located at the approved site that are made between the commencement and completion dates by the business or a project participant. The sales tax exemption shall:

1. Only be utilized for materials which shall be purchased, completed, constructed or installed by the business or a project participant in connection with the project (and not with any intention to sell, transfer or otherwise dispose of any such materials to another party); and
2. Not be available for any cost of motor vehicles, tools, and parts with a useful life of one year or less, utilities, cleaning service or supplies, maintenance or any otherwise taxable services or property.

**(c)** The use by project participants of the sales tax exemption shall be limited. If the business undertakes the project, in whole or in part pursuant to a contract with a project participant, the project participant may utilize the business's sales tax exemption for purchases of eligible property for the project, provided that each project participant shall comply with all of the terms and conditions of this subchapter, the project approval agreement, the sales tax certificate and any reporting requirements. A project participant may not use the sales tax certificate issued to the business, except as authorized by the project approval agreement, which shall be strictly construed to limit use, and the business and the project participant shall be jointly or severally liable for any misuse.

**(d)** Notifications of violations of the terms and conditions of the sales tax exemption shall be addressed as follows. In the event that a project participant utilizes the sales tax exemption provided pursuant to the sales tax certificate in violation of the terms and conditions of this subchapter and or the project approval agreement, and the business is aware of such violation, the business shall promptly deliver notice of the violation to the Chief Executive Officer, and the business shall, upon demand by the Chief Executive Officer, pay to the Division of Taxation the sales or use tax that would have been paid on purchases not authorized by the project approval

agreement in an amount equal to all such authorized sales or use tax exemptions claimed, subject to the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., with regard to unpaid sales or use tax, penalty and interest.

## History

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### HISTORY:

Recodified from N.J.A.C. 12A:2A-2.9 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (d), substituted "Chief Executive Officer" for "Secretary" twice.

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## **N.J.A.C. 19:31-16.10**

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### **§ 19:31-16.10 Reporting requirements**

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**(a)** During the term of the project approval agreement, on the 15th business day of the quarter, the business that is party to the agreement shall furnish to the Chief Executive Officer a certified report of all purchases of eligible property made in the preceding quarter on which the sales tax exemption was claimed, including the date of purchase, an itemized description, amount of purchase, name of project participant that purchased the item, and name of vendor. "Certified" for purposes of this section means that the veracity of the report is attested by the business, and does not entail a certification by an outside accountant based upon an audit of any type.

1. A business having difficulty obtaining the itemized information from subcontractors on third-party construction contracts may file an estimated allocation of the costs of eligible property incurred under the construction contract, pursuant to the percentage determined by the Board, which shall be consistent with industry standards, and made available to the public upon its approval by the Board. Such estimated allocation shall be included in the certified report of all purchases of eligible property. The election of alternative reporting shall be set forth in the project approval agreement, and once selected, may not be revoked or the percentage changed, pursuant to the terms of that agreement.

**(b)** During the term of the project approval agreement, 30 days prior to each anniversary of the commencement date of the agreement, the business shall furnish to the Chief Executive Officer a certified report in a format as may be determined by the Chief Executive Officer which shall contain the following information:

1. A certification indicating whether or not the business is aware of any condition, event or act which constitutes a default or an event of default of the agreement, or which would constitute an event of default with the giving of notice or passage of time, or both, under the project approval agreement;

2. A written description of the present status of construction and use of the project and a description of any anticipated material change in the use of the project or in the number of employees located or to be located at the project;

3. For the applicable reporting year, the total amount of the sales tax that would have been paid on purchases of eligible property by or on behalf of the business but for the fact that the sales tax exemption provided was claimed and aggregated as a total from the commencement date; and

4. Any other reports required under the project approval agreement, such as the information provided to the Chief Executive Officer demonstrating the number of retained full-time jobs maintained by the business.

## History

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### HISTORY:

Amended by R. 2006 d.197, effective May 15, 2006.

See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

In (a), inserted "made in the preceding quarter" in the first sentence and substituted "section" for "subchapter" in the second sentence of the introductory paragraph and added (a)1.

Recodified from N.J.A.C. 12A:2A-2.10 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer" for "Secretary" throughout; and in (a)1, deleted "of Directors of the Commission" following the first occurrence of "Board" and "of Directors" following the second occurrence of "Board".

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## N.J.A.C. 19:31-16.11

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### **§ 19:31-16.11 Fees**

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- (a)** A non-refundable application fee of \$ 1,000 shall accompany every application for grant assistance.
- (b)** An annual servicing fee in an amount equal to two percent of the sales tax exemption used in the previous year, with a cap of \$ 75,000, shall be payable until the quarterly reports pursuant to N.J.A.C. 19:31-16.10(a) are no longer required to be filed.
- (c)** A non-refundable fee of \$ 750.00 shall be paid for each request for any administrative changes, additions or modifications to the grant; and a non-refundable fee of \$ 1,500 shall be paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval.
- (d)** The full amount shall be paid of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

### **History**

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#### **HISTORY:**

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.11, Events of recapture and default, recodified to N.J.A.C. 12A:2A-2.12.

Recodified from N.J.A.C. 12A:2A-2.11 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (b), updated the N.J.A.C. reference.

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Added (d).

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End of Document

## **N.J.A.C. 19:31-16.12**

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### **§ 19:31-16.12 Events of recapture and default**

---

**(a)** The occurrence of any one of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulations of any administrative or governmental body) shall constitute an event of recapture under the project approval agreement:

1. The business reduces or relocates the retained full-time jobs, such that the number of retained full-time jobs falls below the number required pursuant to N.J.A.C. 19:31-16.5(a)3iv (greater than five percent during the first two years of the commitment duration; greater than 10 percent during the remainder of the commitment duration) but has relocated at least the threshold number for project eligibility, 250 or 500 (as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable);
2. The business notifies the Authority, prior to the commitment duration, that it will not relocate 100 percent of the retained full-time jobs set forth in the project approval agreement, but will relocate at least the threshold number for project eligibility, 250 or 500, as applicable to the type of business; or
3. The business is a tenant with capital investment expenses incurred on behalf of the tenant by the landlord, the amount of which is less than the amount as certified pursuant to N.J.A.C. 19:31-16.7(b)2.

**(b)** The occurrence of any one or more of the events in (b)1 through 6 below (whether such events shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulations of any administrative or governmental body) shall constitute an "event of default" under the project approval agreement. Violations of the "events of default" provision of the project approval agreement shall be cause for immediate termination of the sales tax certificate as provided by law and repayment of the State sales tax.

1. The business fails to strictly observe or comply with the limitations and conditions of the use of the sales tax exemption as set forth in this subchapter, the sales tax certificate and the project approval agreement;
2. Any representation or warranty made by the business in its application or in the project approval agreement that is false, misleading, or inaccurate in any material respect;
3. Failure to comply with any condition or requirement of the project approval agreement;

4. The business reduces or relocates the retained full-time jobs below the threshold number for project eligibility, either 250 or 500, as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable;
5. The business fails to pay the sales tax recapture amount in a timely manner; or
6. The business fails to serve or perform in any other material respect any other term, covenant or condition of the business under the project approval agreement and this subchapter and such failure shall have continued for 30 days after the earlier of delivery to the business of written notice thereof from the Chief Executive Officer or the business's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by the payment of money or by diligent efforts within such 30-day period, but diligent efforts are properly commenced within the cure period and the business is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional 45 days and in no case to extend beyond the expiration of the project approval agreement.

## History

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### HISTORY:

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In the introductory paragraph of (a), substituted "events" for "event" following "whether such"; and rewrote (a)4.

Amended by R.2008 d.38, effective February 19, 2008.

See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

Section was "Events of default". Added new (a); recodified former (a) as (b); in the introductory paragraph of (b), substituted "the events in (b)1 through 6 below" for "the following events" and "approval agreement." for "agreement:" and inserted the last sentence; in (b)4, substituted "below the threshold number for project eligibility, either 250 or 500, as applicable to the type of business and as may be reduced up to five percent or 10 percent, as applicable" for "above the percentages certified pursuant to N.J.A.C. 12A:2A-2.5(a)3iv (greater than five percent during the first two years of the commitment duration; greater than 10 percent during the remainder of the commitment duration)" and deleted "or" from the end; added new (a)5; recodified former (a)5 as (a)6; and in (a)6, inserted "the" preceding "business is diligently" and deleted the former last sentence.

Recodified from N.J.A.C. 12A:2A-2.11 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.12, Remedies, recodified to N.J.A.C. 12A:2A-2.13.

Recodified from N.J.A.C. 12A:2A-2.12 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a)1, updated the N.J.A.C. reference; in (a)2, substituted "Authority" for "Commission"; and in (b)6, substituted "Chief Executive Officer" for "Secretary".

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (a)1, deleted "or" from the end; in (a)2, substituted "; or" for a period at the end; and added (a)3.

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## **N.J.A.C. 19:31-16.13**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM***

### **§ 19:31-16.13 Remedies**

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- (a) Upon the occurrence of an event of recapture as described in N.J.A.C. 19:31-16.12 and the project approval agreement, the Chief Executive Officer may demand the payment of the sales tax recapture amount, and in his or her sole discretion, may request that the Director of the Division of Taxation recover the sales tax recapture amount.
- (b) Upon the occurrence of any event of default as described in N.J.A.C. 19:31-16.12 and the project approval agreement, the Chief Executive Officer may, so long as such event of default is continuing, do one or more of the following as the Chief Executive Officer in his or her sole discretion shall determine, without limiting any other right or remedy the Chief Executive Officer or the Division of Taxation may have on account of such event of default:
1. The Chief Executive Officer may require the surrender by the business to the Chief Executive Officer of the sales tax certificate for suspension or cancellation; and/or
  2. The Chief Executive Officer may exercise any other right or remedy that may be available under applicable law or under the project approval agreement, including, without limitation:
    - i. Requesting the Division of Taxation recover the sales tax repayment amount and any additional repayment amount pursuant to the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq.;
    - ii. Recovering damages for loss of a bargain for any default during the commitment duration which damages the parties agree that the Chief Executive Officer's actual damages would be difficult to predict, and that the sales tax repayment amount and any additional repayment amount represents a reasonable approximation of such amount;
    - iii. Terminating the project approval agreement; or
    - iv. Proceeding by appropriate court action (legal or equitable) to enforce the terms of the project approval agreement.
- (c) In the event of default or recapture, statutory interest shall be calculated from the date of default or recapture through the date of payment for all purchases made by the business or project participant pursuant to the exemption certificate issued under the Act.
- (d) The rights and remedies of the Chief Executive Officer under this subchapter and the project approval agreement shall be cumulative and shall not exclude any other rights and remedies of the Chief Executive Officer or the Division of Taxation allowed by law with respect to any event of default under this subchapter or the project approval agreement.



## History

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### HISTORY:

Amended by R.2008 d.38, effective February 19, 2008.

See: 39 N.J.R. 3278(a), 40 N.J.R. 885(a).

Added new (a); recodified former (a) through (c) as (b) through (d); and in (c), inserted "or recapture" twice.

Recodified from N.J.A.C. 12A:2A-2.12 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

In (a) and in the introductory paragraph of (b), updated the N.J.A.C. reference. Former N.J.A.C. 12A:2A-2.13, Appeals, recodified to N.J.A.C. 12A:2A-2.14.

Recodified from N.J.A.C. 12A:2A-2.13 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Chief Executive Officer" for "Secretary" throughout; in (a) and the introductory paragraph of (b), updated the N.J.A.C. references; and in (b)2ii, substituted "Chief Executive Officer's" for "Secretary's".

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## N.J.A.C. 19:31-16.14

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM***

### **§ 19:31-16.14 Appeals**

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(a) The procedure for an appeal of the Board's action on an application to the program shall be as follows. An applicant may appeal the Board's action by submitting in writing to the Authority, within 30 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;
2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal; and
3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final agency decision on the appeal.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-2.13 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2A-2.14, Severability, recodified to N.J.A.C. 12A:2A-2.15.

Recodified from N.J.A.C. 12A:2A-2.14 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Board's" for "Secretary's" throughout; in (a), (b) and (e), substituted "Authority" for "Commission"; in (a), deleted "of Directors" following "Board"; in (b), deleted "arising from decisions of the Secretary" following "appeals"; and in (e), deleted "by the Secretary" following "action".

Repeal and New Rule, R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

Section was "Appeals".

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## **N.J.A.C. 19:31-16.15**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM***

### **§ 19:31-16.15 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-2.14 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Recodified from N.J.A.C. 12A:2A-2.15 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

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## **N.J.A.C. 19:31-17.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES***

### **§ 19:31-17.1 Applicability and scope**

---

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement P.L. 2005, c. 374 (the "Act"), and specifically, section 2 of the Act. Section 2 establishes an energy sales tax exemption program (the "Program") for retail sales of electricity and natural gas and their transport to a business in counties designated for the 50 percent tax exemption under section 1 of P.L. 1993, c. 373 that employs at least 50 people at that facility, at least 50 percent of whom are directly employed in a manufacturing process, and provided that the energy and utility services are consumed exclusively at that facility. The Program is to be administered by the Authority in accordance with the procedures for obtaining the exemption as may be provided under the Sales and Use Tax Act, P.L. 1966, c. 30, and this subchapter.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.1 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Substituted "Economic Development Authority (Authority)" for "Commerce, Economic Growth and Tourism Commission (the 'Commission')" and "Authority" for "Commission," preceding "in accordance", and deleted "established under the jurisdiction of the Commission, and is" following "Program is".

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## **N.J.A.C. 19:31-17.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES***

### **§ 19:31-17.2 Definitions**

---

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means P.L. 2005, c. 374, the Act extending the eligibility for the sales use tax exemption of energy and utility service purchases by certain manufacturing-intensive businesses in Urban Enterprise Zones and certain counties with reduced sales tax and amending P.L. 2004, c. 65.

"Application" means the authorized application submitted to the Authority from a business for approval of an energy sales tax exemption under the program.

"Authority" means the New Jersey Economic Development Authority.

"Board" means the Board of the New Jersey Economic Development Authority.

"Chief Executive Officer" means the Chief Executive Officer of the New Jersey Economic Development Authority.

"Directly employed" means employed as an employee, and not as an independent contractor, and directly involved in the manufacturing process of the business applying for the energy sales tax exemption.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Employ" means utilize the productive services of people as full-time employees. "Full-time employee" is defined at N.J.A.C. 19:31-14.2.

"Energy sales tax exemption" means the energy sales and use tax exemption for retail sales of energy and utility service approved by the Chief Executive Officer pursuant to the Act and this subchapter.

"Manufacturing" means the performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition or character different from that in which they were acquired. The change must be substantial and must result in a transformation of property into a different or substantially more useable product.

"Program" means the energy sales tax exemption program for retail sales of electricity and natural gas and their transport to a business in counties designated for the 50 percent tax exemption under section 1 of P.L. 1993, c. 373, that employs at least 50 people at that facility, at least 50 percent of whom are

directly employed in a manufacturing process, and provided that the energy and utility services are consumed exclusively at that facility, as authorized by P.L. 2005, c. 374 and this subchapter.

"Qualified county" means a county that is designated for the 50 percent sales tax exemption under section 1 of P.L. 1993, c. 373 (N.J.S.A. 54:32B-8.45).

## History

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### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.2 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In definition "Application", substituted "Authority" for "Commission"; added definitions "Authority", "Board" and "Chief Executive Officer"; and deleted definitions "Commission" and "Secretary"; in definition "Employ", updated the N.J.A.C. reference; and in definition "Energy sales tax exemption", substituted "Chief Executive Officer" for "Secretary".

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## **N.J.A.C. 19:31-17.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES***

### **§ 19:31-17.3 Eligibility criteria and condition for exemption**

---

**(a)** To qualify for energy sales tax exemption for the retail sale, transmission, or distribution of electricity and natural gas, an applicant shall be required:

1. To operate a manufacturing facility in a qualified county; and
2. Employ at least 50 people at that facility, at least 50 percent of whom are directly employed in the manufacturing process.

**(b)** The exemption is limited to retail sales of electricity and natural gas that are consumed at the manufacturing facility located in the qualified county.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.3 by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

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## **N.J.A.C. 19:31-17.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES***

### **§ 19:31-17.4 Requests for applications and renewal applications**

---

- (a)** All application requests shall be made to the New Jersey Economic Development Authority, 36 West State Street, P.O. Box 990, Trenton, NJ 08625, on forms and/or in a manner prescribed by the Authority.
- (b)** Annual renewal applications by applicants satisfying the criteria of N.J.A.C. 19:31-17.3 shall be required to be submitted annually within 45 days prior to the expiration date of the energy sales tax exemption.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.4 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Rewrote (a); and in (b), updated the N.J.A.C. reference.

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## **N.J.A.C. 19:31-17.5**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES***

### **§ 19:31-17.5 Application submission requirements**

---

- (a) Applicants shall submit to the Authority a completed Application for Energy Sales Tax Exemption signed by an authorized representative of the business. The application shall bear either a legible post-mark date or a date received stamp from the Authority.
- (b) Each application for the energy sales tax exemption submitted to the Authority shall include the following:
1. The name, address and Employer Identification Number (EIN), also known as a Federal tax identification number, of the applicant;
  2. The address of the facility that is the subject of this application;
  3. The number of total full-time employees at the facility for which the exemption application is being submitted;
  4. The number of full-time employees at that facility that are directly employed in the manufacturing process of the applicant;
  5. The name and address of the company(ies) that supply, transmit, and distribute electricity and natural gas to the facility;
  6. The account identification numbers and billing information including contact name for each account identified in (a)5 above;
  7. An estimate of the facility's annual quantity use of electricity and natural gas in units and in dollars;
  8. A description of the nature of the business and the facility for which the application is being made;
  9. The North American Industrial Classification System identification number(s) relating to the applicant;
  10. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey; and
  11. Such additional information as may be required by the Chief Executive Officer to provide a complete and accurate description of a particular business that is applying for the exemption.

### **History**

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**HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.5 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and the introductory paragraph of (b), substituted "Authority" for "Commission" throughout; and in (b)11, substituted "Chief Executive Officer" for "Secretary".

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## N.J.A.C. 19:31-17.6

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES***

### **§ 19:31-17.6 Application review procedures**

---

(a) The Authority shall conduct a review of the applications in the order received, commencing with the application bearing the earliest submission date. The Authority may require the submission of additional information to complete the application. Once the Authority determines that the application is complete, the Authority has 20 days to determine whether:

1. The application complies with the eligibility criteria;
2. The application satisfies the submission requirements; and
3. The application adequately provides information for the subject applicants.

(b) Upon completion of the review of an application pursuant to (a) above:

1. In the event that an application is approved, the Chief Executive Officer will promptly notify the applicant, the President of the Board of Public Utilities, and the Director that a business has met the requirements for the energy sales tax exemption. In accordance with P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.), the Division of Taxation shall then issue an Exemption Certificate to the approved applicant business.
2. In the event that an application is denied, the Chief Executive Officer will promptly notify the applicant of the denial and the reasons for the denial.
3. After notification of a denial, should the circumstances change so that the applicant reasonably believes its application will be approved, the applicant may reapply to the program no earlier than 90 days from the date the Chief Executive Officer issued the denial.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.6 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), substituted "Authority" for "Commission" throughout; and in (b)1 through (b)3, substituted "Chief Executive Officer" for "Secretary" throughout.

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End of Document

## **N.J.A.C. 19:31-17.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES***

### **§ 19:31-17.7 Monitoring, inspection, and reporting**

---

**(a)** The Authority and agents of the State of New Jersey shall monitor compliance with respect to the eligibility criteria and conditions for this energy sales tax exemption. An applicant that is approved to receive this exemption benefit shall permit any agency of the State of New Jersey to enter said business during reasonable business hours to determine compliance with the eligibility criteria and conditions of the program. Failure to permit access for this purpose will result in the forfeiture of the exemption benefit and may require repayment of sales and use tax previously exempted from payment, as the Authority shall determine.

**(b)** Each business that receives this energy sales tax exemption shall be required to maintain records documenting all of its tax-exempt energy purchases. This information must be supplied to the Authority upon request. In addition, a report summarizing the totals of all exempt energy purchases must be provided for the prior year as a component of the annual renewal application.

**(c)** The Chief Executive Officer shall provide the President of the Board of Public Utilities and Director with an annual list of all businesses that have been approved under this subchapter.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.7 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In (a) and (b), substituted "Authority" for "Commission" throughout; and in (c), substituted "Chief Executive Officer" for "Secretary".

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## N.J.A.C. 19:31-17.8

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 17. ENERGY SALES TAX EXEMPTION PROGRAM FOR CERTAIN COUNTIES***

### **§ 19:31-17.8 Rescission**

---

- (a) The Chief Executive Officer, in addition to any other rights or remedies available pursuant to law, may withhold, reduce, or terminate this energy sales tax exemption or any portion thereof for good cause. The circumstances under which this may occur include, but are not limited to:
1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules, such as failure to maintain the employment levels or the direct employment in manufacturing process required for eligibility;
  2. Submission of false or misleading information, or failure to submit relevant or complete information to the Authority;
  3. Any act of insolvency, the filing of a petition in bankruptcy (voluntary or involuntary), or the existence of other conditions affecting the financial integrity of the business; or
  4. Failure to comply with any condition, term, or requirement of the Authority relating to this program.
- (b) The Chief Executive Officer shall provide written notice to the business of the intent to rescind the approval of the business' application for the energy sales tax exemption benefit.
- (c) The Chief Executive Officer shall provide notice of the determination to rescind to the Director, who shall rescind the energy sales tax exemption certificate issued to the business.
- (d) Any rescission of the energy sales tax exemption will require repayment by the business of all exempted tax payments, and such penalties as may be assessed in accordance with the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., from the effective date of the rescission as determined by the Authority.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.8 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

In the introductory paragraph of (a), in (b) and in (c), substituted "Chief Executive Officer" for "Secretary"; and in (a)2, (a)4 and (d), substituted "Authority" for "Commission".

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## **N.J.A.C. 19:31-17.9**

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### **§ 19:31-17.9 Appeals**

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Appeals under this subchapter shall be subject to the appeal procedures governing the subchapter on sales and use tax exemption at N.J.A.C. 19:31-16.13.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 12A:2A-4.9 and amended by R.2010 d.231, effective October 18, 2010.

See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Updated the N.J.A.C. reference.

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## **N.J.A.C. 19:31-18.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority ("EDA" or "Authority") to implement the Grow New Jersey Assistance Act, P.L. 2011, c. 149 (the Act). The Act establishes the Grow New Jersey Assistance Program (the Program), administered by the Authority, to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State.

### **History**

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#### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

NEW JERSEY ADMINISTRATIVE CODE

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## **N.J.A.C. 19:31-18.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Grow New Jersey Assistance Program Act, P.L. 2011, c. 149.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-209).

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4 et seq.).

"Aviation district" means the area within a one-mile radius of the outermost boundary of the "Atlantic City International Airport," established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means an applicant proposing to own or lease premises, or that has acquired the premises within 24 months prior to project application, in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is a partnership, an S corporation, or a limited liability company or a non-profit corporation. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. In connection with a regional distribution facility of foodstuffs, the business entity or entities that own or lease such facility shall qualify as a business regardless of the type of the business entity or entities that own or lease such facility; the ownership or leasing of such facility by more than one business entity; or the ownership of the

business entity or entities that own or lease such facility. Such ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. Such members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. For the purposes of a regional distribution facility of foodstuffs, leasing shall include subleasing and tenants shall include subtenants. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate. After approval by the Board of the incentive, a business shall include a successor, as determined by the Authority in its sole discretion, to the business and a successor, as determined by the Authority in its sole discretion, to an affiliate of the business if the business applied for a credit based upon any capital investment made by or full-time employees of the affiliate, provided any successor must execute the incentive agreement, which shall include: the obligation to not reduce the number of full-time employees in the successor's Statewide employment in the last tax period prior to the approval of the award; an agreement that all parties to the incentive agreement are jointly and severally liable under the incentive agreement; and an acknowledgment that the tax credit will be allocated to each party to the incentive agreement in accordance with the number of full-time employees that each employs at the qualified business facility.

"Capital investment" in a qualified business facility means expenses by a business or any affiliate of the business incurred after application for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; obtaining and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property in a building, structure, facility, or improvement to real property, including associated soft costs; and receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13); or any of the preceding. Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings, or other environmental components required to attain the level of silver rating or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. In a Garden State Growth Zone, the following qualify as a capital investment: any development, redevelopment, and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the Authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair. A business that acquires or leases a qualified

business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord if pertaining primarily to the premises of the qualified business facility, and, if pertaining generally to the qualified business facility being acquired or leased, shall be allocated to the premises of the qualified business facility on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility. The capital investment described in this definition may include any capital investment made or acquired within 24 months prior to the date of application, so long as the amount of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the qualified business facility being acquired or leased on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility made or acquired prior to the date of application.

"College or university" means a county college, an independent institution of higher education, a public research university, or a State college.

"Commitment period" means the period of time that is 1.5 times the eligibility period.

"Complex of buildings" means buildings that are part of the same financing plan and operational plan.

"County college" means an educational institution established by one or more counties, pursuant to Chapter 64A of Title 18A of the New Jersey Statutes.

"Deep poverty pocket" means a population census tract having a poverty level of 20 percent or more, and which is located within the qualified incentive area.

"Disaster recovery project" means a project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster which, after utilizing all disaster funds available from Federal, State, county, and local funding sources, demonstrates to the satisfaction of the Authority that access to additional funding authorized pursuant to the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161, is necessary to complete the redevelopment project, and which is located within the qualified incentive area.

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Doctoral university" means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education's Basic Classification methodology on August 7, 2017, the effective date of P.L. 2017, c. 221.

"Eligibility period" means the period in which a business may claim a tax credit under the Grow New Jersey Assistance Program, beginning with the tax period in which the Authority accepts certification of the business that it has met the capital investment and employment requirements of the Grow New Jersey Assistance Program and extending thereafter for a term of not more than 10 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

"Eligible position" or "full-time job" means a full-time position in a business in this State that the business has filled with a full-time employee. To be eligible as an eligible position or full-time job, the employee must have his or her primary office at the qualified business facility and must spend at least 80 percent of his or her time at the qualified business facility, or spend any other period of time generally accepted by custom or practice as full-time employment at the qualified business

facility, as determined by the Authority in its sole discretion based on the characteristics of the employee's job and time at the facility, including, but not limited to, the amount of continuous time spent at the facility and the economic impact of the employee on the area in which the facility is located. For example, a reduced period of time is not applicable to a truck driver or salesperson who does not regularly contribute to the local economy due to the transient nature of his or her job responsibilities at the qualified business facility.

"Full-time employee" means a person: who is employed by a business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and who, except for purposes of the Statewide workforce, is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law. With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal: the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent; 35 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons. For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, 30 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether the hours of work were performed by one or more persons, and the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. Full-time employee shall also not include any person who at the time of project application works in New Jersey for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment but who prior to project application was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

"Garden State Create Zone" means the campus of a doctoral university and the area within a three-mile radius of the outermost boundary of the campus of a doctoral university, according to a

map appearing in the doctoral university's official catalog or other official publication on August 7, 2017, the effective date of P.L. 2017, c. 221.

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

"Grow New Jersey tax credit transferee" or "tax credit transferee" means if the business transfers its tax credits, pursuant to N.J.A.C. 19:31-18.13, the purchaser of the tax credits, including any subsequent purchasers of the tax credits.

"Highlands development credit receiving area or redevelopment area" means an area located within a qualified incentive area and designated by the Highlands Water Protection and Planning Council for the receipt of Highlands Development Credits under the Highlands Transfer of Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

"Incentive agreement" means the contract between the business and the Authority, which sets forth the terms and conditions under which the business shall be eligible to receive the incentives authorized pursuant to the Program.

"Incentive effective date" means the date the Authority issues a tax credit based on documentation submitted by a business pursuant to paragraph (1) of subsection b. of section 6 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-247).

"Independent institution of higher education" means a college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education that is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

"Industrial premises" or "industrial space" means premises or space in which at least 51 percent of the square footage will be or has been used for the assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts, including, but not limited to, factories or as a warehouse if the business uses the warehouse as part of the chain of distribution for products assembled, processed, and/or manufactured by the business at the qualified business facility; for the breaking or demolishing of finished or partially finished products; or for the production of oil or gas or the generation or transformation of electricity.

"Industrial use" means assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity, and including farming purposes as that term is defined under IRC section 6420(c)(3)(A), undertaken in an industrial space.

"Major rail station" means a railroad station located within a qualified incentive area that provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Mega project" means:

1. A qualified business facility located in a port district housing a business in the logistics, manufacturing, energy, defense, or maritime industries, either:
  - i. Having a capital investment in excess of \$ 20,000,000, and at which more than 250 full-time employees of the business are created or retained; or
  - ii. At which more than 1,000 full-time employees of the business are created or retained;
2. A qualified business facility located in an aviation district housing a business in the aviation industry, in a Garden State Growth Zone, or in a priority area housing the United States headquarters and related facilities of an automobile manufacturer, either:
  - i. Having a capital investment in excess of \$ 20,000,000, and at which more than 250 full-time employees of the business are created or retained; or
  - ii. At which more than 1,000 full-time employees of the business are created or retained;
3. A qualified business facility located in an urban transit hub housing a business of any kind, having a capital investment in excess of \$ 50,000,000, and at which more than 250 full-time employees of the business are created or retained;
4. A project located in an area designated in need of redevelopment, pursuant to P.L. 1992, c. 79 (N.J.S.A. 40A:12A-1 et seq.), prior to the enactment of P.L. 2014, c. 63, within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties, having capital investment in excess of \$ 20,000,000, and at which more than 150 full-time employees of the business are created or retained; or
5. For applications submitted after July 1, 2016, a qualified business facility primarily used by a business principally engaged in research, development, or manufacture of a drug or device, as defined in N.J.S.A. 24:1-1, or primarily used by a business licensed to conduct a clinical laboratory and business facility pursuant to the "New Jersey Clinical Laboratory Improvement Act," P.L. 1975, c. 166 (N.J.S.A. 45:9-42.26 et seq.), either:
  - i. Having a capital investment in excess of \$ 20,000,000, and at which more than 250 full-time employees of the business are created or retained; or
  - ii. At which more than 1,000 full-time employees of the business are created or retained.

"Minimum environmental and sustainability standards" means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal Revitalization Index" means the 2007 index by the Office for Planning Advocacy within the Department of State measuring or ranking municipal distress.



"New full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

"Non-gaming business" means any business, or portion of any business, which is not engaged in the operation of casino gambling or other gaming as defined in N.J.S.A. 5:12-218. For projects that contain both gaming and non-gaming operations, the number of full-time jobs and amounts of eligible capital investment shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, for example, if gaming revenue is 40 percent of total revenue, then 60 percent of the full-time employees would be deemed non-gaming and in an eligible position for the program.

"Other eligible area" means the portions of the qualified incentive area that are not located within a distressed municipality, or the priority area.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Port district" means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to The South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

"Priority area" means the portions of the qualified incentive area that are not located within a distressed municipality and which: are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition; intersect with portions of a deep poverty pocket, a port district, or were Federally owned land approved for closure under a Federal Commission on Base Realignment and Closure action; are the proposed site of a disaster recovery project, a qualified incubator facility, a highlands development credit receiving area or redevelopment area, a tourism destination project, or transit oriented development; or contain a vacant commercial building having over 400,000 square feet of office, laboratory, or industrial space available for occupancy for a period of over one year; or a site that has been negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the Grow New Jersey Assistance Program established pursuant to P.L. 2011, c. 149 and provided in this subchapter.

"Project" means the capital investment and the employment commitment at a qualified business facility pursuant to the incentive agreement.

"Public research university" means a public research university as defined in section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

"Qualified business facility" means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business that is not engaged in final point of sale retail business at that location, which shall not include a university research hospital, unless the building, complex of buildings, or structural components of buildings, and all machinery and equipment located within a qualified incentive area, are used in connection with the operation of: a final point of sale retail business located in a Garden State Growth Zone that will include a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by either a full service supermarket or grocery store; or a tourism destination project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219).

"Qualified incentive area" means an aviation district, a port district, a distressed municipality, urban transit hub municipality, or an area:

1. Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or
2. Located within:
  - i. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);
  - ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4), including the sports complex, that is, the 750-acre sports and exposition site located in the Borough of East Rutherford under the jurisdiction of the New Jersey Sports and Exposition Authority as of the effective date of P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.) and such additional property that is owned and controlled by the New Jersey Sports and Exposition Authority as may be designated by the Meadowlands Regional Commission, as established by P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), and section 6 of P.L. 2015, c. 19 (N.J.S.A. 5:10A-6) from time to time as part of the sports complex;
  - iii. A regional growth area, a rural development area zoned for industrial use as of December 15, 2016, the effective date of P.L. 2016, c. 75, a town, a village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);
  - iv. The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a highlands development credit receiving area or redevelopment area;
  - v. A Garden State Growth Zone;
  - vi. Land approved for closure under any Federal Commission on Base Realignment and Closure action; or

**vii.** Areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) only if such areas are located within:

- (1)** A designated center under the State Development and Redevelopment Plan;
- (2)** A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts rules to revise this definition as it pertains to Statewide planning areas;
- (3)** Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-14);
- (4)** Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided the expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals;
- (5)** The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a highlands development credit receiving area or redevelopment area; or
- (6)** Any area on which an existing tourism destination project is located.

"Qualified incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3).

"Qualified incubator facility" means a commercial building located within a qualified incentive area: that contains 50,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with a research institution, teaching hospital, college, or university, which is evidenced by a written agreement that demonstrates this collaboration; and within which, at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period. The restricted space may be comprised of non-contiguous areas, and its location within the qualified incubator facility may change from time to time.

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country or eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, "retained full-time job" shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in the Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. For the purposes of the certifications and annual reports required pursuant to the incentive agreement, N.J.S.A. 34:1B-245.e or 247.b(2), to the extent an

eligible position that was the basis of the award no longer exists, a business shall include as a retained full-time job a new eligible position that is filled by a full-time employee as set forth in N.J.A.C. 19:31-18.4(d).

"SDA district" means an "SDA district" as defined in section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situate.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, provided they do not exceed 20 percent of total capital investment.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

"Square feet of gross leasable area" or "gross leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"State college" means a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes.

"Substantial environmental remediation" means the completion of the necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the capital investment in a qualified business facility.

"Targeted industry" means any industry identified from time to time by the Authority including initially, a transportation, manufacturing, defense, energy, logistics, life sciences, technology, health, and finance business, but excluding a primarily warehouse, distribution, or fulfillment center business.

"Technology startup company" means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

"Tourism destination project" means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the qualified incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business facility within an established Tourism District with a significant impact on the economic viability of that District.

"Transit oriented development" means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-8.8(c)4, a bus station platform is a terminal as listed on the EDA's website at [www.njeda.com](http://www.njeda.com).

"Urban transit hub" means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208) and also located within a qualified incentive area.

"Urban transit hub municipality" means a municipality that qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-17 178 et seq.), or that has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation that is taxable and that which is tax exempt.

"Withholdings" means the amount withheld by a business from the wages of full-time employees or estimated taxes paid by, or on behalf of, partners that are full-time employees, or any combination thereof, pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Withholdings shall not include amounts withheld by a business from stock options or from stock options, money, or other payments given to a full-time employee pursuant to the termination of employment of the full-time employee. Withholdings shall include amounts withheld by a business from money or other payments given to a full-time employee pursuant to a bonus for commencing employment or for services rendered by the full-time employee.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added definitions, "Aviation district", "Commitment period", "Complex of buildings", "Deep poverty pocket", "Disaster recovery project", "Distressed municipality", "Eligibility period", " 'Garden State Growth Zone' or 'growth zone' ", "Highlands development credit receiving area or redevelopment area", "Incentive agreement", "Incentive effective date", "Industrial premises", "Major rail station", "Mega project", "Minimum environmental and sustainability standards", "Moderate-income housing", "Municipal Revitalization Index", "Non-industrial premises", "Other eligible area", "Port district", "Priority area", "Project", "Qualified incubator facility", "SDA district", "SDA municipality", "Square feet", " 'Square feet of gross leasable area' or 'gross leasable area' ", "Substantial environmental remediation", "Targeted industry", "Technology startup company", "Tourism destination project", "Transit oriented development", "Urban transit hub", "Urban transit hub municipality", and "Withholdings"; rewrote definitions "Business", "Capital investment", "Full-time employee", "Qualified business facility", "Qualified incentive area" and "Retained full-time job"; substituted definition, " 'Eligible position' or 'full-time job' " for definition "Eligible position"; and deleted definitions, "Commitment duration", "Public transit facility", and "Tax credit term".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

Added definition "Non-gaming business"; and rewrote definition "Retained full-time job".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

In definition "Business", inserted the last sentence; and rewrote definition " 'Eligible position' or 'full-time job' ".

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In definition "Qualified incentive area", rewrote paragraph 2ii; and in definitions "Qualified incubator facility" and "Technology startup company", inserted the last sentence.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In definition "Mega project", in paragraph 3, deleted "or" from the end, in paragraph 4, inserted a comma following ")" and following "63", and substituted "; or" for a period at the end, and added paragraph 5; and in definition "Retained full-time job", substituted "as set forth in N.J.A.C. 19:31-18.4(d)" for "provided that the position is included in the order of date of hire and is not the basis for any other incentive award".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

Added definitions "College or university", "County college", "Doctoral university", "Garden State Create Zone", "Independent institution of higher education", "Public research university", and "State college"; made grammatical and technical changes in definitions "Capital investment", "Disaster recovery project", "Full-time employee", and "Mega project"; in definition "Qualified incentive area", in 2iii, inserted "a rural development area zoned for industrial use as of December 15, 2016, the effective date of P.L. 2016, c. 75," and in 2vii(4) substituted the second occurrence of "the" for "such"; and in definition "Withholdings", deleted ", and, if the full-time employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., the amount of withholding that would occur if the employee were to move to New Jersey." from the end of the first sentence.

NEW JERSEY ADMINISTRATIVE CODE

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## **N.J.A.C. 19:31-18.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.3 Eligibility criteria**

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**(a)** In order to be considered for a Grow New Jersey tax credit, the chief executive officer of a business shall demonstrate at the time of application that the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to or greater than, the applicable capital investment required in (a)1 below at which it will retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable number in (a)2 below.

**1.** For all projects approved after September 18, 2013, the effective date of P.L. 2013, c. 161, the minimum capital investment required shall be reduced by one-third (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties:

- i.** For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development premises for continued similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$ 20.00 per square feet of gross leasable area;
- ii.** For the new construction of an industrial, warehousing, logistics, or research and development premises for similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$ 60.00 per square feet of gross leasable area;
- iii.** For the rehabilitation, improvement, fit-out, or retrofit of an existing premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$ 40.00 per square feet of gross leasable area;
- iv.** For the new construction of a premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$ 120.00 per square feet of gross leasable area. For purposes of this subparagraph, non-industrial premises shall include vacant industrial premises that are unleased and unoccupied; and
- v.** The minimum capital investment shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion, and have the same minimum investment per square feet of gross leasable area. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. Notwithstanding that buildings in a complex of buildings may have different minimum capital investment requirements, the capital investment in a complex of buildings shall be aggregated for purposes of qualifying as a

mega project or for an award pursuant to N.J.A.C. 19:31-18.8(h). The following are examples:

**(1)** A complex of buildings consists of building A and building B, which are both on the same block but separated by other buildings. Both buildings are existing office buildings that will be rehabilitated. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

**(2)** A complex of buildings will consist of building A and building B, which will be adjacent to each other but have separate entrances. Building A is an existing office building that will be rehabilitated; building B will be a newly constructed office building. The business will have to make a minimum capital investment at building A and a separate minimum capital investment at building B.

**(3)** A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot. Both buildings are existing industrial buildings that will be rehabilitated for continued industrial use. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

**2.** The minimum number of new or retained full-time jobs required shall be reduced by one-quarter (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

**i.** For a business that is a technology startup company or a manufacturing company, a minimum of 10 new or 25 retained full-time jobs.

**ii.** For a business engaged primarily in a targeted industry other than a technology startup company or a manufacturing company, a minimum of 25 new or 35 retained full-time jobs.

**iii.** For any other business, a minimum of 35 new or 50 retained full-time jobs.

**iv.** The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings. Notwithstanding the preceding sentence, if a complex of buildings includes one or more buildings located in a Garden State Growth Zone or a county for which the minimum number of new or retained full-time jobs is reduced, the business shall meet the minimum job requirement by locating no less than the reduced minimum number of new or reduced full-time jobs at the buildings in the Garden State Growth Zone or one of the counties for which the minimum capital investment required is reduced. The following are examples:

**(1)** The complex of buildings for a manufacturing company consists of three buildings located in one municipality and one building located in a different municipality. The company will have three new jobs at each building. Neither municipality is a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the minimum full-time jobs, 10 new or 25 retained full-time jobs may be met in the aggregate across all four buildings. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 12 new full-time jobs.

**(2)** The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will



have four new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the reduced minimum full-time jobs, eight new or 19 retained full-time jobs, has been met in the aggregate at the buildings in municipality A. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 10 new full-time jobs.

**(3)** The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have three new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has not met the minimum full-time jobs because the number of jobs in the aggregate at the buildings in municipality A is six, which is less than the reduced minimum full-time jobs, eight new or 19 retained full-time jobs.

**3.** The business shall also demonstrate to the Authority that:

i. The qualified business facility shall be constructed in accordance with the minimum environmental and sustainability standards;

ii. The proposed capital investment and the resultant retention and creation of full-time jobs will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to the State, as calculated pursuant to N.J.A.C. 19:31-18.7(c) prior to taking into account the value of the requested tax credit, and shall be based on the benefits generated during the first 20 years following the completion of the project, except that:

**(1)** For a mega project or a project located in a Garden State Growth Zone, the determination shall be based on the benefits generated during a period of up to 30 years following the completion of the project;

**(2)** For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefit determination shall be based on the benefits generated during a period of up to 35 years following completion of the project, and shall equal at least 100 percent of the requested tax credit allocation; and

**(3)** The net positive economic benefit shall be discounted to reflect the uncertainty of the business's location after the commitment period expires;

iii. The award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, consistent with the following, as applicable:

**(1)** Except as determined by the Authority in its sole discretion based on extraordinary circumstances, including, but not limited to, geographic or regulatory constraints of a project, the business shall provide a full economic analysis of the in-State and out-of-State alternatives under consideration by the business to support that it demonstrates a material factor.

**(2)** Except for (a)3iii(4) below, the award of tax credits shall not be considered a material factor in the creation or retention of full-time jobs filled by employees providing professional services, as defined in N.J.S.A. 14A:17-3(1), and their direct administrative support staff, unless as of the date of the business's application, the full-time job is filled by an employee whose primary business office is located outside of the State. Direct administrative support staff shall not include employees in information technology, human resources, or employee relations positions.

**(3)** If, in a Garden State Growth Zone, the site was acquired or leased prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site.

**(4)** In satisfaction of this requirement, with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, the award of tax credits will be a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority; and

**iv.** For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility will have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

**(1)** Having a capital investment in excess of \$ 50,000,000, excluding any capital investment for site acquisition, at which more than 250 full-time employees of a business are created or retained; and

**(2)** Demonstrating to the satisfaction of the Authority a combination of two or more of:

**(A)** Positive financial benefit to the District;

**(B)** A net increase in visitors to the District;

**(C)** An increase in marketing dollars spent on the District; or

**(D)** The addition of unique amenities or services to the existing project or District.

**(b)** Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

**(c)** A business shall be treated as owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

**(d)** Pursuant to P.L. 2013, c. 161, a business may apply for tax credits under the program for more than one project pursuant to one or more applications. Notwithstanding this subsection, the Authority may, in its sole discretion, consider two or more applications as one application based

on factors including, but not limited to, the location of the qualified business facilities, the types of jobs proposed, and the business's financing and operational plans.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a)3iii, substituted "; and" for a period at the end, and added (a)3iv.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

In (a)1iii, deleted "and" from the end; in (a)1iv, substituted "; and" for a period; added (a)1v and (a)2iv; in (a)2iii, substituted a period for a semicolon; and rewrote (a)3iii.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)1v, inserted the second sentence; in the introductory paragraph of (a)3iii, substituted ", consistent with the following, as applicable" for a period at the end; added (a)3iii(2); recodified former (a)3iii(2) through (3) as (a)3iii(3) through (4); and in (d), inserted the second sentence.

Amended by R.2017 d.071, effective April 17, 2017.

See: 49 N.J.R. 197(a), 49 N.J.R. 776(b).

In (a)3ii(1), deleted "and" from the end; in (a)3ii(2), inserted "and" at the end; and added (a)3ii(3).

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## **N.J.A.C. 19:31-18.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.4 Restrictions**

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**(a)** The Authority, pursuant to P.L. 2013, c. 161, shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the Business Retention and Relocation Assistance Act, P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.), the Business Employment Incentive Program Act, P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.), or any other program administered by the Authority unless:

1. The business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-245). In the instance of the business terminating an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, the Authority shall recapture all or part of any award, provided that such permitted recapture may be calculated to recognize the period of time that the business was in compliance prior to termination and such recapture amount may be paid after approval by the Authority of the business's application for a tax credit incentive award under P.L. 2013, c. 161, but the recapture amount must be paid before the Authority shall execute the incentive agreement, which shall be executed within 18 months following the date of approval of the business's application;
2. The capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives; or
3. The incentives pursuant to the Business Retention and Relocation Assistance Grant (BRRAG) Program Sales and Use Tax Exemption, sections 19 through 22 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-185 through 188) are awarded simultaneously with the Grow New Jersey Tax credit.

**(b)** A project that consists solely of point-of-final-purchase retail facilities, excluding catalog distribution centers, shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. For a qualified business facility that is a mixed-use project that includes retail facilities and that is located in a Garden State Growth Zone or the Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, retail facilities in an amount up to 7.5 percent of the mixed-use project may be included in the mixed-use project application for a grant of tax credits along with the non-retail facilities and that application may include in the aggregate the pro-rata number of full-time employees employed by any number of tenants or other occupants of the included retail facilities. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility

shall not be eligible for a grant of tax credits. For the purposes of this subsection, a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by a full-service supermarket or grocery store, located in a Garden State Growth Zone that qualified under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), or catalog distribution centers shall not be considered point-of-final-purchase retail facilities.

**(c)** For a qualified incubator facility, the maximum number of positions and full-time jobs employed by businesses that are not technology startup companies that are included in the calculation of the total tax credit amount shall not exceed twice the number of positions and full-time jobs employed by technology startup companies. No position or full-time job employed by the operator or a technology startup company may be included in the application as a retained position or full-time job.

**(d)** For the purposes of the certifications and annual reports required pursuant to the incentive agreement and set forth in N.J.A.C. 19:31-18.7(f) and 18.11(a), if a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs. To the extent an eligible retained full-time job that was the basis of the award no longer exists, the business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award. If a qualified business facility comprises a complex of buildings with different factors affecting the tax credit calculation, the business shall meet the employment requirements related to the retained full-time jobs at each building before receiving benefits for new full-time jobs at any building. The business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, regardless of the location of such position, provided that the position is included in the order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new eligible position filled by a full-time employee or the tax credit for the retained full-time job that no longer exists. The following are examples:

1. A project is approved for 38 new full-time jobs and 53 retained full-time jobs. The business submits a certification that it created 38 new full-time jobs and retained 50 full-time jobs. Because three eligible positions that were the basis of the award no longer exist, three of the new eligible positions shall be included as retained full-time jobs. The jobs in the certification shall be considered as 35 new full-time jobs and 53 retained full-time jobs for the term of the grant. If, in an annual report, retained full-time jobs fall to 45, the jobs in the annual report shall be considered as 30 new full-time jobs and 53 retained full-time jobs.
2. A project consisting of a complex of two buildings is approved for 50 new full-time jobs and 100 retained full-time jobs. The total tax credit amount is calculated separately for jobs at each building because building A is in a transit-oriented development and building B is not. The calculation, based on 50 new full-time jobs and 50 retained full-time jobs in building A and 50 retained full-time jobs in building B, results in \$ 3,625 per retained full-time job in building A and \$ 2,219 per retained full-time job in building B. The business submits a certification that it created 50 new full-time jobs and retained 47 full-time jobs in building A and retained 45 full-time jobs in building B. Because eight eligible positions that were the basis of the award no longer exist, eight of the new eligible positions shall be included as retained full-time jobs with the retained full-time positions in building B filled first. The jobs in the certification shall be considered as 42 new full-time jobs and 50 retained full-time jobs in building A and 50

retained full-time jobs in building B. The five eligible positions that are allocated to building B will be paid at the rate of \$ 2,219 per position. The three eligible positions that are allocated to building A will be paid at the rate of \$ 3,625 per position. If in an annual report, the retained full-time jobs at building B fall to 40, the jobs in the annual report shall be considered as 45 new full-time jobs and 50 retained full-time jobs in building A and 50 retained full-time jobs in building B, and will be paid accordingly.

**3.** A manufacturing company's project is approved for 10 new full-time jobs and 30 retained full-time jobs. The business submits a certification that it created 10 new full-time jobs and retained 28 full-time jobs. Because two eligible positions that were the basis of the award no longer exist, two of the new eligible positions shall be included as retained full-time jobs. The jobs in the certification shall be considered as eight new full-time jobs and 30 retained full-time jobs. As the eight new full-time jobs are less than the minimum number of new jobs required for eligibility, only the 30 retained full-time jobs are eligible for the tax credit, regardless of any increase in new jobs in future years.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added new (a); deleted former (a) through (c) and (e) through (i); recodified former (d) as (b); and rewrote (b).

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (b).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Reserved (c); and added (d).

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Deleted (c); recodified former (d) as (c) and rewrote (c); and added (d).

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## **N.J.A.C. 19:31-18.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.5 Application submission requirements**

**(a)** Each application to the Authority made by a business shall include the following information in an application format prescribed by the Authority:

**1.** Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

- i.** The name of the business;
- ii.** The contact information of the business;
- iii.** The prospective future address of the business (if different);
- iv.** The type of the business;
- v.** The principal products and services and three-digit North American Industry Classification System number;
- vi.** The New Jersey tax identification number;
- vii.** The Federal tax identification number;
- viii.** The total number of full-time employees in New Jersey at the time of application and in the last tax period prior to the credit amount approval;
- ix.** The total list of New Jersey operations;
- x.** A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;
- xi.** Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- xii.** Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
- xiii.** A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
- xiv.** In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners'

distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

**xv.** Any other necessary and relevant information as determined by the Authority for a specific application;

**2.** Project information shall include the following:

**i.** An overall description of the proposed project;

**ii.** A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility, and financial information demonstrating ability to complete the capital investment;

**iii.** The estimated value of the capital investment;

**iv.** Supporting evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit pursuant to N.J.A.C. 19:31-18.3(a)3ii, taking into account the criteria listed at N.J.A.C. 19:31-18.7(c).

**(1)** In determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer for North American operations, shall submit a certification indicating that:

**(A)** Any existing full-time jobs are at risk of leaving the State or being eliminated;

**(B)** Any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and

**(C)** The business's chief executive officer, or equivalent officer for North American operations, has reviewed the information submitted to the Authority and that the representations contained therein are accurate;

**(2)** In satisfaction of (a)2iv(1)(A) and (B) above, the certification with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, shall indicate that the provision of tax credits under the program is a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. If the site was acquired within 24 months prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site;



**(3)** For a qualified incubator facility, the certifications in (a)2iv(1) above shall be certified by the operator's chief executive officer or equivalent officer for North American operations, provided that to include any retained full-time job or position employed by a business that is not a technology startup company, the operator shall submit with the application the certification by that business's chief executive officer or equivalent officer for North American operations. To demonstrate that such certifications and the certification in (a)2iv(1)(A) and (B) above are satisfied, the operator shall demonstrate that it would locate the qualified incubator facility at an out-of-State location, but for the tax credit award or that it has a project financing gap in its business model as determined by a fiscal analysis conducted by the Authority, taking into account the project's internal rate of return on the operator's contributed capital and net profit margin; and

**(4)** The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project.

**v.** A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

**vi.** Identification of the site of the proposed qualified business facility, including the block and lot of the site as indicated upon the local tax map. For purposes of determining geographical location of contiguous buildings that extend over more than one geographical location, the contiguous buildings shall be considered in the geographical location in which the contiguous buildings are located with the most beneficial total tax credit amount. For a qualified incubator facility, common areas that are shared by the entire building in which the qualified incubator facility is located and not exclusive to the qualified incubator facility shall not be counted as part of the qualified incubator facility, but the size of the space restricted for use by technology startup companies may include the pro-rata share of any common areas within the qualified business facility;

**vii.** A project schedule that identifies projected move dates for the proposed qualified business facility;

**viii.** A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

**ix.** The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the business, as well as all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist;

**x.** The total number of anticipated new and retained full-time jobs in New Jersey and occupy the qualified business facility and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity; and

**xi.** Any other necessary and relevant information as determined by the Authority for a specific application; and

**3.** Employee information shall include the following:

**i.** A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility;

**ii.** The average annual wage and benefit rates of full-time employees and new and retained full-time jobs at the qualified business facility;

**iii.** Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy, such as the tax credits, pursuant to P.L. 2007, c. 200;

**iv.** Any other necessary and relevant information as determined by the Authority for a specific application; and

**4.** A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the last tax period prior to the credit amount approval.

**(b)** The business applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-18.6(a).

**(c)** A business shall be allowed to assign their ability to apply for the tax credit for a project located in a Garden State Growth Zone under this subchapter to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone, as determined by the Authority. The non-profit organization may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified business facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

**(d)** An organization operating a qualified incubator facility may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified incubator facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

**1.** For purposes of this subsection, "positions" mean full-time employees who are employed by a business at a qualified incubator facility and who spend at least 16 hours a week at the qualified incubator facility and must spend at least 80 percent of his or her time, or any other period of time generally accepted by custom or practice as determined by the Authority, in this State. A position at a qualified incubator facility shall be considered a full-time job under this program.

**2.** In addition to the information required pursuant to (a) above, the organization operating a qualified incubator facility shall be required to submit:

**i.** The names, contact information, New Jersey employer identification, and Federal employer identification number of any party on whose behalf it is making the application to the extent known at the time of application; and

**ii.** The organization's business model and a detailed explanation as to how the business model will ensure that the benefit from the award of tax credits will inure to the businesses and positions on whose behalf the application is made and how the businesses and full-

time employees filling positions will be informed of the award and the benefits from the award.

**(e)** For any project located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or any project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, a business may assign its ability to apply for the tax credit under this subsection to the developer of the facility. The developer may make an application on behalf of the business which meets the requirements for the tax credit, or a group of non-qualifying businesses located at the business facility, that shall be considered a unified project for the purposes of the incentives provided under this section, and the developer may apply for tax credits available based on the number of jobs provided by the business or businesses and the total capital investment of the business or businesses and the developer.

**(f)** In addition to the information required pursuant to (a) above, any applicant authorized pursuant to (c) and (e) above shall be required to submit:

1. Evidence of the assignment to apply for the tax credit from the assignee or the party on whose behalf it is making the application;
2. The name of the assignee or the party on whose behalf it is making the application;
3. The contact information of the assignee or the party on whose behalf it is making the application;
4. The New Jersey employer identification number of the assignee or the party on whose behalf it is making the application;
5. The Federal employer identification number of the assignee or the party on whose behalf it is making the application; and
6. If the applicant is a non-profit authorized under (c) above, the mission statement of the non-profit organization.

**(g)** A business that has already applied for a tax credit incentive award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such tax credits, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (a)2iv(3), (a)2vi, and (c); added new (d) through (f); and recodified former (d) as (g).

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a)1viii and (a)2vi; in (a)3iii, inserted a comma following "subsidy", and deleted "and" from the end; in (a)3iv, substituted "; and" for a period; and added (a)4.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Rewrote (a)2iv, (a)2vi, (c), and (d); and in the introductory paragraph of (f), deleted ", (d)," following "(c)".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote (a)2iv(3).

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## **N.J.A.C. 19:31-18.6**

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### **§ 19:31-18.6 Fees**

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**(a)** A business applying for benefits under this program shall submit a one-time non-refundable application fee, with payment in the form of a check, payable to the "New Jersey Economic Development Authority." The application fee shall be as follows:

1. For projects with total tax credits of \$ 10,000,000 or less and 100 or fewer new and retained full-time jobs, the fee to be charged at application shall be \$ 1,000;
2. For projects with total tax credits of \$ 10,000,000 or less and more than 100 new and retained jobs, the fee to be charged at application shall be \$ 2,500; and
3. For projects with total tax credits in excess of \$ 10,000,000, the fee to be charged at application shall be \$ 5,000.

**(b)** A business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

**(c)** A non-refundable fee of .5 percent of the approved tax credit shall be charged prior to the approval of the tax credit by the Authority as follows:

1. For each project with tax credits of \$ 1,000,000 or less annually, the fee shall not exceed \$ 50,000;
2. For each project with tax credits of \$ 1,000,000 to \$ 4,000,000 annually, the fee shall not exceed \$ 200,000; and
3. For each project with tax credits in excess of \$ 4,000,000 annually, the fee shall not exceed \$ 500,000. The fee shall be refunded if the Authority does not approve the tax credit.

**(d)** For each project with tax credits of \$ 1,000,000 or less annually, a non-refundable fee of .5 percent of the tax credit, not to exceed \$ 50,000, shall be paid prior to the receipt of the tax credit certificate. For each project with tax credits in excess of \$ 1,000,000 annually, a non-refundable fee of .5 percent of the tax credit, not to exceed \$ 500,000, shall be paid prior to the receipt of the tax credit certificate.

**(e)** A business shall pay to the Authority an annual servicing fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report. For each project with tax credits of \$ 1,000,000 or less annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$ 20,000

per year; and for each project with tax credits in excess of \$ 1,000,000 annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$ 75,000 per year.

**(f)** A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-18.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee of \$ 5,000 and \$ 2,500 for each additional request made annually.

**(g)** For each project with total tax credits of \$ 5,000,000 or less, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of \$ 5,000,000, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

**(h)** A non-refundable fee of \$ 5,000 shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a non-refundable fee of \$ 10,000 shall be paid for the second such six-month extension.

**(i)** A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee of \$ 5,000 for terminations that do not require extensive staff time and Board approval; and a non-refundable fee of \$ 25,000 for terminations that require extensive staff time or Board approval.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote (c); in (f), substituted "\$ 5,000 and \$ 2,500 for each additional request made annually" for "\$ 2,500"; in (g), substituted "\$ 5,000" for "\$ 2,500" and "\$ 10,000" for "\$ 5,000"; and in (h), substituted "\$ 5,000" for "\$ 1,000" and "\$ 10,000" for "\$ 2,500".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

In (g), inserted "or less".

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Rewrote (b).

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## **N.J.A.C. 19:31-18.7**

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### **§ 19:31-18.7 Review of application and certification of project completion**

**(a)** A business seeking an approval of tax credits for a qualified business facility shall apply for tax credits prior to July 1, 2019, except as set forth at N.J.A.C. 19:31-18.3(b) and except for businesses seeking a credit for a mega project, which shall apply by September 18, 2017, four years after the effective date of P.L. 2013, c. 161.

**(b)** The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be deemed complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

**(c)** In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-18.3(a)3ii and as certified by the chief executive officer pursuant to N.J.A.C. 19:31-18.5(a)2iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new employees and retained employees for which the award of tax credits will be a material factor in the business's decision to retain the employees in the State, and peripheral economic growth caused by the business's relocation, provided that such determination shall be limited to the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority. Retained employees in a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), and regulated by the Casino Reinvestment Development Authority shall not be included unless the business demonstrates that the award of tax credits will be a material factor to retain the employees in the State in addition to demonstrating the material factor provision in N.J.A.C. 19:31-18.3(a)3iii(4).



For a project located in a Garden State Growth Zone, the Authority may award bonuses in its net positive economic benefit calculation including, but not limited to, full payment of taxes for a qualified business facility that receives a tax abatement pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. With regard to a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefits test may utilize the value of those property taxes subject to the provisions of section 24 of P.L. 2013, c. 161 (N.J.S.A. 52:27D-489s) or the value of those property taxes that would have been assessed on the new construction, improvements, or substantial rehabilitation of structures on real property if the structures were not exempt because they are on real property owned by a public entity and incremental sales and excise taxes that are derived from activities within the area and which are rebated or retained by the municipality pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.) or any other law providing for such rebate or retention.

**(d)** Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, and the maximum amount of tax credits to be granted and, shall promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State job transfers, after staff's review of the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third-party consultants, the cost which will be paid by the applicant, the Board shall make a separate determination to verify and confirm by way of making a factual finding by separate vote that the jobs are at risk of leaving the State, and as to the date or dates at which the Authority expects that those jobs would actually leave the State, or, with respect to projects located in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), that the provision of tax credits under the program is a material factor in the business's decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.). The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter and incentive agreement, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the Grow New Jersey tax credits.
2. In the approval letter to the business, the Authority shall set a date by which its approval will expire.

**(e)** Within 12 months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, committed financing for and site control of the qualified business facility, except that a business

shall have 24 months to submit such progress information for a mega project or for a qualified business facility that consists of new construction. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within the required period of time, or if progress as indicated has not been achieved.

**(f)** Upon completion of the capital investment and employment requirements of the program, the business shall submit certifications evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements with supporting evidence satisfactory to the Authority.

**1.** The business shall submit a certification of a certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority, relating to the capital investment. The amount of the capital investment in the certification that has been approved by the Authority shall not be increased regardless of additional capital investment in the qualified business facility, provided, however, that in no event will the amount of capital investment exceed the amount of capital investment previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

**2.** The business shall submit a certification of the chief financial officer of the business, which certification shall be acceptable to the Authority, evidencing that the business has satisfied the conditions relating to any employment requirements. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional jobs located at the qualified business facility, and, except as set forth in N.J.A.C. 19:31-18.11(e), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in N.J.A.C. 19:31-18.4(d). In the event the number of new and/or retained full-time jobs is reduced below the number of new and/or retained full-time jobs in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

**3.** Absent extenuating circumstances and the written approval of the Authority, the certification with respect to capital investment and employment shall be submitted within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline, however, in no event, shall the incentive effective date occur later than four years following the date of approval of an application by the Authority, except that:

**i.** As of January 19, 2016, the effective date of P.L. 2015, c. 252, a business that applied for the tax credit prior to July 1, 2014, under P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.), and was required to submit its documentation no later than July 28, 2017, shall submit its documentation to the Authority no later than July 28, 2018, indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount; and

ii. The Authority may grant additional extensions for projects located in a Garden State Growth Zone with a capital investment greater than \$ 100,000,000 and a total tax credit award greater than \$ 100,000,000 as a result of force majeure that will be recognized under the following circumstances, which shall be demonstrated by the business to the satisfaction of the Authority:

- (1) The business is delayed due to unforeseeable acts related to the project beyond the business's control and without its fault or negligence;
- (2) The business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification;
- (3) The business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay;
- (4) The business provides timely notice to the Authority of the delay, not to exceed 30 days after the business's actual or constructive knowledge of the delay; and
- (5) The business provides periodic reports, not less than every 30 days, of the status of the delay and the steps being taken to mitigate or overcome the delay.

4. An organization operating a qualified incubator facility shall provide written evidence that the qualified business facility continues to qualify as a qualified incubator facility and that the benefit from the award of tax credits will inure to the businesses and positions on whose behalf the application was made.

5. The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

(g) Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met, within 90 days of the submission of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications under (f) above, provided it shall not exceed the maximum amount determined by the Board under (d) above. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance issued by the Authority.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (e).

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In the introductory paragraph of (f), deleted "of a certified public accountant, which may be made pursuant to an 'agreed upon procedures' letter acceptable to the Authority" following "certifications"; and in (f)1 and (f)2, inserted the first sentence.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Added new (f)4, and recodified former (f)4 as (f)5.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (c), substituted "employees and" for "or", inserted "for which the award of tax credits will be a material factor in the business's decision to retain the employees in the State", and inserted the second sentence; in (e), substituted "12" for "six" and "24" for "12"; in (f)2, deleted a comma following "award" and substituted "as set forth in N.J.A.C. 19:31-18.4(d)" for "related to the retained full-time jobs before receiving benefits for new full-time jobs"; and rewrote (f)3.

NEW JERSEY ADMINISTRATIVE CODE

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## **N.J.A.C. 19:31-18.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.8 Determination of grant amount; bonus award**

**(a)** The total amount of the tax credit for an eligible business shall be for each new or retained full-time job as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period; however, except as set forth in N.J.A.C. 19:31-18.11(e), the total tax credit amount credited annually to the business shall not exceed the maximum amount determined by the Board under N.J.A.C. 19:31-18.7(d) and the amount calculated pursuant to N.J.A.C. 19:31-18.7(g), divided by the number of years in the eligibility period. The total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. The total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings. Notwithstanding that the total tax credit for jobs in different buildings may be calculated separately, forfeitures pursuant to N.J.A.C. 19:31-18.15 and defaults and recaptures included in the incentive agreement pursuant to N.J.A.C. 19:31-18.10(b) shall be based on the aggregate capital investment and eligible full-time jobs.

**(b)** The base amount of the tax credit for each new or retained full-time job shall be as follows:

1. For a qualified business facility located within an urban transit hub municipality, in a Garden State Growth Zone, a Garden State Create Zone and used by an eligible business in a targeted industry to conduct a collaborative research relationship with a doctoral university within the zone, or which is a mega project, \$ 5,000 per year;
2. For a qualified business facility located within a distressed municipality but not qualifying under (b)1 above, \$ 4,000 per year;
3. For a project in a priority area, \$ 3,000 per year; and
4. For a project in other eligible areas, \$ 500.00 per year.

**(c)** In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased if the qualified business facility meets any of the following priority criteria or other additional or replacement criteria determined by the Authority from time to time in response to evolving economic or market conditions, provided that (c)5, 6, 8, and 10 below shall not apply to a qualified incubator facility:

1. For a qualified business facility located in a deep poverty pocket or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development, an increase of \$ 1,500 per year;

- 2.** For a qualified business facility located in a qualified incubator facility, an increase of \$ 500.00 per year;
- 3.** For a qualified business facility located in a mixed-use development that incorporates sufficient moderate income housing on site that is made available to accommodate a minimum of 20 percent of the full-time employees of the business, an increase of \$ 500.00 per year;
- 4.** For a qualified business facility located within a transit-oriented development, an increase of \$ 2,000 per year;
- 5.** For a qualified business facility, other than a mega project or a project in a Garden State Growth Zone, at which the capital investment in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of \$ 1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount required for eligibility by 20 percent, with a maximum increase of \$ 3,000 per year;
- 6.** For a business with new full-time jobs and retained full-time jobs at the project with a median average salary in excess of the existing median average salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a Garden State Growth Zone, a business that employs full-time jobs at the project with a median average salary in excess of the median average salary for full-time workers residing in the Garden State Growth Zone, an increase of \$ 250.00 per year during the commitment period for each 35 percent by which the project's average salary levels exceeds the county or Garden State Growth Zone average salary, with a maximum increase of \$ 1,500 per year;
- 7.** For a business with large numbers of new full-time jobs and retained full-time jobs during the commitment period, the increases shall be in accordance with the following schedule:
  - i.** If the number of new full-time jobs and retained full-time jobs is between 251 and 400, \$ 500.00 per year;
  - ii.** If the number of new full-time jobs and retained full-time jobs is between 401 and 600, \$ 750.00 per year;
  - iii.** If the number of new full-time jobs and retained full-time jobs is between 601 and 800, \$ 1,000 per year;
  - iv.** If the number of new full-time jobs and retained full-time jobs is between 801 and 1,000, \$ 1,250 per year;
  - v.** If the number of new full-time jobs and retained full-time jobs is in excess of 1,000, \$ 1,500 per year;
- 8.** For a business in a targeted industry, an increase of \$ 500.00 per year;
- 9.** For a qualified business facility exceeding the Leadership in Energy and Environmental Design's "Silver" rating standards or completes substantial environmental remediation, an additional increase of \$ 250.00 per year;
- 10.** For a mega project or a project located within a Garden State Growth Zone at which the capital investment in industrial premises for industrial use by the business exceeds the minimum capital investment required for eligibility pursuant to subsection b of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of \$ 1,000 per year for each additional amount

of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount by 20 percent, with a maximum increase of \$ 5,000 per year;

11. For a project in which a business retains at least 400 jobs and is located within the municipality in which it was located immediately prior to the filing of the application hereunder and is the United States headquarters of an automobile manufacturer, an increase of \$ 1,500 per year;
12. For a project located in a municipality in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties with a 2007 Municipality Revitalization Index rank greater than 465, an increase of \$ 1,000 per year;
13. For a project located within a half-mile of any light rail station constructed after September 18, 2013, the effective date of P.L. 2013, c. 161, an increase of \$ 1,000 per year;
14. For a marine terminal project in a municipality located outside the Garden State Growth Zone, but within the geographical boundaries of the South Jersey Port District, an increase of \$ 1,500 per year;
15. For a project located within an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6), and which is located within a quarter mile of at least one United States highway and at least two New Jersey State highways, an increase of \$ 1,500 per year;
16. For a project that generates solar energy on site for use within the project of an amount that equals at least 50 percent of the project's annual electric supply service needs, an increase of \$ 250.00 per year;
17. For a qualified business facility in a vacant commercial building or campus having over 1,000,000 square feet of office or laboratory space available for occupancy for a period of over one year that the Authority designates, as listed on the Authority's website at [www.njeda.com](http://www.njeda.com), an increase of \$ 1,000 per year; and
18. For an eligible business in a targeted industry at a qualified business facility on the campus of a college or university other than a doctoral university, or at a qualified business facility within a three-mile radius of the outermost boundary of the campus of a college or university other than a doctoral university, which facility is used by the business to conduct a collaborative research relationship with the college or university, an increase of \$ 1,000 per year. The boundary of the campus of a college or university shall be based upon a map appearing in the college's or university's official catalog or other official publication on August 7, 2017, the effective date of P.L. 2017, c. 221.

**(d)** The gross amount of the tax credit for an eligible business for each new or retained full-time job shall be the sum of the base amount as set forth pursuant to (b) above and the various additional bonus amounts for which the business is eligible pursuant to (c) above, subject to the following limitations:

1. For a mega project or a project in a Garden State Growth Zone, the gross amount for each new or retained full-time job shall not exceed \$ 15,000 per year;
2. For a qualified business facility located within an urban transit hub municipality or a Garden State Create Zone, the gross amount for each new or retained full-time job shall not exceed \$ 12,000 per year;
3. For a qualified business facility in a distressed municipality the gross amount for each new or retained full-time job shall not exceed \$ 11,000 per year;

4. For a qualified business facility in other priority areas, the gross amount for each new or retained full-time job shall not exceed \$ 10,500 per year;
  5. For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$ 6,000 per year; and
  6. For a disaster recovery project, the gross amount for each new or retained full-time job shall not exceed \$ 2,000 per year.
- (e)** After the determination by the Authority of the gross amount of tax credits for which a business is eligible pursuant to (d) above, the final total tax credit amount shall be calculated as follows:
1. For each new full-time job, the business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and
  2. For each retained full-time job, the business shall be allowed tax credits equaling the lesser of 50 percent of the gross amount of tax credits for each retained full-time job, or one-tenth of the capital investment, which will be the lesser of actual capital investment or the business's proposed amount approved at application, divided by the number of retained and new full-time jobs per year over the grant term of ten years, unless the jobs are part of a mega project that is the United States headquarters of an automobile manufacturer located within a priority area or a qualified business facility in a Garden State Growth Zone, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job, or unless the new qualified business facility would replace a facility that has been wholly or substantially damaged as a result of a Federally declared disaster, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job. The per retained full-time job tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g), provided that in no event shall the gross amount of tax credits per retained full-time job exceed the gross amount calculated at the approval of the application. Based on this per retained full-time job calculation, any reduction in the number of retained full-time jobs shall proportionately reduce the amount of tax credits for that year.
- (f)** For each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed:
1. Thirty-five million dollars (\$ 35,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority;
  2. Thirty million dollars (\$ 30,000,000) and provides a net positive economic benefit to the State with respect to a mega project or a qualified business facility in a Garden State Growth Zone;
  3. Ten million dollars (\$ 10,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in an urban transit hub municipality or a Garden State Create Zone;



4. Eight million dollars (\$ 8,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a distressed municipality;
5. Four million dollars (\$ 4,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other priority areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility; and
6. Two-and-a-half million dollars (\$ 2,500,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other eligible areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility.

**(g)** Under (f) above, with the exception of a project located within a Garden State Growth Zone which qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, that divides the total capital investment of the project by the total number of full-time jobs at that project, for each application for tax credits in excess of \$ 4,000,000 annually, the amount of tax credits available to be applied by the business annually shall be the lesser of the maximum amount under the applicable paragraph or an amount determined by the Authority necessary to complete the project, with such determination made by the Authority's utilization of a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations, as applicable; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the Authority, including, but not limited to, factors affecting the decision of the business to relocate, the Authority shall independently verify and confirm the amount necessary to complete the project.

**(h)** Notwithstanding anything to the contrary in (a) through (g) above, for a project located within a Garden State Growth Zone that qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the total tax credit shall be:

1. For a project that creates or retains 35 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 5,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$ 2,000,000 each year of the grant term;
2. For a project that creates or retains 70 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 10,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$ 3,000,000 each year of the grant term;

3. For a project that creates or retains 100 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 15,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$ 4,000,000 each year of the grant term;
4. For a project that creates or retains 150 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 20,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$ 5,000,000 each year of the grant term; or
5. For a project that creates or retains 250 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 30,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:
  - i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or
  - ii. The total capital investment of the project divided by the total number of full-time jobs as defined for this program at that project divided by 10 years.
6. For projects approved under this subsection, the per full-time employee tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the lesser of the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) or the award of tax credits approved by the Board pursuant to N.J.A.C. 19:31-18.7(d). Based on this per full-time employee calculation and provided the business continues to meet the minimum number of employees required in subparagraphs (a), (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), any reduction in the number of employees shall proportionately reduce the amount of tax credits for that year, that is, the number of full-time employees will be multiplied by the per full-time employee calculation done at certification.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (c)15, deleted "and" from the end; in (c)16, substituted "; and" for a period; added (c)17; rewrote (e)2, (f)1, and (g); in the introductory paragraphs of (h)1 through (h)5, inserted "new to the municipality"; and added (h)6.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In the introductory paragraph of (c), inserted ", provided that (c)5, 6, 8, and 10 below shall not apply to a qualified incubator facility".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted the last sentence.

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

In (a), inserted the first occurrence of "the"; rewrote (b)1; in (c)10, substituted "exceeds" for "is in excess of" and "b" for "b."; in (c)16, deleted "and" from the end; in (c)17, substituted "; and" for a period at the end; added (c)18; and in (d)2 and (f)3, inserted "or a Garden State Create Zone".

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## **N.J.A.C. 19:31-18.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.9 Tax credit amount; application and allocation of the tax credit**

**(a)** For each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter.

**(b)** The business may apply the credit against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

**(c)** The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period during which it was transferred or in any of the next three successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

**(d)** Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the Director may require.

**(e)** In connection with a regional distribution facility of foodstuffs, the business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this subsection, leasing shall include subleasing and tenants shall include subtenants.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (d).

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End of Document

## **N.J.A.C. 19:31-18.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.10 Incentive agreement**

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**(a)** All approved applicants shall execute an approval letter and an incentive agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of an incentive agreement.

**(b)** The incentive agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer of the Authority:

- 1.** A detailed description of the proposed project, which will result in job creation or retention, and the number of new or retained full-time jobs that are approved for tax credits;
- 2.** The eligibility period of the tax credits, including the first year for which the tax credits may be claimed;
- 3.** A requirement that the applicant maintain the project at a location in New Jersey for the commitment period, with at least the minimum number of full-time employees as required by the program, which shall include consideration of bonus award(s) and net positive economic benefit test pursuant to N.J.A.C. 19:31-18.3(a)3ii and the amount of tax credits previously received by the business during the eligibility period, and a provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with the requirements in this paragraph for the commitment duration. Such recapture may include interest on the recapture amount at the rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties and all costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. If all or part of any tax credits awarded is subject to recapture, the Authority will pursue recapture from the business and not from a tax credit transfer certificate purchaser. Tax credit transfer certificate purchasers shall be subject to all other limitations and conditions that apply to the use of the tax credits by the business, including, but not limited to, reduction and forfeiture provisions and the requirement of a letter of compliance for the relevant tax period;
- 4.** Personnel information that will enable the Authority to administer the program;
- 5.** A requirement that the certifications relating to the amount of eligible capital investment and number of employees with supporting evidence satisfactory to the Authority shall be submitted by the business in accordance with N.J.A.C. 19:31-18.7(f);

6. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;
  7. Certifications by the business, including the following: the State's financial support will yield a net positive economic benefit to the State;
  8. Requirements on maintaining the existence of the business and not relocating the project;
  9. Annual reporting requirements for the number of full-time employees for which the tax credits are to be made;
  10. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;
  11. Audit of the payroll records, as deemed necessary by the Authority;
  12. Indemnification and insurance requirements;
  13. Limitations on the grant of tax credits;
  14. A provision which permits the Authority to amend the agreement;
  15. Default and remedies;
  16. Reporting requirements; and
  17. A provision to permit the Authority to recoup, during the period of the net positive economic benefit, all or a portion of the tax credits awarded based on the net positive economic benefit calculated for the years after the commitment period.
- (c) The incentive agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 2011, c. 149.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Section was "Project agreement". Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (b)3.

Amended by R.2017 d.071, effective April 17, 2017.

See: 49 N.J.R. 197(a), 49 N.J.R. 776(b).

In (b)15, deleted "and" from the end; in (b)16, substituted "; and" for a period; and added (b)17.

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End of Document



## **N.J.A.C. 19:31-18.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM***

### **§ 19:31-18.11 Reporting requirements and annual reports**

**(a)** After notification pursuant to N.J.A.C. 19:31-18.7(g), the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

- 1.** The number of full-time employees and new or retained full-time positions employed at the qualified business facility, the list of affiliates that contributed to the full-time employees at the qualified business facility, the number of full-time employees in its Statewide workforce as defined in N.J.A.C. 19:31-18.15(a), the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, total lease payments, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in N.J.A.C. 19:31-18.4(d); and
- 2.** For an organization operating a qualified incubator facility that applied on behalf of businesses or positions, the number of full-time employees or positions in the space restricted for use by technology company startup companies and the number of full-time employees or positions outside of the space restricted for use by technology company startup companies. The annual report shall demonstrate that at least 50 percent of the qualified business incubator remains restricted for such use and that any company in the restricted space continues to qualify as a technology startup company.
- 3.** A certification indicating whether or not the business is aware of any condition, event, or act, which would cause the business not to be in compliance with the approval, the Act, the incentive agreement, or this subchapter.

**(b)** The tax credit certificate may provide for additional reporting requirements.

**(c)** In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

**(d)** Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

**(e)** For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an additional tax credit award representing an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this subsection; provided that the adjustment may not affect other obligations under the incentive agreement to maintain a minimum number of employees. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

**(f)** For a project located within a Garden State Growth Zone which qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), then the Authority shall recalculate the total tax credit amount per full-time employee by using the certified capital investment of the project allowable under the applicable subparagraph and the number of full-time employees certified on the date of the recalculation and applying those numbers to subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (e), deleted ", which following review by EDA staff, the Board will determine whether to approve the request" following the fourth occurrence of "agreement", and inserted the last sentence; and added (f).

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In the introductory paragraph of (a), substituted "the chief financial officer of the business" for "a certified public accountant".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a)1.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

Added new (a)2, and recodified former (a)2 as (a)3.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)1, substituted "as set forth in N.J.A.C. 19:31-18.4(d)" for "related to the retained full-time jobs before receiving benefits for new full-time jobs".

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## **N.J.A.C. 19:31-18.12**

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### **§ 19:31-18.12 Tax credit certificate**

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- (a) The tax credit certificate shall set forth the following terms:
1. The starting date of the tax period and the commitment duration;
  2. The amount of the tax credits;
  3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;
  4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;
  5. Events that would trigger reduction and forfeiture of tax credit amounts; and
  6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

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## **N.J.A.C. 19:31-18.13**

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### **§ 19:31-18.13 Application for tax credit transfer certificate**

**(a)** Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, in an amount not less than \$ 25,000 pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

**(b)** The initial sale or assignment of any amount of a tax credit allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted.

**(c)** In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-18.5(a)1xiv.

**(d)** Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to

N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

**(e)** The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In (a), inserted "the" preceding "Treasury", and substituted "\$ 100,000 in tax credits, provided that one transfer consisting of any remainder that is less than \$ 100,000, may be made in each tax period for less than \$ 100,000" for "\$ 1,000,000 in tax credits".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a), inserted "in an amount not less than \$ 25,000", and deleted the former fourth sentence; and rewrote (b).

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## **N.J.A.C. 19:31-18.14**

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### **§ 19:31-18.14 Cap on total credits**

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The combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 and P.L. 2010, c. 57 (N.J.S.A. 34:1B-207 et seq.) prior to December 31, 2013, shall not exceed \$ 1,750,000,000, except as may be increased by the Authority as set forth in paragraph (5) of subsection a. of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3).

### **History**

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#### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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## N.J.A.C. 19:31-18.15

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### **§ 19:31-18.15 Reduction and forfeiture of tax credits**

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**(a)** If, in any tax period during the eligibility period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. The Statewide workforce shall not include full-time employees at any point-of-final-purchase retail facilities, unless the award includes full-time employees engaged in final point of sale retail. The number of full-time employees in a business's Statewide workforce shall not include a new eligible position at the qualified business facility, unless the new eligible position is in addition to the number of full-time employees specified in the incentive agreement and the business is not receiving an additional tax credit award for the new eligible position pursuant to N.J.A.C. 19:31-18.11(e) or (f).

1. For purposes of this subsection, "business" shall include any affiliate that contributed to the full-time employees at the qualified business facility for the relevant tax period or contributed capital investment to the project.

**(b)** If, in any tax period during the eligibility period, the number of full-time employees employed by the business at the qualified business facility, or, for a qualified incubator facility, the number of full-time employees and positions employed by the operator or the businesses on whose behalf the operator applied, located within a qualified incentive area drops below 80 percent of the number of new and retained full-time jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 80 percent of the number of jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g).

**(c)** The credit amount allowed for a tax period for which documentation of a business's credit amount remains uncertified by the Authority, as of a date three years after the closing date of that period, shall be forfeited, although credit amounts for the remainder of the eligibility period shall remain available to it.

**(d)** Provided a business complies with all other requirements of the program, the amount of tax credits a business may take in a tax period shall be reduced in proportion to the reduction in the number of new or retained full-time jobs, as indicated in the annual report, below the number of



full-time jobs specified in the incentive agreement. For projects for which awards are calculated pursuant to N.J.A.C. 19:31-18.8(h), if the number of new and retained full-time jobs, as indicated in annual report, is reduced below the required number to qualify under a subsection thereof, the tax credits that the business may take shall be rescored under the subsection that corresponds to the number of new and retained full-time jobs reported. Any tax credits that the business could not take because of a reduction under this subsection shall be forfeited.

## History

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### HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a), inserted the last sentence.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Added (a)1.

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In (b), inserted ", or, for a qualified incubator facility, the number of full-time employees and positions employed by the operator or the businesses on whose behalf the operator applied,".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted the last sentence.

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## N.J.A.C. 19:31-18.16

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### **§ 19:31-18.16 Effect of sale or lease of qualified facilities**

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**(a)** If the qualified business facility is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that any credits of the business shall remain unaffected. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

**(b)** Unless otherwise permitted in this subchapter, if a business leases or subleases the qualified business facility in whole or in part during the eligibility period, the new tenant shall not acquire the credit of the business, and the business shall forfeit all credits for the tax period of its lease or sublease and all subsequent tax periods. Notwithstanding the foregoing, a business may lease or sublease an amount up to five percent of the qualified business facility to a new tenant without forfeiting any of the business's credits; however, no full-time employees or capital investment by the new tenant shall contribute to the business's eligible full-time employees or capital investment.

### **History**

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#### **HISTORY:**

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In (a) and (b), deleted "10-year" preceding "eligibility"; and in (a), inserted "by the owner", and substituted "the business" for "tenants".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (b), substituted "Unless otherwise permitted in this subchapter, if" for "If".

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (b).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In (a), inserted the last sentence.

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## **N.J.A.C. 19:31-18.17**

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### **§ 19:31-18.17 Affirmative action and prevailing wage**

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The Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to State incentive grant projects undertaken in connection with financial assistance received under the Grow New Jersey Assistance Program.

### **History**

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#### **HISTORY:**

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.17, Severability, recodified to N.J.A.C. 19:31-18.19.

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## **N.J.A.C. 19:31-18.18**

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### **§ 19:31-18.18 Appeals**

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- (a) The Board's action on applications shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c) Appeals that are timely submitted shall be handled by the Authority as follows:
1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

### **History**

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**HISTORY:**

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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## **N.J.A.C. 19:31-18.19**

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### **§ 19:31-18.19 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

### **History**

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#### **HISTORY:**

Recodified from N.J.A.C. 19:31-18.17 by R.2015 d.014, January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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## **N.J.A.C. 19:31-19.1**

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### **§ 19:31-19.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14 (Act). The Act authorizes credits against corporation business and gross income taxes for qualified investments in New Jersey emerging technology businesses, in New Jersey emerging technology holding companies, or in a qualified venture fund, to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

### **History**

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#### **HISTORY:**

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

Deleted "(Authority)" following "Authority", deleted "the" preceding the second occurrence of "Act", and inserted "or in New Jersey emerging technology holding companies".

Amended by R.2021 d.139, effective December 6, 2021.

See: 53 N.J.R. 1481(a), 53 N.J.R. 2072(c).

Substituted a comma for "or" following "businesses", and inserted ", or in a qualified venture fund,".



## **N.J.A.C. 19:31-19.2**

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### **§ 19:31-19.2 Definitions**

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The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14, as amended.

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

"Acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

"Authority" means the New Jersey Economic Development Authority.

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies, and sub-technologies developed as a result of insights gained from research advances that add to that body of fundamental knowledge.

"Board" means the Board of the New Jersey Economic Development Authority.

"Carbon footprint reduction technology" means a technology using equipment for the commercial, institutional, and industrial sectors that increases energy efficiency, develops and delivers renewable or non-carbon-emitting energy technologies, develops innovative carbon emissions abatement with significant carbon emissions reduction potential, or promotes measurable electricity end-use energy efficiency.

"Commitment agreement" means the contract between the qualified venture fund, the investor, and the Authority pursuant to N.J.A.C. 19:31-19.7(d)2.

"Control" with respect to a corporation means ownership, directly or indirectly, of stock possessing 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control" with respect to a trust means ownership, directly or indirectly, of 80 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of

section 267 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 267.), other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation, if stock possessing at least 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns, directly, stock possessing at least 80 percent of the voting power of all classes of stock of at least one of the other corporations.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Diverse entrepreneur" means a New Jersey-based business that meets the criteria for a minority-owned business or women-owned business as set forth at section 3 of P.L. 1983, c. 482 (N.J.S.A. 52:32-19), as evidenced by a certification by the State as a minority-owned business or a women-owned business pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.).

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

"Eligible technology" means advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Filling a position in New Jersey" means filling a position with a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

"Full-time employee" means a person who is:

1. Employed by a New Jersey emerging technology business on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, including a common law employee, which shall mean a person who is in an employer-employee relationship with the business in which the business has the right to direct and control how the person performs the services; and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or are not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides;
2. A partner of a New Jersey emerging technology business and works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or are not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54:A1-1 et seq., by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides;

**3.** An employee who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the New Jersey emerging technology business on a permanent basis within a single position and that position requires at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority.

"Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the New Jersey emerging technology business; or any person who works as an intern, as a temporary employee, or in a temporary position.

"Information technology" means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer-related services, and computer training.

"Investor" means the individual or entity that made the qualified investment.

"License" means an agreement that states therein that the emerging technology business is granting a license that authorizes the investor to control aspects of the development of the New Jersey emerging technology business's protected proprietary intellectual property. License shall not include an agreement, such as an exclusive distribution agreement or similar business arrangement that is not registered with the U.S. Federal Government, such as the U.S. Patent and Trademark Office, and which does not grant the investor control of the protected proprietary intellectual property.

"Life sciences" means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products, or physical or biological research.

"Marketing rights" means the exclusive right of an entity to sell a product or products that qualifies the originator of that product(s) as a New Jersey emerging technology business.

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the Federal Food and Drug Administration.

"Mobile communications technology" means a technology involving the functionality and reliability of the transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but not be limited to, smartphones, electronic books and tablets, digital audio players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having to be connected to any physical or fixed link.

"New Jersey-based business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing, or owning capital or property, or maintaining an office in this State.

"New Jersey emerging technology business" or "emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State, whose primary business is an eligible technology, and:

1. Has qualified research expenses paid or incurred for research conducted in its most recent fiscal year prior to the qualified investment in this State;
2. Conducts pilot scale manufacturing in this State; or

**3. Conducts technology commercialization in this State.**

In calculating the number of employees under this definition, employees of any company, except the investor, with control over the New Jersey emerging technology business or in the same controlled group as the New Jersey emerging technology business, shall be included. The company must continue to operate as a New Jersey emerging technology business until the earlier of six months after the qualified investment or the date of the investor's completed application for the credit pursuant to N.J.A.C. 19:31-19.4.

"New Jersey emerging technology business holding company" means any corporation, association, firm, partnership, trust, or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

"Pilot scale manufacturing" means the design, construction, and testing of preproduction prototypes and models in an eligible technology other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-6), from the sales of the product, service, or process do not exceed \$ 1 million.

"Privilege period" means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) or New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

"Production agreement" means, upon completion of pilot scale manufacturing or technology commercialization, the first manufacturing contract of a product that qualifies the producer of that product as a New Jersey emerging technology business that causes the total gross receipts, as calculated in the manner provided in section 6 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-6), from such sales of the product, service, or process to be no less than \$ 1,000,000.

"Program" means the Angel Investor Tax Credit Program.

"Protected proprietary intellectual property" means intellectual property that is the technology of the entity's primary business as a New Jersey emerging technology business that is also protected via a patent pending, patent awaiting approval, approved patent, or registered copyright.

"Purchase agreement" means, upon completion of pilot scale manufacturing or technology commercialization, the first acquisition of the product that qualifies the producer of that product as a New Jersey emerging technology business that causes the total gross receipts, as calculated in the manner provided in section 6 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-6), from such sales of the product, service, or process to be no less than \$ 1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business or to a New Jersey emerging technology business holding company by an investor that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, at the time of the transfer of cash, the transfer of which is in exchange for:

- 1.** Stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), right to use technology, marketing rights, warrants, options, or any assets similar to those

included in this definition, including but not limited to, options or rights to acquire any of the assets; or

2. A purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology business holding company or both.

For the transfer of cash to be considered non-refundable, the assets received by the investor in the exchange referred to at paragraph 1 above and the agreements entered into by the investor referred to at paragraph 2 above must be held or not expire for at least two calendar years from the date of the exchange, with the exception of initial public offerings (IPOs), mergers and acquisitions, damage awards for the New Jersey emerging technology business's default of an agreement, or other return of initial cash outlay beyond the investor's control. "Qualified investment" also means the irrevocable contractual commitment to a qualified venture fund.

"Qualified research expenses" means qualified research expenses as defined in section 41 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 41.), as in effect on June 30, 1992, in an eligible technology.

"Qualified venture fund" means a venture fund required by a commitment agreement with an investor and the Authority to invest a minimum of 50 percent of the venture fund's committed funds in New Jersey-based businesses and that the Authority, in its sole discretion, determines has the capacity to make the minimum investment based upon the qualified venture fund's investment history, if any, its private placement memorandum and other relevant information.

"Related person" means:

1. A corporation, partnership, association, or trust controlled by the taxpayer or the investor;
2. An officer, corporation, partnership, association or trust that is in the control of the taxpayer or the investor;
3. A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in the control of the taxpayer or the investor; or
4. A member of the same controlled group as the taxpayer or the investor.

"Renewable energy technology" means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and/or sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel, but not powered by a fossil fuel.

"Research agreement" means a contract to methodically study a component of the field that qualifies the entity conducting the methodical study as a New Jersey emerging technology business.

"Right to use technology" means the exclusive right of an entity to utilize a product or products that qualifies the originator of that product(s) as a New Jersey emerging technology business.

"Tax credit approval year" means the taxpayer's taxable year or privilege period in which the Authority approves the application for tax credits.

"Tax credit vintage year" means the taxpayer's taxable year or privilege period in which the investor made the qualified investment.

"Taxpayer" means the individual filing a tax return pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or the entity filing a tax return pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) that is eligible to receive a tax credit under the Program. The taxpayer must be the investor except when the qualified investment is made by a partnership or an entity treated as a partnership for tax purposes, in which case, for purposes of the Program, the partnership or entity shall be considered the investor and each partner or member of the entity shall be considered a taxpayer.

"Technology commercialization" means the design, construction, testing, and production for sale of a product in an eligible technology previously in research or pilot scale manufacturing.

"Venture fund" means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in which the investment is made. "Venture fund" may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture fund.

"Verified transfer of funds" means a non-refundable transfer of funds equal to 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company to a New Jersey emerging technology business by the New Jersey emerging technology business holding company that is accompanied by documentation, as required by the Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same tax year.

## History

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### HISTORY:

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote definition "Full-time employee".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

Added definitions "Carbon footprint reduction technology", "New Jersey emerging technology business holding company", and "Verified transfer of funds"; in definition "Electronic device technology", deleted a comma following "equipment" and "microwave"; in definition "Eligible technology", inserted "carbon footprint reduction technology,"; in definition "Mobile communications technology", inserted the second occurrence of "the"; deleted "shall" following "but", and substituted "digital audio" for "mp3"; in definition "Pilot scale manufacturing", inserted the first and second occurrences of "the", and substituted the fourth occurrence of "the" for "such"; and in definition "Qualified investment", in the introductory paragraph, inserted "or to a New Jersey emerging technology business holding company" and "or the New Jersey emerging technology business holding company" and in 2, inserted "between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology business holding company or both".

Amended by R.2021 d.139, effective December 6, 2021.

See: 53 N.J.R. 1481(a), 53 N.J.R. 2072(c).

Added definitions "Act", "Commitment agreement", "Diverse entrepreneur", "New Jersey-based business", "Qualified venture fund", and "Venture fund"; in the last paragraph of definition "Qualified investment", substituted "at" for the second and third occurrences of "in", and inserted the last sentence.

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End of Document

## **N.J.A.C. 19:31-19.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM***

### **§ 19:31-19.3 Eligibility criteria**

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- (a)** In order to be considered for tax credits under the Angel Investor Tax Credit Program, an investor shall make a qualified investment in a New Jersey emerging technology business, or a New Jersey emerging technology business holding company, or a qualified venture fund.
- (b)** The Program applies to privilege periods and taxable years beginning on or after January 1, 2012, except that the Program applies to qualified investments in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies, that make verified transfers of funds to New Jersey emerging technology businesses that conduct technology commercialization in this State in the field of carbon footprint reduction technology for privilege periods and taxable years beginning on or after May 1, 2017. For qualified investments made on or before July 1, 2013, an investor must submit a completed application by July 1, 2014, except that a completed application for qualified investments in New Jersey emerging technology business holding companies made before May 1, 2017, must be submitted by December 31, 2017. For all other qualified investments in a New Jersey emerging technology business, an investor must submit a completed application within six months of the date of the qualified investment, and for all other qualified investments in a New Jersey emerging technology business holding company, within six months of the date of the verified transfer of funds. For all qualified investments in a qualified venture fund, an investor must submit a completed application within six months of executing an irrevocable contractual commitment to a qualified venture fund.
- (c)** A credit shall not be allowed pursuant to section 1 of P.L. 1993, c. 175 (N.J.S.A. 54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this subchapter.
- (d)** For a qualified investment to a qualified venture fund, the contract containing the irrevocable contractual commitment must be a fully executed document in writing. For any other qualified investment, any asset received and any agreement entered into by the investor in connection with the non-refundable transfer of cash that serves as a qualified investment must be a fully executed document in writing.
- (e)** For qualified investments in a New Jersey emerging technology business holding company, the verified transfer of funds shall be evidenced by documentation, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same tax year.
- (f)** A qualified venture fund shall not be eligible as an investor for a qualified investment in a New Jersey emerging technology business or a New Jersey emerging technology holding business if an investor has previously been approved tax credits for a qualified investment in that qualified



venture fund. An investor that applies for a qualified investment in a qualified venture fund shall not be eligible if that qualified venture fund has previously been approved tax credits for a qualified investment in a New Jersey emerging technology business or a New Jersey emerging technology holding business.

## History

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### **HISTORY:**

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (b), substituted "six months" for "one year".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

Rewrote the section.

Amended by R.2021 d.139, effective December 6, 2021.

See: 53 N.J.R. 1481(a), 53 N.J.R. 2072(c).

In (a), inserted a comma following the first occurrence of "business", and inserted ", or a qualified venture fund"; in (b), inserted a comma following the first occurrence of "companies", and inserted the last sentence; rewrote (d); and added (f).

## **N.J.A.C. 19:31-19.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM***

### **§ 19:31-19.4 Application submission requirements**

(a) An investor shall submit an application to the Authority; the Authority shall conduct a review of the applications commencing with the completed application bearing the earliest completion date.

(b) A completed application shall include, but not be limited to, the following:

1. Investor information, which shall include the following:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number or Social Security number, as applicable;

(2) The total amount of the qualified investment, including for qualified investments in a qualified venture fund, the total amount of the irrevocable contractual commitment, and amount of requested tax credit;

(3) A description of the qualified investment;

(4) Evidence of qualified investment, including the executed document demonstrating that the qualified investment was made, as required in N.J.A.C. 19:31-19.3(d);

(5) A list of all officers, directors, owners, and/or trustees;

(6) A list of 100 percent of ownership of the investor by percentage or if a publicly traded company, the 10 percent or greater officers, directors, or owners; and

(7) The Federal tax identification number or Social Security number as applicable, for all owners of the investor; and

ii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

2. New Jersey emerging technology business information, which shall include:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number; and

(2) A list of 100 percent of ownership of the business by percentage;

ii. At the time of the qualified investment and at the time of application, except that applications for qualified investments in New Jersey emerging technology business holding companies made before May 1, 2017, shall provide the following information as of the time of the qualified investment and at the earliest of six months after the verified transfer of funds or the time of application:



(4) Certification from the chief executive officer or general partner of the qualified venture fund that the contract contains an irrevocable contractual commitment to the transfer of cash to the qualified venture fund; and

ii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39); and

5. Any other supplemental information required by the Authority to decide on the approval of the application or required by the Division of Taxation to administer the credit.

## History

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### HISTORY:

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (b)2ii(2)(B), inserted "or any other entity providing common law employees".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

Rewrote (b)2ii; in (b)2iii, deleted "and" from the end; added new (b)3; and recodified former (b)3 as (b)4.

Amended by R.2021 d.139, effective December 6, 2021.

See: 53 N.J.R. 1481(a), 53 N.J.R. 2072(c).

In (b)1i(2), inserted ", including for qualified investments in a qualified venture fund, the total amount of the irrevocable contractual commitment,"; added new (b)4; and recodified former (b)4 as (b)5.

## N.J.A.C. 19:31-19.5

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM***

### **§ 19:31-19.5 Fees**

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- (a) A non-refundable application fee of \$ 500.00 shall accompany every application for tax credits for qualified investments of \$ 50,000 or less.
- (b) A non-refundable application fee of \$ 2,500 shall accompany every application for tax credits for qualified investments of more than \$ 50,000.
- (c) A fee of five percent of the approved tax credit amount for qualified investments of more than \$ 500,000, shall be paid to the Authority upon the approval of the tax credit. The application fee of \$ 2,500 required under (a) above, shall be applied toward the approval fee.
- (d) A non-refundable fee of \$ 150.00 shall be paid to the Authority for each request for reissuance of a tax certificate previously issued pursuant to N.J.A.C. 19:31-19.6.
- (e) The full amount shall be paid of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

### **History**

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#### **HISTORY:**

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Rewrote the section.

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Added (e).

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## **N.J.A.C. 19:31-19.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM***

### **§ 19:31-19.6 Tax credit amount; overpayment and carryforward of tax credits**

**(a)** A taxpayer, upon eligibility review and approval of the investor's application by the Authority, in consultation with the Director, and upon issuance of a tax credit certificate by the Division of Taxation, shall be allowed a credit against the tax imposed under the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) or New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., in an amount equal to 20 percent of the qualified investment made by the investor in a New Jersey emerging technology business, in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business, or in a qualified venture fund. The Authority, in consultation with the Director, shall increase the amount of a tax credit allowed pursuant to the section by five percent if:

1. The taxpayer makes a qualified investment in a New Jersey emerging technology business or in a New Jersey emerging technology holding company that makes a verified transfer of funds to a New Jersey emerging technology business if the New Jersey emerging technology business is:
  - i. Either located in a qualified opportunity zone pursuant to 26 U.S.C. § 1400.Z-1, or a low-income community as defined at 26 U.S.C. § .45D; or
  - ii. Certified by the State as a minority-owned business or a women-owned business pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.); or
2. In the case of a qualified investment involving a qualified venture fund, if the qualified venture fund commits in the commitment agreement to invest 50 percent of its funds in diverse entrepreneurs for the relevant fund that is part of the irrevocable contractual agreement with the Authority.

**(b)** The maximum allowed credit shall be \$ 500,000 for the tax credit vintage year for each qualified investment made by the investor. The maximum allowed credit shall include awards to a related person of the investor in the same New Jersey emerging technology business, New Jersey emerging technology business holding company, or qualified venture fund during the investor's tax credit vintage year if the investor has control over the qualified investment.

**(c)** An investor that is a partnership or an entity treated as a partnership for tax purposes, upon eligibility review and approval, shall not be allowed a credit under this section directly, but the amount of credit of each member or partner taxpayer in respect to a distributive share of partnership income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or under the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), shall be determined by allocating to each taxpayer, that proportion of the credit acquired by the

partnership or entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership or entity for its taxable year ending within or with the taxpayer's tax credit vintage year. For the purposes of (c) and (d) below, the amount of tax liability that would be otherwise due of a taxpayer is that proportion of the total liability of the taxpayer that the taxpayer's share of the partnership income or gain included in gross income bears to the total gross income of the taxpayer.

**(d)** The credit for a corporation that has made a valid election as a New Jersey S corporation pursuant to section 3 of P.L. 1993, c. 173 (N.J.S.A. 54:10A-5.22) may be applied by the shareholders of the S corporation against the tax liability otherwise due under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., provided that the amount of credit that may be used by a shareholder of the S corporation shall be determined by allocating to each shareholder of the S corporation that proportion of the tax credit of the S corporation that is equal to the shareholder's proportionate share of the S corporation, whether or not distributed, of the total distributive income or gain of the S corporation for its tax period ending with or within the shareholder's tax period, and the credit may be applied by the shareholders against the tax liability otherwise due pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

**(e)** The amount of the credit allowed shall be applied against the tax otherwise due under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., for the tax credit approval year after all other credits and payments. If the credit exceeds the amount of tax liability otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.A. 54A:9-7, provided, however, that N.J.S.A. 54A:9-7.f shall not apply. The 15-year carryforward in (f) below is not applicable to a credit claimed under the New Jersey Gross Income Tax Act.

**(f)** The order of priority in which the credit allowed by this section against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and any other credits allowed by law may be taken, shall be as prescribed by the Director.

**(g)** Except as provided in (g) below, the amount of tax credit otherwise allowable against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), which cannot be applied for the tax credit approval year against tax liability otherwise due for that tax credit approval year may either be carried over, if necessary, to the 15-tax years following the tax credit approval year or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of N.J.S.A. 54:49-15, provided, however, that section 7 of P.L. 1992, c. 175 (N.J.S.A. 54:49-15.1) shall not apply.

**(h)** A taxpayer may not carry over any amount of credit allowed against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the tax credit approval year was prior to the year of acquisition, merger, or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the Director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer.

**(i)** In the event that any certification or application information required from the investor is found to be willfully false or that the investor submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority, the Authority may,

at its sole discretion and in addition to any other remedies available, revoke and/or terminate any award of tax credits in their entirety and may require recapture of some or all tax credits received by the taxpayer. Such recapture may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount. Any funds recaptured pursuant to this subsection, including penalties and interest, shall be deposited into the General Fund of the State.

## History

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### **HISTORY:**

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

Rewrote the section.

Amended by R.2021 d.139, effective December 6, 2021.

See: 53 N.J.R. 1481(a), 53 N.J.R. 2072(c).

Rewrote the section.



## **N.J.A.C. 19:31-19.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM***

### **§ 19:31-19.7 Evaluation process; award of tax credits; appeals**

- (a)** The Authority, in consultation with the Director, shall process and evaluate complete applications.
- (b)** The Authority shall transmit a copy of its decision to the applicant-investor.
- (c)** Except as provided at (d) below, if the Authority has approved the application, the Authority shall notify the Division of Taxation of the approval, and the Division of Taxation shall then issue the tax credit certificate to the applicant investor.
- (d)** The following apply to an investor that has been approved for a qualified investment into a qualified venture fund on the basis of an irrevocable contractual commitment:
  - 1.** Following approval by the Authority, but before the issuance of tax credits, the Authority shall notify the investor of the Authority's decision.
  - 2.** Prior to the issuance of tax credits, the Authority shall provide the investor with a commitment agreement and require the investor to return the commitment agreement executed by the qualified venture fund and the investor. The Authority's award of the credits will be subject to the execution of the commitment agreement. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the investor does not return the executed commitment agreement within the period of time required by the Authority. The terms of the commitment agreement shall include, but shall not be limited to, the following:
    - i.** A requirement that the qualified venture fund shall invest a minimum of 50 percent of its funds in New Jersey-based businesses within the earlier of the qualified venture fund's investment period or 10 years. The total size of the qualified venture fund shall be determined at the qualified venture fund's final closing date;
    - ii.** At the qualified venture fund's option, a requirement that the venture fund shall invest a minimum of 50 percent of its funds in diverse entrepreneurs;
    - iii.** A requirement that the venture fund shall make calls of a minimum of 80 percent of the irrevocable contractual commitments within the earlier of the initial term of the qualified venture fund or 10 years. The initial term shall be determined based on the governing agreement between the investor and the fund;
    - iv.** A requirement that the investor shall satisfy 100 percent of the capital call commitment's from the qualified venture fund;

**v.** A provision permitting the Authority to recapture, absent extenuating circumstances, from either the venture fund or the investor, based upon who fails to perform. The recapture amount shall be equal to a prorated amount of the tax credits if the qualified venture fund or investor does not comply with (d)2iii or iv above, an amount equal to the total tax credits if the qualified venture fund does not comply with (d)2i above, or an amount equal to the increase in tax credits if the qualified venture fund does not comply with (d)2ii above, as applicable. Such recapture may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs collection; and

**vi.** A requirement for the qualified venture fund to submit to the Authority an annual review report in a format as may be determined by the Authority, which shall contain the following information:

- (1)** A list of any capital calls of the investor's irrevocable contractual commitment that have been made and the date of the capital call(s);
- (2)** The qualified venture fund's financial statement for the most recent year prepared by an independent certified public accountant, including all investment schedules;
- (3)** Documentation demonstrating the transfers of cash from the investor to the qualified venture fund in response to the capital call(s), including, but not limited to, a subscription agreement, capital call letters, and bank records or statements;
- (4)** Documentation demonstrating to the transfer of funds from the qualified venture fund to businesses, including, but not limited to, stock purchase agreements and detailed bank records or statements;
- (5)** Certification(s) of minority- or women-owned business(es) from the State of New Jersey to confirm investments in diverse entrepreneurs, applicable if the bonus at N.J.A.C. 19:31-19.6(a)2 was part of the qualified investment approval;
- (6)** A limited partner roster with final commitment amounts;
- (7)** A current list of portfolio companies with investment amounts, office location, and full-time employee totals of the portfolio companies; and
- (8)** A certification from the qualified venture fund's general partner indicating whether the general partner is aware of any condition, event, or act that would cause the qualified venture fund not to be in compliance with the approval, the Act, the commitment agreement, or this subchapter;

**vii.** A provision permitting an audit from time to time, as the Authority deems necessary, of the evidence and documentation of the qualified venture fund supporting the annual review reports;

**viii.** A provision permitting the Authority to amend the commitment agreement;

**ix.** A provision establishing the conditions under which the Authority, the qualified venture fund, the investor, or any of them, may terminate the agreement;

**x.** Indemnification and insurance from the qualified venture fund and the investor to benefit the Authority; and

**xi.** Default and remedies, including, but not limited to, a default if the qualified venture fund made a material misrepresentation in any annual review report; and

**3.** Upon the receipt of the executed commitment agreement, the Authority shall notify the Division of Taxation of the approval, and the Division of Taxation shall then issue the tax credit certificate to the applicant investor.

**(e)** An applicant investor may appeal the Authority's action by submitting in writing to the Authority, within 20 days from the effective date of the Authority's action, an explanation as to how the investor, the New Jersey emerging technology business, and/or the New Jersey emerging technology business holding company has met the program criteria. Appeals will be handled by the Authority as follows:

- 1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;
- 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal;
- 3.** The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final decision on the appeal; and
- 4.** Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

## History

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### HISTORY:

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

In the introductory paragraph of (d), substituted "investor," for "investor or", and inserted ", and/or the New Jersey emerging technology business holding company".

Amended by R.2021 d.139, effective December 6, 2021.

See: 53 N.J.R. 1481(a), 53 N.J.R. 2072(c).

Rewrote the section.

## **N.J.A.C. 19:31-19.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM***

### **§ 19:31-19.8 Cap on total credits**

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(a) The amount of credits approved by the Authority, in consultation with the Director, pursuant to P.L. 2013, c. 14 (N.J.S.A. 54A:4-13), shall not exceed a cumulative total of \$ 35 million in any calendar year to apply against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and the tax imposed pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

(b) If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, under (a) above, then any complete applications for which no tax credits have been allowed for that reason may be approved by the Authority and allowed, in the order in which their applications were completed, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits are not in excess of the amount of credits available.

### **History**

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#### **HISTORY:**

Amended by R.2021 d.139, effective December 6, 2021.

See: 53 N.J.R. 1481(a), 53 N.J.R. 2072(c).

In (a), substituted "\$ 35" for "\$ 25".

## **N.J.A.C. 19:31-20.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.1 Applicability and scope**

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This subchapter is promulgated by the New Jersey Economic Development Authority (the Authority) to implement section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended (the Act), which authorizes the Authority to approve up to \$ 350 million, based on the amount of uncommitted tax credits under the New Jersey Aspire Program and the Emerge Program pursuant to N.J.S.A. 34:1B-362(b)(1)(f) and (h), in tax credits for the development of qualified wind energy facilities in the State.

### **History**

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#### **HISTORY:**

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

Substituted "\$ 350" for "\$ 100", substituted "based on the amount of uncommitted tax credits under the New Jersey Aspire Program and the Emerge Program pursuant to N.J.S.A. 34:1B-362(b)(1)(f) and (h)" for "except as may be increased by the Authority", and substituted "the State" for "wind energy zones".

## **N.J.A.C. 19:31-20.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563.) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414.). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under this Program.

"Approval letter" means the letter sent by the Authority that sets forth the conditions to maintain the approval and to receive the tax credit, the forecasted schedule for completion and occupancy of the project, the date the eligibility period is scheduled to commence, the estimated amount of tax credits, the process by which affiliates contributing employment or capital investment may be added, the requirement for the project site to remain a qualified wind energy facility, events that would trigger reduction and forfeiture of tax credits, tax clearance certificate requirements, and other such information that furthers the purposes of the Program. The letter also requires the applicant to permit audit(s) from time to time, as the Authority deems necessary, of the business's payroll records and any other evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-20.7(f) and the annual reports pursuant to N.J.A.C. 19:31-20.14. The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

"Authority" means the New Jersey Economic Development Authority.

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is a partnership, an S

corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate.

"Capital investment" in a qualified wind energy facility means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs, provided soft costs shall not exceed 20 percent of all capital investment. Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings, or other environmental components required to attain the level of silver rating or above in the LEED(R) building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source, including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high-performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified wind energy facility site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. To be included, the capital investment must be commenced after August 19, 2010, the effective date of the Act. For purposes of this subchapter, "commenced" shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

"Complex of buildings" means buildings that are part of the same financing plan and operational plan.

"Developer" means, with respect to a qualified wind energy facility, a business that intends to construct and lease a wind energy facility. A developer may seek to receive approval that the facility will constitute a qualified wind energy facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

"Eligibility period" means the five-year period in which a business may claim an offshore wind economic development tax credit, beginning with the tax period in which the Authority accepts the certification of the business that it has met the capital investment and employment qualifications of the Program.

"Equipment supply coordination agreement" means an agreement between a business and an equipment manufacturer, supplier, installer, or operator that supports a qualified offshore wind project, or other wind energy project as determined by the Authority, and that indicates the number of new, full-time jobs to be created by the agreement participants towards the employment requirement as set forth in N.J.A.C. 19:31-20.3. "Equipment supply coordination agreement" shall not include subcontracts or agreements between the equipment manufacturer, supplier, installer, and operator and parties other than the business that has applied for a credit under this Program.

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom

or practice as full-time employment, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.), for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. A full-time employee is also a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include an employee who is a resident of another state and whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the State of New Jersey.

"Full-time employee at the qualified wind energy facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the facility, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

"Leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-20.14(e) that must accompany the use of the tax credit certificate.

"Minimum number of new full-time employees" means:

1. For the first year, at least a cumulative 100 new full-time employees compared to the number of full-time employees at the time of application;
2. For a privilege period or taxable year following the first year, at least a cumulative 150 new full-time employees compared to the number of full-time employees at the time of application;
3. For a privilege period or taxable year following the second year, at least a cumulative 200 new full-time employees compared to the number of full-time employees at the time of application; and
4. For the fourth and fifth privilege period or taxable year following the third and fourth year, respectively, at least a cumulative 300 new full-time employees compared to the number of full-time employees at the time of application

"Net leasable area" means the usable area or actual occupiable area of a building, a floor, or an office suite. The amount of usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled, and, thus, is not fixed for the life of a building as would be the case with leasable area.



"New full-time employee" means a position that did not previously exist in this State and that is created by the business and filled by a full-time employee at the qualified wind energy facility. A new full-time employee may also include new full-time employee resulting from an equipment supply coordination agreement, provided that the employee spends at least 80 percent of his or her time in New Jersey, or any other period of time in New Jersey generally accepted by custom or practice as full-time employment, as determined by the Authority. New full-time employee resulting from an equipment supply coordination agreement may include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent. With regard to new full-time employees resulting from an equipment supply coordination agreement, one "new full-time employee" means 35 hours of employment per week dedicated to the work required under the agreement, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, regardless of whether or not the hours of work were performed by one or more persons. New full-time position shall also include new full-time positions that a business creates after receipt of approval, pursuant to N.J.A.C. 19:31-20.7, that are transferred to the qualified wind energy facility upon completion thereof and meet the requirements of this Program.

"Offshore wind economic development tax credit" means the tax credit permitted under section 6 of the Act, which may be applied against the tax liability otherwise due for corporation business tax or insurance premiums tax pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the Offshore Wind Economic Development Tax Credit Program created pursuant to section 6 of the Act and provided in this subchapter.

"Progress information" means the information that must be submitted pursuant to N.J.A.C. 19:31-20.7(e).

"Project" means the employment and the capital investment in a qualified wind energy facility that is at least the employment and capital investment required by the Program.

"Prorated minimum number of new full-time employees" means the minimum number of new full-time employees pursuant to N.J.A.C. 19:31-20.9(a) for a business receiving a prorated award.

"Prorated annual minimum number of new full-time employees" means for projects approved with less than 300 new full-time employees:

1. For the first year, at least a cumulative 100 new full-time employees compared to the number of full-time employees at the time of application;
2. For a privilege period or taxable year following the first year, at least a cumulative 150 new full-time employees compared to the number of full-time employees at the time of application;
3. For a privilege period or taxable year following the second year, the lesser of 200 and the applicable prorated minimum number of new full-time employees, compared to the number of full-time employees at the time of application; and

4. For the fourth and fifth privilege period or taxable year following the third year and fourth year, respectively, the applicable prorated minimum number of new full-time employees compared to the number of full-time employees at the time of application.

"Qualified offshore wind project" means the same as the term is defined in section 3 of P.L. 1999, c. 23 (N.J.S.A. 48:3-51), which is a wind turbine electricity generation facility in the Atlantic Ocean and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the New Jersey Board of Public Utilities, or any successor entity, pursuant to section 3 of P.L. 2010, c. 57 (N.J.S.A. 48:3-87.1).

"Qualified wind energy facility" means any building, complex of buildings, or structural components of buildings, including water access infrastructure, and all machinery and equipment used in the manufacturing, assembly, development, or administration of component parts that is primarily used to support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the Authority. To the extent a qualified wind energy facility requires improvements to existing non-wind facilities, only the improvements shall be part of the qualified wind energy facility.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery, but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

"Tenant" means a business that is a lessee in a qualified wind energy facility.

## History

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### HISTORY:

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a)."

Rewrote definitions "Approval letter", "Qualified offshore wind project", "Qualified wind energy facility", and "Soft costs"; in definition "Capital investment", inserted ", provided soft costs shall not exceed 20 percent of all capital investment" and a comma following the first occurrence of "source"; in definition "Eligibility period", substituted "five-year" for "10-year"; in definition "Full-time employee", deleted ", provided that any employee whose work is provided pursuant to a collective bargaining agreement with a business in the wind energy zone may be included" from the end; in definition "Full-time employee at the qualified wind energy facility", substituted "at the facility" for "in New Jersey"; in definition "Letter of compliance", updated the N.J.A.C. reference; in definition "Project", deleted "within a designated wind energy zone" from the end; added definitions "Minimum number of new full-time employees", "Prorated minimum number of new full-time employees", and "Prorated annual minimum number of new full-time employees"; and deleted definition "Wind energy zone".

## **N.J.A.C. 19:31-20.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.3 Eligibility criteria**

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**(a)** In order to be eligible for an offshore wind economic development tax credit for a qualified wind energy facility:

**1.** If the business is other than a tenant, the business shall:

- i.** Make or acquire capital investments in a qualified wind energy facility totaling not less than \$ 50,000,000. A business that acquires a qualified wind energy facility after August 19, 2010, the effective date of the Act, shall also be deemed to have acquired the capital investment made or acquired by the seller, subject to the disqualifications at N.J.A.C. 19:31-20.13. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of \$ 50,000,000 provided that the owner so indicates in the owner's application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;
- ii.** Employ, in the aggregate, with tenants at the qualified wind energy facility, the minimum number of new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement, except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award; and
- iii.** Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required at (c) below; and

**2.** If the business is a tenant in a qualified wind energy facility:

- i.** The owner of the qualified wind energy facility shall make or acquire capital investments in the facility totaling not less than \$ 50,000,000 in accordance with (a)1i above;
- ii.** The tenant shall occupy a leased area of the qualified wind energy facility that represents at least \$ 17,500,000 of the capital investment in the qualified wind energy facility, as calculated pursuant to (b) below;
- iii.** Employ, in the aggregate, with other tenants at the qualified wind energy facility, the minimum number of new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement, except that any business with the

prorated annual minimum number of new full-time employees will be eligible for a prorated award;

**iv.** The business shall lease the qualified wind energy facility for a term of not less than the eligibility period; and

**v.** Except for tenants of a qualified wind energy facility for which the owner has previously demonstrated a net positive economic benefit and received approval of the qualified wind energy facility or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required at (c) below. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment.

**(b)** In order to determine whether the tenant's leasable area of the qualified wind energy facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$ 50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified wind energy facility.

**(c)** The net positive economic benefit required at (a)1iii and (a)2v above shall equal at least 110 percent of the approved tax credit allocation amount, to the State for the period equal to 75 percent of the useful life of the investment, not to exceed the eligibility period, provided that the Authority may determine, at its discretion, that the net positive economic benefit may extend to 20 years based on the length of the business's commitment to maintain the project at the qualified wind energy facility and that the award of tax credits is subject to the recoupment provisions included in the approval letter. To support the determination of a net positive economic benefit, the business shall submit to the Authority, prior to approval, a non-binding letter of intent executed between the Chief Executive Officer of the Authority and the chief executive officer, or equivalent officer for North American operations, of the business stating that the tax credits will yield a net positive economic benefit in the amount required in this subsection, taking into account the criteria listed at N.J.A.C. 19:31-20.7(c). The letter of intent shall also include a certification from the chief executive officer, or equivalent officer for North American operations, of the business that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.

**(d)** Full-time employment for an accounting or privilege period, or the portion thereof after the certification of the business that it has met the capital investment and employment qualifications, shall be determined as the average of the monthly full-time employment for the period or portion thereof.

**(e)** Because a business may include an affiliate or affiliates, the capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.

**(f)** A business shall be treated as owner of a qualified wind energy facility if it holds title to the facility or if it ground leases the land underlying the facility for at least 50 years.

**(g)** A business that is investing in a qualified wind energy facility may apply for tax credits valued at less than the total amount of the capital investments in its project.

## History

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### **HISTORY:**

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

Rewrote (a) and (c); and in (f), inserted "or".

## **N.J.A.C. 19:31-20.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.4 Restrictions**

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- (a) A business shall not be awarded offshore wind economic development tax credits if:
1. The business participates in a Business Employment Incentive Program grant pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) relating to the same capital and employees that qualify the business for the Program; or
  2. The business receives assistance pursuant to the "Business Retention and Relocation Assistance Act," P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).
- (b) A business that is awarded a tax credit under the Program shall not be eligible for incentives authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).
- (c) Capital investments in a qualified wind energy facility must be incurred after the effective date of P.L. 2010, c. 57, which is August 19, 2010, but prior to its submission of documentation pursuant to N.J.A.C. 19:31-20.7(f).
- (d) If a business participating in a Business Employment Incentive Program grant for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation Assistance Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for offshore wind economic development tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, or Municipal Rehabilitation and Economic Recovery Act, as applicable.

### **History**

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#### **HISTORY:**

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

In the introductory paragraph of (a) and (b), substituted "awarded" for "allowed".

## **N.J.A.C. 19:31-20.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.5 Application submission requirements**

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**(a)** Each application to the Authority made by a business that is an owner or tenant shall include the following information in an application format prescribed by the Authority:

- 1.** Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:
  - i.** The name of the business;
  - ii.** The contact information of the business;
  - iii.** Prospective future address of the business (if different);
  - iv.** The type of the business;
  - v.** Principal products and services and three-digit North American Industry Classification System number;
  - vi.** The New Jersey tax identification number;
  - vii.** The Federal tax identification number;
  - viii.** The total number of employees in New Jersey at the time of application and in the last tax period prior to the application;
  - ix.** The total list of New Jersey operations;
  - x.** A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the Program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;
  - xi.** Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
  - xii.** Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
  - xiii.** A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65, P.L. 1996, c. 26, and P.L. 2002, c. 43; and

**xiv.** Any other necessary and relevant information as determined by the Authority for a specific application.

**2.** Project information shall include the following:

**i.** An overall description of the proposed project;

**ii.** A description of the capital investments planned by the business, if other than a tenant at the proposed qualified wind energy facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified wind energy facility;

**iii.** The estimated value of the capital investment;

**iv.** A certification by the chief executive officer, or equivalent officer for North American operations, of the business, with supporting evidence, that the State's financial support of the proposed capital investment in a qualified wind energy facility will yield a net positive economic benefit in the amount required by N.J.A.C. 19:31-20.3(c), taking into account the criteria listed at N.J.A.C. 19:31-20.7(c). The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

**v.** Identification of the site of the proposed qualified wind energy facility, including the block and lot of the site as indicated upon the local tax map or other documentation acceptable to the Authority;

**vi.** A project schedule that identifies projected move dates for the proposed qualified wind energy facility;

**vii.** A schedule of short-term and long-term employment projections of the business in the State, taking into account the proposed project;

**viii.** The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility;

**ix.** The total number of anticipated new full-time employees that would be created in New Jersey, for each of the years of the eligibility period, and that would occupy the qualified wind energy facility, and the total number of full-time employees that would occupy the qualified wind energy facility, and the distribution of such totals identified by business entity;

**x.** The total number of anticipated new full-time positions that would be created in New Jersey through any equipment supply coordination agreement and the projected length of time the agreement(s) will be in effect;

**xi.** Any plans to hire and train local residents, including, specifically, residents of the municipality, and to contribute to the local economy and community; and

**xii.** Any other necessary and relevant information as determined by the Authority for a specific application.

**3.** Employee information shall include the following:

**i.** A written certification that the employees that are the subject of this application will be new full-time employees as defined in the Program;



- ii. The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified wind energy facility;
  - iii. To the extent a tenant other than the business is meeting the employment requirement in the qualified wind energy facility, a submission from the tenant relating to (a)3i above;
  - iv. Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy such as the tax credits, pursuant to P.L. 2007, c. 200; and
  - v. Any other necessary and relevant information as determined by the Authority for a specific application.
4. A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the last tax period prior to the credit amount approval.
- (b) A developer may apply to have a building approved as a qualified wind energy facility by submitting the information required pursuant to (a)2i, ii, iii, and v above. Any tenant seeking an approval of tax credits for a qualified wind energy facility so approved will be required to submit the information required pursuant to (a)1, 2iv, 2vi through xii, 3, and 4 above.
- (c) The business applying to the Program shall submit an application fee as set forth at N.J.A.C. 19:31-20.6.

## History

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### HISTORY:

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

In (a)1xiii, inserted "and" at the end; deleted former (a)1xiv and recodified former (a)1xv as (a)1xiv; in (a)2ix, substituted "employees" for "positions", and substituted ", for each of the years of the eligibility period, and that would" for "and".

## **N.J.A.C. 19:31-20.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.6 Application and servicing fees**

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- (a)** A business applying for benefits under the Program shall submit a one-time non-refundable application fee. The application fee shall be, as follows:
1. For projects with a total of 150 to 299 new full-time employees listed in the application, the fee to be charged at application shall be \$ 10,000; and
  2. For projects with a total of 300 or more new employees listed in the application, the fee to be charged at application shall be \$ 15,000.
- (b)** A business shall pay to the Authority, the full amount of direct costs of an analysis by a third-party retained by the Authority, if the Authority deems such retention to be necessary.
- (c)** A non-refundable fee shall be paid at the time of execution of the non-binding letter of intent pursuant to N.J.A.C. 19:31-20.3(c), as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:
1. For projects with a total of 150 to 299 new full-time employees proposed for consideration by the Board, the fee shall be \$ 150,000; and
  2. For projects with a total of 300 or more new employees proposed for consideration by the Board, the fee shall be \$ 300,000.
- (d)** A non-refundable fee shall be paid prior to the receipt of the tax credit certificate, as follows:
1. For projects with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$ 150,000; and
  2. For projects with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$ 300,000.
- (e)** A business shall pay to the Authority an annual servicing fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period and, if applicable, the duration of the commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the eligibility period. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, as follows:
1. For projects with a total of 150 to 299 new full-time employees approved by the Board, the annual servicing fee shall be \$ 50,000 per year; and

2. For projects with a total of 300 or more new full-time employees approved by the Board, the annual servicing fee shall be \$ 75,000 per year.

**(f)** A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-20.10 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$ 10,000, and \$ 5,000 for each additional request made annually; and
2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$ 15,000, and \$ 7,500 for each additional request made annually.

**(g)** A business shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For each project with a total of 150 to 299 new full-time employees approved by the Board, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 15,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval; and
2. For each project with a total of 300 or more new full-time employees approved by the Board, a non-refundable fee of \$ 7,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

**(h)** A non-refundable fee shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a nonrefundable fee shall be paid for any subsequent six-month extension, as follows:

1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$ 10,000 for the first six-month extension, and \$ 15,000 for each subsequent six-month extension; and
2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$ 15,000 for the first six-month extension, and \$ 25,000 for each subsequent six-month extension.

**(i)** A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee for terminations that do not require extensive staff time and Board approval; and a non-refundable fee for terminations that require extensive staff time or Board approval, as follows:

1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$ 5,000, and \$ 15,000 for terminations that require extensive staff time and Board approval; and
2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval

shall be \$ 7,500, and \$ 25,000 for terminations that require extensive staff time and Board approval.

## History

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### **HISTORY:**

Amended by R.2020 d.122, effective November 16, 2020.

See: 52 N.J.R. 1612(a), 52 N.J.R. 2064(a).

Rewrote (b).

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

Rewrote the section.

## **N.J.A.C. 19:31-20.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.7 Review of allocation and certification of project completion**

**(a)** A business seeking an approval of tax credits for a qualified wind energy facility must apply for tax credits by July 1, 2025, and a business shall submit its documentation for approval of its credit amount by July 1, 2028.

**(b)** The Authority shall conduct a review of the applications commencing with the application bearing the earliest date a completed application is submitted or if interest in the Program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

**(c)** In determining whether the company meets the net positive economic benefits test, as certified pursuant to N.J.A.C. 19:31-20.5(a)2iv, the Authority's consideration shall include, but not be limited to, the direct benefits to the State, including local taxes that may benefit the State. The Authority shall also consider indirect benefits caused by the business's relocation to New Jersey, except, that the Authority will not consider indirect benefits if a business is including new full-time employees resulting from an equipment supply coordination agreement in the calculation of its new full-time employees. The Authority may also consider taxes paid directly or generated indirectly by retained employees, at the Authority's discretion based on evidence satisfactory to the Authority that the employees are at risk of being lost to another state or country or eliminated, and induced benefits derived from construction, provided that such determination shall not include any capital investment or employees for which an incentive has been previously provided or any capital investment by a local or State governmental entity.

**(d)** Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Board shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions that must be met in order to maintain the approval and to receive the tax credits. An approval letter setting forth the conditions and indemnification and insurance requirements will be sent to the applicant. Such

conditions shall include, but not be limited to, the requirement that the project does not violate any environmental law requirements and that the business agrees to extend the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax to the eligibility period. The approval letter shall contain the requirement that the project comply with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), for all capital investment and with the Authority's affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), commencing November 15, 2021. The approval letter shall also set forth a condition requiring the business to maintain the project at the qualified wind energy facility after the eligibility period to the extent the net positive economic benefit is calculated based on a period of years after the eligibility period pursuant to N.J.A.C. 19:31-20.3(c).

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the Program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the offshore wind economic development tax credits.

2. In the approval letter to the business, the Authority shall set a date by which its approval will expire.

**(e)** Within 12 months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for, and site control of, the qualified wind energy facility, except that projects consisting of new construction shall have 24 months. Commencing with the date six months following the date of application approval, and every six months thereafter until completion of the project, each approved business shall submit an update of the status of the project to the Authority. Unless the Authority determines in its sole discretion that extenuating circumstances exist for extensions, the Authority's approval of the tax credits shall expire if the Authority does not timely receive the progress information or status update.

**(f)** Upon completion of the capital investment and employment requirements of the Program, the business shall submit a certification of a qualified independent certified public accountant and any receipts or verifiable documentation requested by the Authority, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment, any employment requirements, and other eligibility requirements.

1. The certification with respect to the capital investment shall define the amount of the capital investment and shall not be increased regardless of additional capital investment in the qualified wind energy facility, provided; however, that in no event, will the amount of capital investment exceed the amount of capital investment previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the award accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The certification with respect to employment shall include the number of full-time employees employed at the qualified wind energy facility or through an equipment supply coordination agreement, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, and the salary of all new full-time employees. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the

company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time employees or salaries in the certification is reduced below the number of new full-time employees in the approval of the application or the salaries proposed in the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the award accordingly. If the certification indicates that the employment is less than the required number of new full-time employees for the first year of the award, the business shall no longer be eligible for tax credits.

**3.** The certification shall include the list of affiliates that contributed to the capital investment or full-time employees at the qualified wind energy facility and the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any such affiliate that was not listed in the application.

**4.** The Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants; provided, the business may select a certified public accountant that is independent to the business and not on the Authority's list of qualified certified public accountants for purposes of the capital investment certification, or the business's chief financial officer may certify for purposes of the employment certification, upon the Authority's prior approval, if the business demonstrates an extenuating circumstance prohibiting the business from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business.

**5.** The certification shall be submitted to the Authority no later than three years after the Authority's application approval, unless the Authority determines in its sole discretion that there are extenuating circumstances for extensions, but in no event later than July 1, 2028.

**6.** The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

**(g)** Once the Authority accepts the timely certification of the business that it has satisfied the capital investment, employment, and any other eligibility requirements of the Program, and the Authority determines that all necessary conditions have been met, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

## History

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### HISTORY:

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

Rewrote the section.

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End of Document



## **N.J.A.C. 19:31-20.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.8 (Reserved)**

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### **History**

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#### **HISTORY:**

Repealed by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 43 N.J.R. 1922(a).

Section was "Tax credit certificate".

## **N.J.A.C. 19:31-20.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.9 Tax credit amount; application and allocation of the tax credit**

**(a)** The amount of the credit awarded pursuant to the Program for projects creating 300 or more new full-time employees during the eligibility period shall, except as otherwise provided, be equal to the capital investment previously approved by the Board and made by the business, or the capital investment represented by the business' leased area, or area owned by the business as a condominium, except as may be limited by the net positive economic benefits test and shall be taken over the eligibility period, at the rate of one-fifth of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the Authority as having met the investment capital, employment, and any other eligibility requirements, subject to any reduction or disqualification provided at P.L. 2018, c. 17 and this subchapter, as determined by annual review by the Authority. The amount of the credit allowed pursuant to the Program for projects creating less than 300 new full-time employees, but at least 150 new full-time employees during the eligibility period shall be set, as follows:

1. Fifty percent of the capital investment for projects creating 150 new full-time employees and less than 200 new full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 150 new full-time employees.
2. Sixty five percent of the capital investment for projects creating 200 new full-time employees and less than 250 new full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 200 new full-time employees.
3. Eighty five percent of the capital investment for projects creating 250 new full-time employees and less than 300 new full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 250 new full-time employees.

**(b)** In no event shall the amount of tax credits exceed the amount of tax credits previously approved by Board as follows:

1. If the owner uses space in a qualified wind energy facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified wind energy facility not leased to tenants and the denominator of which is the total net leaseable area.

**2.** In order to determine the amount of the tenant's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in N.J.A.C. 19:31-20.3(b) to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further provided that such tenant allowance or tenant improvements meet the definition of capital investment.

**(c)** The business may apply the credit against its corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the Program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as subsequently adjusted pursuant to N.J.A.C. 19:31-20.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the qualified wind energy facility or employees at the qualified wind energy facility during the tax period for which the tax credits are issued.

**(d)** The amount of credit awarded for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business's total lease payments for occupancy for the tax period.

**(e)** A business that is a partnership shall not be awarded a credit under the Program directly, but the amount of credit of a corporate owner of a business shall be determined by allocating to each corporate owner of the partnership that proportion of the credit of the business that is equal to the corporate owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or at the end of the owner's tax period, or that proportion that is allocated by an agreement, if any, among all the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by the time and accompanied by the additional information as the Director may require consistent with any rule, guidance, or other publication issued by the Division of Taxation.

**(f)** The tax credits are not refundable and shall not result in a refund in the event that they do not equal or exceed a business's tax liability.

**(g)** The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter.

## History

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### HISTORY:

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

Rewrote the section.

## **N.J.A.C. 19:31-20.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.10 Application for tax credit transfer certificate**

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**(a)** A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for a tax credit transfer certificate covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be sold. Once approved by the Authority and the Director of the Division of Taxation, a certificate shall be issued. The certificate, upon receipt thereof by the business from the Director and the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was awarded the credit, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

**(b)** The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value that shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount.

**(c)** In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the corporate owners' distributive share of income or gain of the partnership, the selling agreement shall set forth the allocation among the corporate owners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31-20.5(a).

**(d)** In no event shall the purchaser or assignee of a tax credit transfer certificate make any subsequent transfers, assignments, or sales of a tax credit transfer certificate.

**(e)** The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

(f) The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferrer;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The State tax against which the transferee may apply the tax credit; and
5. The consideration received by the transferrer.

## History

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### HISTORY:

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

In (a), substituted "awarded" for "allowed", and inserted ", including, but not limited to, any applicable statutes of limitations for claiming a refund or credit"; in (c), inserted "corporate" twice; and added (f)

## **N.J.A.C. 19:31-20.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.11 Cap on total credits**

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The value of all credits approved by the Authority may be up to \$ 100,000,000, except as may be increased by the Authority as set forth in this section. The Authority shall monitor application and allocation activity under the Program. If the Chief Executive Officer of the Authority judges certain qualified offshore wind projects to be meritorious, the cap may, in the discretion of the Authority, be exceeded for allocation to qualified wind energy facilities in such amounts as the Authority deems reasonable, justified, and appropriate.

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## **N.J.A.C. 19:31-20.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.12 Reduction and forfeiture of tax credits**

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**(a)** If, in any tax period during the eligibility period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under the Program, then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this section has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the required full-time employees at the qualified wind energy facility. A company with which the recipient has an equipment supply coordination agreement is not considered an affiliate for the purposes of this section. The number of full-time employees in a business's Statewide workforce shall not include a new full-time employee at the qualified wind energy facility.

**(b)** If, in any tax period during the eligibility period, the aggregate number of new full-time employees at the qualified wind energy facility and resulting from an equipment supply coordination agreement drops below the minimum number of new full-time employees or prorated annual minimum number of new full time employees, as applicable, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of new full-time employees employed at the qualified wind energy facility and resulting from an equipment supply coordination agreement to the minimum number of new full-time employees or prorated annual minimum number of new full-time employees, as applicable, has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

**(c)** The credit amount for any tax period ending after January 13, 2026, which is the date 18 years after the effective date of P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.), during which the documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the years of the eligibility period shall remain available.

**(d)** In the event that any certification required from the business or the other party to any equipment supply coordination agreement, including, but not limited to, the certifications required pursuant to N.J.A.C. 19:31-20.14(a)2, is found to be willfully false or that the business submitted false or misleading information or failed to submit relevant information in the application or any

other submission to the Authority or the Division of Taxation, the Authority may, at its sole discretion and in addition to any other remedies available, revoke and/or terminate any award of tax credits in their entirety and may recapture all or a portion of the tax credits received by the business.

**(e)** For projects with a commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the eligibility period, the Authority may recoup all or a portion of the tax credits awarded if the business does not maintain the project at the qualified wind energy facility for the period of years after the eligibility period based on a recoupment schedule in the approval letter. The business shall have 12 months to restore the new full-time jobs to 300 or the applicable prorated minimum number of new full-time employees before the Authority may recoup any amount of tax credits.

**(f)** Any recapture or recoupment pursuant to (d) or (e) above may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture or recoupment amount.

## History

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### HISTORY:

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

In (a), inserted "during the eligibility period" and the third sentence; rewrote (b) and (e); in (d), substituted "recapture all or a portion of the" for "require repayment of"; and added (f).



## N.J.A.C. 19:31-20.13

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.13 Effect of sale or lease of qualified facilities**

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**(a)** The tax credit amount shall be forfeited in the event of sale of the qualified wind energy facility or lease or sublease of the business's tenancy as follows:

1. If the qualified wind energy facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.
2. If a tenant leases or subleases its tenancy in whole or in part during the eligibility period, the lessee or sublessee shall not acquire the credit of the lessor or sublessor, and the lessor or sublessor tenant shall forfeit all credits for the tax period of its lease or sublease and all subsequent tax periods, except that if the lessor or sublessor tenant retains sufficient capital investment and employment to remain eligible for the Program, the forfeiture shall affect only the credits attributable to the leased or subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the lessee or sublessee shall be subtracted. Notwithstanding the foregoing, a business may lease or sublease a portion of its qualified business facility to any other new tenant without forfeiting any of the business's credits, but shall not include the new tenant's full-time employees and capital investment in the business's eligible full-time employees or capital investment if:
  - i. The lessee or sublessee is a party to any equipment supply coordination agreement;
  - ii. The aggregate amount leased or subleased to any other tenant comprises five percent or less of the qualified wind energy facility; or
  - iii. The business leases or subleases to a tenant that primarily uses the leased or subleased premises to support the development and operation of a qualified offshore wind project.

### **History**

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#### **HISTORY:**

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

In the introductory paragraph of (a), inserted "lease or"; and rewrote (a)2.

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End of Document

## **N.J.A.C. 19:31-20.14**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.14 Annual review reporting requirements; letter of compliance**

(a) After notification pursuant to N.J.A.C. 19:31-20.7(g), the business shall furnish to the Authority an annual review report in a format as may be determined by the Authority, which shall contain the following information:

1. A certification, which shall be made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-20.7(f)4. The certification shall state the number of full-time employees and new full-time employees employed at the qualified wind energy facility or through an equipment supply coordination agreement, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, the salary of all new full-time employees, the number in the business's Statewide employment, total lease payments, the list of affiliates that contributed to the full-time employees at the qualified wind energy facility, the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time employees at the qualified wind energy facility or resulting from an equipment supply coordination agreement or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time employees or salaries in the annual review report of the prior year or the certification pursuant to N.J.A.C. 19:31-20.7(f) if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the award accordingly. If, in a tax period subsequent to a reduction in the size of the grant the business increases the number of new full-time employees at the qualified wind energy facility or resulting from an equipment supply coordination agreement or salaries of these jobs in the annual review report above 10 percent or more of the number of new full-time employees or salaries in the annual review report of the prior year, the Authority may reevaluate the net positive economic benefit and increase the size of the award accordingly, but in no event shall the amount of tax credit that

the business may take in a tax period be greater than one-fifth of the total tax credit amount approved by the Authority. This reduction shall not affect any forfeiture pursuant to N.J.A.C. 19:31-20.12.

**2.** A certification indicating whether or not the business is aware of any condition, event, or act that would cause the business not to be in compliance with the approval letter, P.L. 2007, c. 346, or this subchapter.

**(b)** Failure to submit its annual report within 120 days after the end of the business's tax privilege period or submission of the annual report without the information required above, shall result in forfeiture of any annual tax credits to be received by the business unless the Authority determines in its sole discretion that there are extenuating circumstances excusing the business from the timely filing required.

**(c)** The approval letter may provide for additional reporting requirements.

**(d)** In conducting its annual review, the Authority shall require a business to submit any information determined by the Authority to be necessary and relevant to its review and may require an audit of payroll and employment records.

**(e)** Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate shall be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance shall indicate whether the business may take all or a portion of the credits allocable to the tax privilege period.

## History

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### HISTORY:

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

In (a), deleted "certified by a certified public accountant" following "report", rewrote (a)1; in (a)2, inserted "letter" and a comma following "346"; and in (c), substituted "approval letter" for "tax credit certificate".

## N.J.A.C. 19:31-20.15

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.15 Appeals**

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- (a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c) Appeals that are timely submitted shall be handled by the Authority as follows:
1. The Chief Executive Officer of the Authority shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

### **History**

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**HISTORY:**

Amended by R.2021 d.131, effective November 15, 2021.

See: 53 N.J.R. 1347(a), 53 N.J.R. 1922(a).

In (a), deleted "on applications" following "action"; and in (b), inserted "effective".

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End of Document

## **N.J.A.C. 19:31-20.16**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM***

### **§ 19:31-20.16 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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## **N.J.A.C. 19:31-21.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Division of Taxation to implement the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56.

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## **N.J.A.C. 19:31-21.2**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.2 Definitions**

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The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to N.J.S.A. 54:50-39.d.

"Commission" means the New Jersey Motion Picture and Television Development Commission.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form, but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. "Digital media content" does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.A. 2C:34-2 and 2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Director" means the Director of the New Jersey Division of Taxation.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, talk show, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.A. 2C:34-2 and 2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except for taxpayers applying for a tax credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 165, if the production company of the reality show owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests, after July 1, 2018, no less than \$ 3,000,000 in such a facility within a designated enterprise zone established pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or a UEZ-impacted business district established pursuant to N.J.S.A. 52:27H-66.2. The investment of the production company may include the investment of its landlord after July 1, 2018. To determine the investment of the landlord, the

Authority shall multiply the owner's total capital investment in the building by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Fiscal year" means the State's fiscal year, which begins July 1 and ends June 30.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner, the taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of \$ 500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Independent contractor" means an individual treated as an independent contractor for Federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" does not include entities contracted with by the taxpayer to provide goods or ancillary contractor services, such as catering, construction, trailers, equipment, or transportation.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Post-production costs" means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects. There shall be no distinguishing between the production and post-production phases for animated films due to the intertwined relationship between those two phases in animation.

"Pre-production costs" means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated. For animated films, pre-production constitutes the period of time during which models are drawn on paper and/or created in the computer (for example, storyboarding).

"Primary place of business" means, for purposes of determining the amount of tax credit pursuant to N.J.A.C. 19:31-21.6( 1)2 and 3, the headquarters or commercial facility of a vendor at which the qualified expense transaction occurs.

"Principal photography" means the filming of major and significant portions of a qualified film that involves the lead actors or actresses. For animated films, "principal photography" means the point at which the models created during the pre-production phase are complete and the staff begins to choreograph, animate, and render the animations.

"Privilege period" means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, N.J.S.A. 54:10A-5.

"Program" means the Garden State Film and Digital Media Jobs Program.

"Qualified digital media content production expenses" means expenses incurred in New Jersey after July 1, 2018, for the production of digital media content. "Qualified digital media content production expenses" shall include, but not be limited to, wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payments made to a loan out company or to an independent contractor shall not be "qualified digital media content production expenses" unless the payments are made in connection with a trade, profession, or occupation carried out in this State or for the rendition of personal services performed in the State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey after July 1, 2018, for the production of a film, including pre-production costs, and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include, but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs for tangible personal property used and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a "qualified film production expenses" unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$ 500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines.

"Selling business" means a taxpayer that has unused tax credits, which it wishes to sell.

"Taxable year" means the calendar or fiscal accounting period for which a tax is payable under N.J.S.A. 54A:1-1 et seq., and commencing on or after July 1, 2018, but before July 1, 2023.

"Taxation" means the New Jersey Division of Taxation.

"Tax credit transfer certificate" means the certificate issued by the Division of Taxation certifying to the selling business the amounts of film tax credit being sold. The certificate shall state that the transferor waives its right to claim the credit shown on the certificate. The certificate shall show the fiscal year in which the application was initially approved and have the same tax credit vintage year as the original tax credit certificate.

"Tax credit vintage year" means the applicant's privilege period or taxable year in which the Authority issued the initial approval of the application and the tax credit may be applied.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

"Vendor authorized to do business in New Jersey" means a vendor that has obtained authorization to conduct business in this State by filing the appropriate documents with the State of New Jersey Department of the Treasury, Division of Revenue and Enterprise Services.

## History

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### **HISTORY:**

Amended by R.2020 d.007, effective January 6, 2020.

See: 51 N.J.R. 1256(a), 52 N.J.R. 58(b).

In definition "Tax credit vintage year", substituted "issued the initial approval of" for "approved".

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## **N.J.A.C. 19:31-21.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.3 Eligibility criteria**

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- (a)** A taxpayer shall be eligible for the program for film tax credits if the Authority finds that:
1. The taxpayer will incur after July 1, 2018, at least 60 percent of the total film production expenses, exclusive of post-production costs, for services performed and goods purchased through vendors authorized to do business in New Jersey, or the qualified film production expenses of the taxpayer during one taxable year exceed \$ 1,000,000 per production;
  2. The principal photography of the film commences within the earlier of 180 days from the date of the completed application for the tax credit, or 150 days from the date of the initial approval of the application pursuant to N.J.A.C. 19:31-21.7(a) for the tax credit;
  3. The film includes, when determined to be appropriate by the Commission, taking into account factors including, but not limited to, the budget and audience of the film, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an appropriate logo approved by the Commission, in the end credits of the film;
  4. The taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31-21.7(c)2; and
  5. The taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with (c) below.
- (b)** A taxpayer shall be eligible for the program for digital media tax credits if the Authority finds that:
1. The taxpayer will incur qualified digital media content production expenses during a privilege period or taxable year, provided that:
    - i. At least \$ 2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business in New Jersey;
    - ii. At least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey; and
    - iii. The taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31-21.7(c)2; and

2. The taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with (c) below.

(c) A taxpayer shall withhold from each payment to a loan out company or to an independent contractor, an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to N.J.S.A. 54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

## History

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### HISTORY:

Amended by R.2020 d.007, effective January 6, 2020.

See: 51 N.J.R. 1256(a), 52 N.J.R. 58(b).

In (a)2, substituted "completed" for "original".

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## **N.J.A.C. 19:31-21.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.4 Application submission requirements**

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- (a) A completed application for film tax credits shall include, but not be limited to, the following:
1. A preliminary budget for the film project with a breakout of projected costs, including pre-production costs and post-production costs;
  2. A breakout of projected total film production expenses, excluding pre-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.3(a)1, for services performed and goods purchased through vendors authorized to do business in New Jersey;
  3. A breakout of projected qualified film production expenses, pursuant to N.J.A.C. 19:31-21.3(a)2, in New Jersey;
  4. A breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.6(h)2 or 3, for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County;
  5. A description of the project, which must include:
    - i. A plot summary;
    - ii. The genre and subject matter;
    - iii. The anticipated film rating, if applicable;
    - iv. The names of principals and actors; and
    - v. The location(s) for filming;
  6. The filming schedule;
  7. The anticipated or actual dates of commencement and completion of principal photography and total film production expenses;
  8. An election by the taxpayer as to whether the tax credit will be based on total film production expenses, exclusive of post-production costs, or on qualified film expenses during a privilege period or taxable year, that exceed \$ 1,000,000 per production;
  9. If the applicant is a partnership or limited liability company, a list of members or owners applying for a tax credit under this program, including the percentage of ownership interest of each;

**10.** If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6( )1, satisfaction of the requirements in N.J.A.C. 19:31-21.6( )1i through iv; and

**11.** If the film production involves an eligible reality show, a description of the capital investment, which shall be no less than \$ 3,000,000, and a description of the production facility, which shall be no less than 20,000 square feet of real property, respectively, within a designated enterprise zone established pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or a UEZ-impacted business district established pursuant to N.J.S.A. 52:27H-66.2.

**(b)** A completed application for digital media tax credits shall include, but not be limited to, the following:

- 1.** A preliminary or actual budget demonstrating at least \$ 2,000,000 of total digital media content production expenses incurred for services performed and goods purchased through vendors authorized to do business in New Jersey;
- 2.** A breakout of projected digital media content production expenses for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;
- 3.** The total number of current full-time or full-time equivalent digital media employees, plans for anticipated new full-time or full-time equivalent employees, and current non-digital media full-time or full-time equivalent employees;
- 4.** A description of the project, which must include an overall summary of digital media content; and
- 5.** If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6( )1, satisfaction of the requirements under N.J.A.C. 19:31-21.6( )1i through iv.

## History

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### HISTORY:

Administrative correction.

See: 51 N.J.R. 173(b).

Amended by R.2020 d.007, effective January 6, 2020.

See: 51 N.J.R. 1256(a), 52 N.J.R. 58(b).

In (b)1, inserted "and goods purchased through vendors authorized to do business in New Jersey".

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## **N.J.A.C. 19:31-21.5**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.5 Fees**

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- (a)** A non-refundable fee shall accompany every application for tax credits, as follows:
  - 1.** For projects with total tax credits of \$ 1,000,000 or less, the fee to be charged at application shall be \$ 500.00; and
  - 2.** For projects with total tax credits in excess of \$ 1,000,000, the fee to be charged at application shall be \$ 2,500.
- (b)** A non-refundable fee of 0.5 percent of the approved tax credit amount shall be paid prior to the receipt of the tax credit.
- (c)** A non-refundable fee of \$ 1,000 shall be paid to the Authority upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-21.8.
- (d)** The full amount of direct costs of any analysis by a third-party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid by the applicant.

### **History**

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#### **HISTORY:**

Amended by R.2020 d.007, effective January 6, 2020.

See: 51 N.J.R. 1256(a), 52 N.J.R. 58(b).

Added (d).

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## **N.J.A.C. 19:31-21.6**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.6 Tax credit amounts; bonus amount; carryforward of tax credits**

**(a)** A taxpayer, upon final approval of an application to the Authority and the Director for film tax credits pursuant to N.J.A.C. 19:31-21.7(d), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., in an amount equal to 30 percent of the qualified film production expenses of the taxpayer, which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023.

**(b)** A taxpayer, upon final approval of an application to the Authority and the Director for digital media tax credits pursuant to N.J.A.C. 19:31-21.7(d), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer, which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023.

**(c)** No tax credit shall be allowed pursuant to this subchapter for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the Director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period or taxable year for which a tax credit authorized pursuant to this subchapter is allowed.

**(d)** A business that is not a "taxpayer" as defined and used in N.J.S.A. 54:10A-1 et seq., and, therefore, is not directly allowed a credit under this subchapter, but is a business entity that is classified as a partnership for Federal income tax purposes and is ultimately owned by a business entity that is a "corporation" as defined in N.J.S.A. 54:10A-4, or a limited liability company formed under the Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 et seq., or qualified to do business in this State as a foreign limited liability company, with one member, and is wholly owned by the business entity that is a "corporation" as defined in N.J.S.A. 54:10A-4, but otherwise meets all other requirements of this subchapter, shall be considered an eligible applicant and "taxpayer" as that term is used in this section.

**(e)** A business entity that is not a gross income "taxpayer" as defined and used in N.J.S.A. 54A:1-1 et seq., and, therefore, is not directly allowed a credit under this subchapter, but otherwise meets all the other requirements of this subchapter, shall be considered an eligible applicant and "taxpayer" as that term is used in this section, and the application of an otherwise allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subchapter.

**(f)** A business entity that is classified as a partnership for Federal income tax purpose shall not be allowed a tax credit pursuant to this section directly, but the amount of the tax credit of a taxpayer in respect of a distributive share of entity income shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

**(g)** A New Jersey S Corporation shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending with the taxpayer's taxable year.

**(h)** The order of priority in which the tax credit allowed by this section and any other credits allowed by law may be taken, shall be as prescribed by the Director.

**(i)** The amount of the tax credit applied under this section against the tax imposed pursuant to N.J.S.A. 54:10A-5, for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in N.J.S.A. 54:10A-5.

**(j)** The amount of the tax credit applied under this section against the tax otherwise due under N.J.S.A. 54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than zero.

**(k)** The amount of tax credit otherwise allowable under this section that cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.A. 54:10A-1 et seq. or 54A:1-1 et seq., may be carried forward, if necessary, to the seven privilege periods or taxable years following the privilege period or taxable year for which the credit was allowed.

**(l)** Notwithstanding any limit in (a) above, the tax credits awarded may be increased pursuant to the following:

- 1.** A taxpayer shall be allowed an increase in the tax credit against the tax imposed pursuant to N.J.S.A. 54:10A-5, in an amount equal to two percent of the qualified film or digital media content production expenses, provided that the application is accompanied by a diversity plan, outlining:
  - i.** The intention to prioritize the hiring of minority persons and women in an amount of not less than 15 percent of the total hired for the qualified film or digital medial production;
  - ii.** The efforts made, or to be made, in the recruitment, selection, appointment, promotion, training, and related employment areas to ensure equal employment opportunities for minority persons and women;
  - iii.** The specific goals, which may include advertising and recruitment actions, for hiring minority persons and women, including full-time jobs for full-time or full-time equivalent employees in New Jersey for production staff and crew, entry level positions, management positions, and talent-related positions; and
  - iv.** Whether the applicant intends to participate, or has participated, in training, education, and recruitment programs that are organized in cooperation with State colleges and

universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of minority persons and women.

2. The tax credit allowed pursuant to (a) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 35 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

3. The tax credit allowed pursuant to (b) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

## History

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### HISTORY:

Amended by R.2020 d.007, effective January 6, 2020.

See: 51 N.J.R. 1256(a), 52 N.J.R. 58(b).

Rewrote (f)1ii and (f)1iv.

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## **N.J.A.C. 19:31-21.7**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.7 Evaluation process; initial approval award of tax credits; appeals**

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**(a)** Applications shall be submitted to the Commission, which, upon review for eligibility, will forward the application to the Authority with the Commission's recommendation. The application shall be considered by the Authority for initial approval on a first in time basis, subject to an annual cap of \$ 75 million for film production tax credits and \$ 10 million for digital production tax credits in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year 2024. At initial approval, the Authority will designate the maximum amount of the tax credit and will assign a tax credit vintage year to the tax credit. The initial approval letter received by the taxpayer will include conditions subsequent to receipt of the tax credit including, but not limited to, the requirement for progress reports and the date by when final documentation pursuant to (b) below is required. Failure to submit timely, periodic reports that demonstrate satisfactory progress or final documentation may lead to the forfeiture of the tax credit.

**(b)** In general, the final documentation required by (c) below shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

**(c)** Upon completion of total film production expenses or the total digital media content production expenses, or the incurrence of qualified film production expenses during a privilege period or taxable year that exceed \$ 1,000,000 per production, the taxpayer shall submit the following final documentation, which the Authority, in consultation with the Director and the Commission, shall process and evaluate:

1. With respect to a film, evidence satisfactory to the Commission, and written confirmation from the Commission to the Authority that principal photography commenced within the earlier of 180 days from the date of completed application or 150 days from the date of initial approval by the Authority;
2. The Authority shall review and approve actual budgets and proof of total and qualified film production expenses or total and qualified digital media content production expenses, including a listing of the name of the company or person paid; his, her, or its Federal identification number; and a report prepared by an independent certified public accountant licensed in the State verifying the expenses claimed by the applicant. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the Authority and the Director; and shall include such information and documentation as shall be determined to be necessary by the Authority and the Director to

substantiate the total and qualified film production expenses or the total and qualified digital media content production expenses of the taxpayer. The amount of the qualified film production expenses or qualified digital media content production expenses in the certification shall not be increased regardless of additional expenses after the date of the certification;

**3.** With respect to a film, evidence satisfactory to the Commission that the film includes marketing materials, as deemed appropriate, pursuant to N.J.A.C. 19:31-21.3(a)3;

**4.** If the applicant was initially approved for a bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6( 1), evidence of good faith efforts to undertake the diversity plan. The bonus amount shall not be included in the amount of the final approval if the applicant fails to submit satisfactory evidence to the Authority and the Division; and

**5.** The Division shall conduct verification of partners or members of pass through entities, such as partnerships or LLCs.

**(d)** The Authority, in consultation with the Division and Commission, shall determine final approval of the tax credit in an amount based on the Authority's determination of the total and qualified film production expenses or total and qualified digital media content production expenses reported in the independent certified public accountant's certification, but in no event shall the tax credit be greater than the amount stated in the Authority's initial approval. The Authority shall provide, in writing to the taxpayer, the determination of the expenses, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

**(e)** If the Authority has approved the application, the Authority shall notify the Division of the final approval. The Division shall then issue the tax credit certificate to the applicant. The taxpayer's use of the tax credit shall be limited by N.J.A.C. 19:31-21.9(a) or (b), as applicable.

**(f)** An applicant may appeal the Authority's initial approval or denial under (a) above and final approval or denial under (c) above by submitting, in writing to the Authority, within 20 calendar days from the date of the Authority's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administration Procedure Rules, N.J.A.C. 1:1. Appeals that are timely submitted shall be handled by the Authority as follows:

**1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

**2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

## History

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### HISTORY:

Administrative correction.

See: 51 N.J.R. 173(b).

Amended by R.2020 d.007, effective January 6, 2020.

See: 51 N.J.R. 1256(a), 52 N.J.R. 58(b).

In (a), deleted ", which will be the fiscal year in which the application receives initial approval" from the end of the third sentence; and in (c)1, inserted "the earlier of" and substituted "completed" for "original".

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## **N.J.A.C. 19:31-21.8**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.8 Application for tax credit transfer certificate**

**(a)** Tax credits, upon receipt thereof by a taxpayer from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, pursuant to this section, subject to the cumulative total in N.J.A.C. 19:31-21.9(a), to any other taxpayer who may have a tax liability pursuant to N.J.S.A. 54:10A-5 or 54A:1-1 et seq. A taxpayer shall apply to the Authority and the Director for a tax credit transfer certificate, in lieu of the business being allowed any amount of the credit against the tax liability of the taxpayer. Such application shall identify the specific tax credits to be transferred, the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the taxpayer, naming the transferee. The certificate issued to the business shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the tax credits pursuant to N.J.A.C. 19:31-21.6.

**(b)** The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred credit amount. In order to evidence this requirement, the taxpayer shall submit to the Authority an executed form of standard selling agreement that evidences that the consideration received by the taxpayer is not less than 75 percent of the transferred tax credit.

**(c)** In the event that the taxpayer is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31-21.6.

**(d)** The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.



## N.J.A.C. 19:31-21.9

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.9 Cap on total credits**

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**(a)** The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Director and the Authority pursuant to N.J.A.C. 19:31-21.6(a) shall not exceed a cumulative total of \$ 75,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year 2024, as indicated by the fiscal year in which the tax credit was initially approved, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to N.J.S.A. 54A:1-1 et seq. If the cumulative total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year under N.J.A.C. 19:31-21.6(a) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under N.J.A.C. 19:31-21.6(a) are not in excess of the amount of credits available.

**(b)** The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director pursuant to N.J.A.C. 19:31-21.6(b) shall not exceed a cumulative total of \$ 10,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year 2024, as indicated by the tax credit vintage year, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to N.J.S.A. 54A:1-1 et seq. If the total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year under N.J.A.C. 19:31-21.6(b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and who have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under N.J.A.C. 19:31-21.6(b) are not in excess of the amount of credits available.

### **History**

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#### **HISTORY:**

Amended by R.2020 d.007, effective January 6, 2020.

See: 51 N.J.R. 1256(a), 52 N.J.R. 58(b).

In (a), substituted "fiscal year in which the tax credit was initially approved" for "tax credit vintage year".

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End of Document

## **N.J.A.C. 19:31-21.10**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.10 Affirmative action; and prevailing wage**

The Authority's affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1, will apply to productions undertaken with financial assistance received under the Garden State Film and Digital Media Jobs Program.

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## **N.J.A.C. 19:31-21.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM***

### **§ 19:31-21.11 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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## **N.J.A.C. 19:31-22.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the Emerge Program Act (Act), sections 68 through 81 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160. The Act authorizes the Authority to administer the program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State. The Authority Board may approve the award of tax credits to a business upon application of the business demonstrating its eligibility under the Act and this subchapter and following the execution of a letter of intent and the payment of fees, subject to the limitations set forth in this subchapter. The value of all tax credits approved by the Authority for businesses eligible pursuant to section 71 of P.L. 2020, c. 156 shall be subject to the limitations set forth at section 98 of P.L. 2020, c. 156.

### **History**

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#### **HISTORY:**

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

Inserted ", as amended by P.L. 2021, c. 160" and substituted "at" for "in" in the last sentence.

## **N.J.A.C. 19:31-22.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.2 Definitions**

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The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the Emerge Program Act, sections 68 through 81 of P.L. 2020, c. 156.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the business. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563.), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414.). A taxpayer may establish, by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by sections 1563 and 414 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 1563. and 414). An affiliate of a business may contribute to meeting either the capital investment or full-time employee requirements of a business that applies for a credit under section 71 of P.L. 2020, c. 156.

"Approval letter" means the letter sent by the Authority to the eligible business awarded tax credits under the program and countersigned by the eligible business pursuant to N.J.A.C. 19:31-22.9(a), which sets forth the conditions that must be met by the eligible business before the execution of a commitment agreement.

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Aviation district" means all areas within the boundaries of the Atlantic City International Airport, established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24), and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center.

"Board" means the Board of members of the New Jersey Economic Development Authority, established pursuant to section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. "Building services" shall not include any skilled maintenance work, professional

services, or other public work for which a contractor is required to pay the "prevailing wage" as defined at section 2 of P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

"Business" means an applicant proposing to own or lease premises in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5, or is a partnership, S corporation, limited liability company, or non-profit corporation. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. After approval by the Board of the award, if the business transfers the project, in whole or in part, or the business merges into another company, a business shall include a successor, as determined by the Authority in its sole discretion, to the business and a successor, as determined by the Authority in its sole discretion, to an affiliate of the business if the business applied for a credit based upon any capital investment made by full-time employees of the affiliate, provided any successor must execute the commitment agreement, which shall include: the obligation to not reduce the number of full-time employees in the successor's Statewide employment in the last tax period prior to the approval of the award; an agreement that all parties to the commitment agreement are jointly and severally liable under the commitment agreement; and an acknowledgment that the tax credit will be allocated to each party to the commitment agreement in accordance with the number of full-time employees that each employs.

"Capital investment" means expenses that a business or an affiliate of the business incurs, or is incurred, on behalf of the business or affiliate by its landlord, which may be demonstrated through an executed letter of intent or lease, following the submission of a complete application to the Authority pursuant to section 72 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.5, but prior to the project completion date, as shall be defined in the project agreement, for:

1. Site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, including, but not limited to, water, electric, sewer, and stormwater, and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems, or other environmental components required to attain the level of silver rating and gold rating standards or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source, including N.J.S.A. 52:27H-80 et seq., but does not include site acquisition;
2. Obtaining and installing furnishings and machinery, apparatus, or equipment, including but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168. and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property; or any combination of the foregoing. Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Capital investment shall include the value of a capital lease, as defined by generally accepted accounting practices (GAAP), of furnishings and machinery, apparatus, or equipment, based on the shorter of the useful life of the leased property or the commitment period; and

**3. Associated soft costs, which shall not exceed 20 percent of all capital investment.**

"College or university" means a county college, an independent institution of higher education, a public research university, or a State college.

"Commitment agreement" means the contract between an eligible business and the Authority pursuant to N.J.A.C. 19:31-22.9, that the parties execute after the conditions in the approval letter are met.

"Commitment period" means a period that is 1.5 times the eligibility period specified in the project agreement entered into pursuant to section 73 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.9, rounded up, for each applicable phase agreement.

"Community benefits agreement" means the agreement between the eligible business, the municipality or county, and the Authority pursuant to N.J.A.C. 19:31-22.9(c).

"Complex of buildings" means buildings that are part of the same financing plan and operational plan. The buildings comprising a complex of buildings may be non-contiguous and in geographical locations with different factors that affect the tax credit calculation.

"County college" means an educational institution established by one or more counties, pursuant to Chapter 64A of Title 18A of the New Jersey Statutes.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Distressed municipality" means a municipality that is qualified to receive assistance pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs, to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Doctoral university" means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education's Basic Classification methodology on August 7, 2017, the effective date of P.L. 2017, c. 221.

"Eligibility period" means the period in which an eligible business may claim a tax credit under the program for a given project phase, beginning with the tax period in which the Authority accepts certification of the eligible business that it has met the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(d), and extending thereafter for a term of not more than seven years. The term shall be determined at the discretion of the applicant at application, provided that the term of the eligibility period may consist of nonconsecutive tax years if the applicant elects, at any time after the end of the first tax period of the eligibility period, to defer the continuation of the eligibility period to a subsequent tax period. The applicant must be, at the time of the deferral election, in compliance with the requirements of the program. The Authority may extend the eligibility period one additional tax period to accommodate a prorated payment pursuant to paragraph (2) of subsection a. of section 77 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

"Eligible business" means any business that satisfies the criteria set forth at section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3 at the time of application for tax credits under the program.

"Eligible position" or "full-time job" means a full-time position in a business in this State that the business has filled with a full-time employee. An eligible position shall not include an independent contractor or consultant, unless the independent contractor or consultant meets



the definition of a full-time employee in the Act and this section. An eligible position may not include a position that is engaged in final point-of-sale retail, unless the position is located at a qualified business facility used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District, as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219).

"Employment and Investment Corridor" means the portions of the qualified incentive area that are not located within a distressed municipality and which:

1. Are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan, or until the State Planning Commission revises and readopts New Jersey's State Development and Redevelopment Plan and adopts rules to revise this definition;
2. Intersect with portions of: a port district, a qualified incentive tract, or Federally owned land approved for closure under a Federal Commission on Base Realignment and Closure action;
3. Are the proposed site of a qualified incubator facility, a tourism-destination project, or transit-oriented development; or
4. At the time of application, contain:
  - i. A vacant commercial building or campus having over 400,000 square feet of office, laboratory, or industrial space, or any combination of office, laboratory, or industrial space, available for occupancy for a period of over one year, provided that "employment and investment corridor" shall no longer include the building or campus when there is less than 400,000 square feet of vacant space; or
  - ii. A site that has been negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

"Enhanced area" means a municipality that contains an urban transit hub, as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208); the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and the three municipalities with the highest percentage of Supplemental Nutrition Assistance Program recipients according to the 2017 Municipal Revitalization Index.

"Full-time employee" means:

1. A person:
  - i. Who is employed by a business for consideration for at least 35 hours a week and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.;
  - ii. Who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for at least 35 hours a week and whose wages are subject to withholding, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.;
  - iii. Who is a partner of a business who works for the partnership for at least 35 hours a week and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of

estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.;

**iv.** Who is a resident of another state, and would be eligible pursuant to subparagraphs 1i, ii, or iii above, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., due to a reciprocity agreement with the other state; or

**v.** The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for subparagraphs 1i, ii, or iii above. A "full-time employee" shall include, but shall not be limited to, an employee who has been hired by way of a labor union hiring hall, or its equivalent, provided that the 35 hours of employment per week in the State shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons;

**2.** A "full time employee" further means a person eligible pursuant to paragraph 1 above who, as evidenced by documentation acceptable to the Authority, is provided, by the business, no later than 90 days of hire, employee health benefits under a health benefits plan authorized pursuant to State or Federal law; provided, however, that with respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal, the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; and

**3.** "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business or a contract worker whose income is subject to withholding, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., except that any person working as an independent contractor or contract worker whose income is subject to withholding, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., for the business shall be deemed a full-time employee if the business demonstrates to the Authority that:

**i.** The person working as an independent contractor or contract worker for the business works at least 35 hours per week or renders any other standard service generally accepted by custom or practice as full-time employment;

**ii.** The person is provided, at the date of initial engagement, as evidenced by documentation acceptable to the Authority, employee health benefits under a health benefits plan authorized pursuant to State or Federal law;

**iii.** The business provides documentation to the Authority to permit the Authority to verify the compensation paid to, the withholdings of, and the time worked by, the person working as an independent contractor or contract worker; and

**iv.** The business shall provide to the Authority an annual report that identifies the number of persons working as independent contractors or contract workers for the business and their contractual or partnering relationship with the business; and

**4.** "Full-time employee" shall not include any person who, at the time of project application, works in New Jersey for consideration for at least 35 hours per week for the business, or who renders any other standard of service generally accepted by custom or

practice as full-time employment, but who, prior to project application, works under an employee leasing agreement between the business and an employee leasing company that is not a professional employer organization or who was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on January 7, 2021, the effective date of P.L. 2020, c. 156, is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality, or as a result of the Federal government owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Incentive area" means:

1. An aviation district;
2. A port district;
3. A distressed municipality or enhanced area;
4. An area designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning Area); or a Designated Center under the State Development and Redevelopment Plan;
5. An area located within a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6), or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);
6. An area located within any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District, as delineated at section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4);
7. An area located within a regional growth area, rural development area zoned for industrial use as of December 5, 2016, the effective date of P.L. 2016, c. 75, or town, village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);
8. An area located within a government-restricted municipality;
9. An area located within land approved for closure under any Federal Commission on Base Realignment and Closure action;
10. An area located within an area designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive), so long as that area designated as Planning Area 4A (Rural Planning Area),

Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within:

- i. A designated center under the State Development and Redevelopment Plan;
  - ii. A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Development and Redevelopment Plan and adopts rules to revise this definition as it pertains to Statewide Planning Areas;
  - iii. Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6), or in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-14);
  - iv. Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided the expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals; or
  - v. Any area on which an existing tourism destination project is located; or
- 11.** An area located in a qualified opportunity zone.

"Independent institution of higher education" means a college or university incorporated and located in New Jersey, which, by virtue of law, character, or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education that is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of, and continuation of regional accreditation by, the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

"Industrial premises" or "industrial space" means premises or space in which at least 51 percent of the square footage will be, or has been, used for the assembling, processing, manufacturing, or any combination thereof, of finished or partially finished products from materials or fabricated parts, including, but not limited to, factories or as a warehouse if the business uses the warehouse as part of the chain of distribution for products assembled, processed, manufactured, or any combination thereof, by the business at the qualified business facility; for the breaking or demolishing of finished, or partially finished, products; or for the production of oil or gas or the generation or transformation of electricity.

"Industrial use" means assembling, processing, manufacturing, or any combination thereof, of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity. "Industrial use" includes farming purposes as that term is defined at 26 U.S.C. § 6420.(c)(3)(A), undertaken in an industrial space.

"Infrastructure Fund" means the Recovery Infrastructure Fund established pursuant to section 79 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.18 to fund local infrastructure improvements.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or

other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

"Major rail station" means a railroad station that is located within a qualified incentive area and that provides, to the public access, to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Mega project" means a project of special economic importance, at which 500 or more new full-time jobs are created, having capital investment of at least \$ 50,000,000 in a targeted industry and that provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to: being undertaken by a business that is making an industry leading investment in a new technology or high-growth sub-industry level or catalyzing a new sub-industry or industry-cluster within the State.

"Minimum environmental and sustainability standards" means the standards established by the Authority in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

"Municipal Revitalization Index" means the most updated municipal revitalization distress score, as published at the time of project Board approval by the Department of Community Affairs.

"New full-time job" means an eligible position that did not previously exist in this State created by a business. For the purposes of determining the number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

"Non-gaming business" means any business, or portion of any business, that is not engaged in the operation of casino gambling or other gaming as defined at N.J.S.A. 5:12-218. For projects that contain both gaming and non-gaming operations, the number of full-time jobs and amounts of eligible capital investment shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, for example, if gaming revenue is 40 percent of total revenue, then 60 percent of the full-time employees would be deemed non-gaming and in an eligible position for the program.

"Other eligible area" means the portions of the incentive area that are not located within a distressed municipality, or the employment and investment corridor.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Phased project" means a project with an initial phase that is a mega project and each subsequent phase includes a minimum capital investment of \$ 25 million and minimum of 250 new full-time jobs.

"Port district" means the portions of an incentive area that are located within the Port of New York District of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to the South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the Emerge program established by sections 68 through 81 of P.L. 2020, c. 156 and as implemented by this subchapter.

"Project" means the capital investment at a qualified business facility and the employment commitment pursuant to the project agreement.

"Project agreement" means the approval letter and the commitment agreement executed between an eligible business and the Authority, which together set forth the terms and conditions under which the eligible business may receive the tax credit award authorized by the Board pursuant to the Emerge program.

"Project phase agreement" means a sub-agreement of the project agreement that governs the timing, capital investment, employment levels, and other details of the respective phase.

"Public research university" means a public research university as defined at section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

"Qualified business facility" means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located therein, used in connection with the operation of a business that is not engaged in final point-of-sale retail business at that location, unless the building, complex of buildings, or structural components of buildings, and all machinery and equipment therein, are used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District, as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219). In determining whether a qualified business facility for professional services is engaged in final point-of-sale retail, the Authority shall consider several factors, including, but not limited to, whether the business is a small business and whether the preponderance of its customer base is located within this State.

"Quality child care facility" means a child care center licensed by the Department of Children and Families or a family child care home registered with the Department of Human Services, operating continuously, which has not been subject to an enforcement action, and which has and maintains a licensed capacity for children age 13 years or younger who attend for less than 24 hours a day.

"Qualified incentive tract" means a population census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

"Qualified incubator facility" means a commercial building located within an incentive area: that contains 5,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with, a research institution, teaching

hospital, college, or university; and within which at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

"Qualified opportunity zone" means a Federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400.Z-1.

"Research and development premises" or "research and development space" means premises or space in which at least 51 percent of the square footage will be, or has been, used for research and development.

"Retained full-time job" means an eligible position that currently exists in this State and is filled by a full-time employee, but which, because of a potential relocation by the business, is at risk of being lost to another state or country. For the purposes of determining the number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

"SDA district" means an SDA district as defined at section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situated.

"Small business" means a business engaged primarily in a targeted industry, with fewer than 100 employees, as determined six months before application and at the time of application. Employees of a small business shall include a person who is employed by a business for consideration for at least 35 hours a week; who is employed pursuant to an employee leasing agreement for at least 35 hours a week; or who is a partner of a business who works for the partnership for at least 35 hours a week. Employee of a small business shall also include any person who works as an independent contractor for the business or a contract worker who works at the business for at least 35 hours a week. For those persons who are employed by the business or who work for the business as independent contractors or contract workers for less than 35 hours a week, 35 hours of employment a week shall constitute one employee, regardless of whether or not the hours of work were performed by one or more persons. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment. For purposes of the number of employees, a small business shall include all of its affiliates, regardless of whether the affiliate may contribute full-time jobs or capital investment to the project.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery, but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

"Square foot" or "square footage" means the sum of all areas on all floors of a building or structure included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

"Square foot of gross leasable area" or "square footage of gross leasable area" or "gross leasable area" means rentable area of the building or structure as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building or structure that

penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building or structure and is not affected by changes in corridor sizes or configuration.

"State college" means a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes.

"Statewide workforce" means the total number of full-time employees in the Statewide workforce of the business and any affiliate of the business, if the affiliate contributes any capital investment or full-time employees. "Statewide workforce" shall not include a new eligible position unless the new eligible position is in addition to the number of full-time employees specified in the commitment agreement and the business is not receiving an additional tax credit award for the new eligible position. Further, "Statewide workforce" shall not include full-time employees at any final point-of-sale retail facilities unless the project, as approved by the Board, includes full-time employees engaged in final point-of-sale retail.

"Substantial environmental remediation" means the completion of the necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the capital investment in a qualified business facility.

"Targeted industry" means any industry identified from time to time by the Authority that shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses, including food innovation, and other innovative industries that disrupt current technologies or business models. A project shall be considered to be in a targeted industry if the primary activity undertaken by the full-time employees will be in a targeted industry, or if the business is engaged primarily in a targeted industry. An eligible business shall be considered to be in a targeted industry if the project is for full-time employees of a division that primarily undertakes activity within the definition of a targeted industry, or the eligible business is a subsidiary of an entity that is engaged primarily in a targeted industry, even if the project is for full-time employees who do not work directly in the targeted industry. The Authority may consider whether a business is engaged primarily in another innovative industry that disrupts current technologies or business models, by assessing factors including, but not limited to, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new firms to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based firms to collect a share of revenues that were traditionally only available to companies in other geographies.

"Technology startup company" means a for-profit business that has been in operation fewer than seven years at the time that it initially occupies or expands in a qualified business facility and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which proprietary technology or business method the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

"Total project cost" means the greater of the actual cost or the estimated cost to be incurred in connection with the project by the business or its landlord until the issuance of a permanent



certificate of occupancy, or upon such other event evidencing project completion, as set forth in the commitment agreement.

"Tourism-destination project" means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business within an established tourism district with a significant impact on the economic viability of that tourism district.

"Transit-oriented development" means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a government-restricted municipality, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations.

"Transit hub" means an urban transit hub, as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), and that is also located within an incentive area.

"Transit hub municipality" means a Transit Village or a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), or which has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

"Transit village" means a municipality that has been designated as a transit village by the Commissioner of the Department of Transportation and the Transit Village Task Force.

"Withholdings" means the amount withheld by a business from the wages of full-time employees, or estimated taxes paid by, or on behalf of, partners who are full-time employees, or any combination thereof, pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Withholdings shall not include amounts withheld by a business from stock options or from stock options, money, or other payments given to a full-time employee pursuant to the termination of employment of the full-time employee. Withholdings shall include amounts withheld by a business from money or other payments given to a full-time employee pursuant to a bonus for commencing employment or for services rendered by the full-time employee.

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

Deleted definition "Authorized agent of the owner"; rewrote definitions "Business", "Capital investment", "Employment and Investment Corridor", "Enhanced area", "Full-time employee", "Incentive area", "New full-time job", "Project agreement", "Project phase agreement", "Quality child care facility", "Retained full-time job", and "Statewide workforce"; added definitions "Substantial environmental remediation" and "Technology startup company".

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End of Document

## **N.J.A.C. 19:31-22.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.3 Eligibility criteria**

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**(a)** A business eligible pursuant to this section may submit an application to the Authority in accordance with the provisions of section 72 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.5 on or after May 20, 2021, the effective date of this subchapter, but prior to March 1, 2027.

**(b)** The Authority shall make the determination that an applicant has met the criteria for eligibility for a tax award and shall determine the amount of the award. In order for a business to be eligible for tax credits under the program, the chief executive officer of the business or an equivalent officer shall demonstrate to the Authority at the time of application that:

1. The business will make, acquire, or lease a capital investment at the qualified business facility equal to or greater than the applicable amount set forth at (c) below;
2. The business will create or retain new and retained full-time jobs in the State in an amount equal to or greater than the applicable minimum number of new or retained full-time jobs required to be eligible as set forth at (d) below. To qualify as an eligible position or full-time job, the business must demonstrate to the Authority's satisfaction that the employee spends at least 80 percent of the individual's work time in this State and that the eligible position requires an employee to have the individual's primary place of work in this State;
3. The qualified business facility is located in a qualified incentive area;
4. The award of tax credits will be a material factor in the business's decision to create or retain the number of new and retained full-time jobs set forth in its application, except that:
  - i. The award of tax credits shall not be considered a material factor in the creation or retention of full-time jobs filled by employees providing professional services, as defined at N.J.S.A. 14A:17-3(1), and their direct administrative support staff, unless as of the date of the business's application, the full-time job is filled by an employee whose primary business office is located outside of the State. Direct administrative support staff shall not include employees in information technology, human resources, or employee relations positions; and
  - ii. In determining whether a position provides professional services subject to (b)4i above, the Authority shall consider several factors, including, but not limited to, whether the business is a small business or whether the preponderance of its customer base is located within this State;
5. The award of tax credits, the capital investment resultant from the award of tax credits, and the resultant creation and retention of new and retained full-time jobs will yield a net positive economic benefit, as calculated by the Authority, to the State equaling at least 400 percent of

the requested tax credit allocation amount except as listed at (b)5i and ii below. For a phased project, the requested tax credit allocation amount for the initial phase shall equal at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below, and, for each phase thereafter, the cumulative net positive economic benefit shall equal at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below. The net positive economic benefit determination shall be calculated prior to considering the value of the requested tax credit under the program and shall be based on the benefits generated during the period of time from approval through the end of the commitment period. The net positive economic benefit may be based on the benefits generated through the end of the longer period of extended commitment that the business may elect for purposes of receiving credit for benefits projected to occur after the expiration of the commitment period, pursuant to (b)5iv below.

- i. An award of tax credits to a business for a qualified business facility located in a distressed municipality or an enhanced area shall yield a net economic positive benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 300 percent of the requested tax credit amount.
- ii. An award of tax credits to a business for a qualified business facility located in a government-restricted municipality, or for a mega project, shall yield a net positive economic benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 200 percent of the requested tax credit amount.
- iii. The net positive economic benefits calculated for all projects shall be evaluated by the Authority on a present value basis with the requested tax credit allocation amount discounted to present value at the same discount rate as the benefits from capital investment resultant from the award of tax credits and the resultant retention and creation of full-time jobs as provided at (b)5iv below.
- iv. A business may elect a period of extended commitment beyond the commitment period for which time the economic benefits shall be creditable by the Authority to the determination of the net positive economic benefit of the project. In no event, shall the period for which the net positive economic benefit be determined, including any extended commitment period, exceed 20 years. A business electing a period of extended commitment and failing to maintain the project through the expiration of that extended commitment period shall be obligated to repay a proportion of the incremental benefits received on account of having extended the commitment period, taking into consideration the number of years of extended commitment during which the business maintained the project.
- v. If, during the term of the program, the methodology used by the Authority in projecting the net positive economic benefits of a project in making the determination required pursuant to this paragraph is modified, the Authority may adjust, prospectively, the respective percentage thresholds by which the benefits must exceed the requested tax credit allocation amount set forth pursuant to this paragraph to ensure consistent application of the respective percentage thresholds. Any modification to the methodology shall be applied prospectively. Prospective application means using the modified methodology or respective percentages to pending applications and to projects that have been previously approved if the business requests a modification, or this subchapter or

the commitment agreement requires or authorizes the Authority to conduct a reevaluation of the net positive economic benefit;

6. The qualified business facility shall be in compliance with minimum environmental and sustainability standards upon completion of the project;
7. The project shall comply with the Authority's affirmative action requirements, adopted pursuant to section 4 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3; and
8. Each worker employed to perform construction work or building services work at the qualified business facility shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.).

i. The payment of prevailing wage pursuant to this paragraph shall not apply if:

- (1) The work performed under the contract is performed at a qualified business facility owned by a landlord that is not a business receiving Authority assistance;
- (2) The landlord is a party to the construction contract, building services contract, or both; and
- (3) The qualified business facility constitutes a lease of less than 35 percent of the entire facility at the time of contract and under any agreement to subsequently lease the qualified business facility.

ii. In accordance with section 1 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.1), nothing in this paragraph shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first certificate of compliance pursuant to paragraph (2) of subsection a. of section 77 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

iii. The payment of prevailing wages for building services work shall apply for the duration of the commitment period.

(c) The minimum capital investment required to be eligible pursuant to (b)1 above shall be the sum of (c)1 through 5 below, as applicable, provided that to the extent a business's qualified business is comprised of more than one of the uses at (c)1, 2, 3, or 4 below, the minimum investment for common areas will be in proportion to the other areas.

1. For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development portion of the premises for continued similar use by the business, a minimum investment of \$ 20.00 per square foot of gross leasable area;
2. For the new construction of an industrial, warehousing, logistics, or research and development portion of the premises for use by the business, a minimum investment of \$ 60.00 per square foot of gross leasable area;
3. For the rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises that does not qualify pursuant to (c)1 or 2 above, a minimum investment of \$ 40.00 per square foot of gross leasable area;
4. For the new construction of a portion of the premises that does not qualify pursuant to (c)1 or 2 above, a minimum investment of \$ 120.00 per square foot of gross leasable area;
5. For a small business, no new minimum capital investment shall be required, provided the applicant has demonstrated evidence satisfactory to the Authority of its intent to remain in the

State for the commitment period. Such evidence may include, but is not limited to, a proposed lease, membership agreement, or similar commitment for space; and

**6.** In the event the business invests less than the amount set forth at (c)1 above in the qualified business facility, the business shall donate the uninvested balance to the infrastructure fund established pursuant to section 79 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.18, which donation shall not be included in the net positive economic benefit analysis pursuant to (b)4 above or the full economic analysis pursuant to N.J.A.C. 19:31-22.7(d).

**(d)** The minimum number of new or retained full-time jobs required to be eligible pursuant to (b)2 above shall be as set forth at (d)1 through 5 below. A business may be eligible for a tax credit award for both new and retained full-time jobs if the business separately satisfies the corresponding minimum number for new and retained full-time jobs.

**1.** For a small business, 25 percent growth of its workforce with new full-time jobs within the eligibility period. The small business shall submit a growth plan, which specifies the number of new full-time employees that the eligible business will hire each year of the eligibility period in the State provided that by the end of the eligibility period, the eligible business shall have a minimum of 25 percent growth of its workforce with new full-time jobs;

**2.** For a business engaged primarily in a targeted industry that does not qualify as a small business, 25 new full-time jobs;

**3.** For any business not set forth at (d)1 or 2 above, a minimum of 35 new full-time jobs;

**4.** For a business eligible for new full-time jobs pursuant to (d)2 or 3 above, the business shall also be eligible for retained full-time jobs in addition to the new full-time jobs if the business will retain: 150 retained full-time jobs when locating in a government-restricted municipality; 250 retained full-time jobs when locating in a qualified incentive tract or enhanced area municipality; or 500 retained full-time jobs when locating anywhere else in the State;

**5.** For a business not eligible pursuant to (d)2, 3, or 4 above, which is locating in a qualified incentive tract, enhanced area, or government-restricted municipality, the greater of 500 retained full-time jobs or the business's retained full-time jobs at the time of application; and

**6.** For any business not set forth at (d)5 above, the greater of 1,000 retained full-time jobs or the business's retained full-time jobs at the time of application.

**(e)** In addition to the requirements at (b), (c), or (d) above, a business shall provide and adhere to the following. The requirements set forth in this subsection may be modified by the Authority to respond to an emergency, disaster, or other factors that result in employees of an eligible business having to work from a location other than the qualified business facility:

**1.** A plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business's new and retained full-time employees as approved, as determined by the Authority in its sole discretion by considering square footage allocable to eligible positions. The business shall adhere to such plan to complete its project.

**2.** A certification by the chief executive officer of the business or an equivalent officer, under the penalty of perjury, that not less than 80 percent of the withholdings of new and retained full-time jobs are, and will be, subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

**(f)** The chief executive officer of the business, or an equivalent officer, shall certify that all factual representations made by the business to the Authority pursuant to (b), (c), and (d) above are true under the penalty of perjury.

**(g)** For a qualified business facility that is a complex of buildings:

1. The minimum capital investment required pursuant to (b) above and for purposes of qualifying as a mega project shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion. In all other instances, each building in a complex shall meet a minimum capital investment required pursuant to (b) above. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples of complexes of buildings that are proximate:

- i. A complex of buildings consists of building A and building B, which are both on the same block, but separated by other buildings.
- ii. A complex of buildings will consist of building A and building B, which will be adjacent to each other, but have separate entrances.
- iii. A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot.

2. The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings.

**(h)** For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility shall have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

1. Having a capital investment in excess of \$ 50,000,000, at which more than 250 full-time employees of a business are created or retained; and
2. Demonstrating to the satisfaction of the Authority a combination of two or more of the following as a result of the project:
  - i. Positive financial benefit to the Tourism District;
  - ii. A net increase in visitors to the Tourism District;
  - iii. An increase in marketing dollars spent on the Tourism District; or
  - iv. The addition of unique amenities or services to the Tourism District, which amenities or services may be located at the project.

**(i)** A business shall be treated as the owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

**(j)** A business may apply for tax credits under the program for more than one project through one or more applications. However, the Authority may, in its sole discretion, consider two or more applications as one application for one project based on factors including, but not limited to, the location of the qualified business facilities, the types of jobs proposed, and the business's financing and operational plans.

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

Rewrote (b). (c), (d), (e) and (f).

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End of Document



## **N.J.A.C. 19:31-22.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.4 Restrictions**

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- (a)** The Authority shall not enter into a commitment agreement with a business that has previously received incentives administered by the Authority unless the capital investment incurred and new or retained full-time jobs pledged by the business in the new commitment agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.
- (b)** A project that consists solely of final point-of-sale retail facilities shall not be eligible for a grant of tax credits. If a project consists of both final point-of-sale retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. If a warehouse facility is part of a final point-of-sale retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), shall not be considered final point-of-sale retail facility.
- (c)** For the purposes of the certifications and annual reports required pursuant to the commitment agreement and set forth at N.J.A.C. 19:31-22.9(f) and 22.10(a)5, if a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs.
- 1.** To the extent an eligible retained full-time job that was the basis of the award no longer exists, the business shall include as a retained full-time job, a new eligible position that is filled by a full-time employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award.
  - 2.** If a qualified business facility comprises a complex of buildings with different factors affecting the tax credit calculation, the business shall meet the employment requirements related to the retained full-time jobs at, or associated with, each building before receiving benefits for new full-time jobs at, or associated with, any building. The business shall include as a retained full-time job, a new eligible position that is filled by a full-time employee, regardless of the location of such position, provided that the position is included in the order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new eligible position filled by a full-time employee or the tax credit for the retained full-time job that no longer exists.
- (d)** A business with full-time employees that are the subject of an existing incentive award shall have to maintain 100 percent of the full-time employees subject of the existing incentive award before any full-time employee may be counted as an eligible position.

(e) To remain a mega project, the business shall maintain at least 500 new full-time jobs and demonstrate the factors approved for leadership each year during the commitment period.

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

In (a), substituted "a commitment" for "an incentive" and "commitment" for "incentive".

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End of Document

## **N.J.A.C. 19:31-22.5**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.5 Application submission requirements**

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**(a)** Each application to the Authority made by a business shall include the following information in an application format prescribed by the Authority:

- 1.** Information on the business, including all affiliates contributing either full-time employees or capital investment, or both, to the project, which shall include the following:
  - i.** The name of the business;
  - ii.** The contact information of the person identified as the primary contact for the business;
  - iii.** The prospective future address of the business (if different);
  - iv.** The type of the business;
  - v.** The principal products and services and three-digit North American Industry Classification System number;
  - vi.** The New Jersey tax identification number;
  - vii.** The Federal tax identification number;
  - viii.** The total number of full-time employees in New Jersey on the date of the application and in the business's last tax period prior to the date of the application. If the application is approved in the business's subsequent tax period, the business must provide the total number of full-time employees in New Jersey in the tax period prior to credit amount approval;
  - ix.** The total list of the business's locations in New Jersey and the function performed at each location;
  - x.** A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the owner or business is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The business shall also submit a written certification by the chief executive officer of the eligible business or an equivalent officer stating that the business applying for the program satisfies the criteria at N.J.A.C. 19:31-22.7(c)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury; that contractors or subcontractors that will perform work at the qualified business facility are registered as required pursuant to the Public Works

Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury, and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

**xi.** A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

**xii.** Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

**xiii.** A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received; and

**xiv.** Any other necessary and relevant information as determined by the Authority for a specific application; and

**2.** Project information, which shall include the following:

**i.** An overall description of the proposed project;

**ii.** A description of the capital investments planned by the business at the proposed qualified business facility;

**iii.** The estimated value of the capital investment and financial information demonstrating ability to complete the capital investment; and

**iv.** Evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit pursuant to N.J.A.C. 19:31-22.3(b)5, taking into account the criteria listed at N.J.A.C. 19:31-22.3(b)5i through v, and a statement that the applicant understands and acknowledges it may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

**(1)** In relation to whether a proposed capital investment will yield a net positive economic benefit, the business shall submit a certification by the business's chief executive officer or an equivalent officer stating:

**(A)** That the existing full-time jobs are at risk of leaving the State or being eliminated, if the business has any such full-time jobs;

**(B)** The tax credits are a material factor in any projected creation or retention, as applicable, of new full-time jobs; and

**(C)** All documents and all factual representations made by the business to the Authority in support of and to demonstrate that the award of tax credits will yield a net positive benefit to the State are true and accurate at the time of submission, under the penalty of perjury;

**v.** A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project;

**vi.** Identification of the site or sites of the proposed qualified business facility, including the block and lot of the site or sites as indicated upon the local tax map. For purposes of determining geographical location of a building or contiguous buildings that extend over

more than one geographical location, the building or contiguous buildings shall be considered in the geographical location in which the building or contiguous buildings are located with the most beneficial total tax credit amount;

**vii.** A project schedule that identifies projected move dates for the proposed qualified business facility;

**viii.** A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

**ix.** The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants, and total net leasable area) and/or details of the purchase or building of the proposed project facility; and a full economic analysis of all locations under consideration by the business, as well as all lease agreements, ownership documents, or substantially similar documentation for the business's proposed in-State locations and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist;

**x.** The identification of key factors that are influencing the business's decision to either move to, or stay in, the State, or locate out-of-State, weighted to reflect importance to the business;

**xi.** A narrative description of the business's rationale to move to, or stay in, the State, or locate out-of-State and any other issues driving the applicant's decisions;

**xii.** Competitive proposals that the eligible business has received from other states;

**xiii.** The total number of anticipated new and retained full-time jobs in New Jersey and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity if any such jobs and employees will be provided by affiliates;

**xiv.** For a small business, the growth plan required pursuant to N.J.A.C. 19:31-22.3(d)1; and

**xv.** Any other necessary and relevant information as determined by the Authority for a specific application; and

**3.** Employee information, which shall include the following:

**i.** Evidence to the Authority's satisfaction that demonstrates that 80 percent of each eligible position's work time will be performed in this State;

**ii.** The average annual wage and benefit rates of full-time employees and new and retained full-time jobs in the State; and

**iii.** Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy, such as the tax credits, pursuant to P.L. 2007, c. 200; and

**4.** Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to:

**i.** A list of current employees and retained full-time employees in the State;

**ii.** The WR 30 of the business for the privilege period prior to application;

- iii.** A list of affiliates that will be contributing to the capital investment or full-time employees to the project;
  - iv.** All locations in this State of the business and affiliates that will be contributing to the capital investment or full-time employees to the project;
  - v.** The Statewide work force for the privilege period prior to application;
  - vi.** A floor plan of the proposed qualified business facility that identifies the location of and square footage associated with the functions of the eligible positions at the proposed qualified business facility; and
  - vii.** A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the business's last tax period prior to the date of the application. If the application is approved in the business's subsequent tax period, the business must provide the total number of full-time employees in New Jersey of all affiliates in the tax period prior to credit amount approval.
- (b)** The business applying to the program shall submit an application fee as set forth at N.J.A.C. 19:31-22.6.
- (c)** The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project.
- (d)** If circumstances require an eligible business to amend its application to the Authority or to provide additional or supplemental factual representations prior to approval, then the chief executive officer of the eligible business, or an equivalent officer, shall certify to the Authority that the information provided in its amended application and any other factual representations made in support of and to demonstrate the eligibility requirements at N.J.A.C. 19:31-22.3(b), (c), (d), and (e) are true under the penalty of perjury.

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

In (a)1, inserted a comma preceding and following "or both"; rewrote (a)1x; in (a)2iv(1), substituted "chief executive officer" for "owner" and "an equivalent officer" for "authorized agent of the owner"; in (a)2ix, substituted "proposed" for "current" following "business's"; rewrote (a)3; in (a)4i, substituted "in the State" for " at, or associated with, the qualified business facility", in (d), substituted "chief executive officer" for "owner" and "equivalent officer" for "authorized agent of the owner".

## **N.J.A.C. 19:31-22.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.6 Fees**

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**(a)** A business applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects with 99 or fewer new and retained full-time jobs, the fee to be charged at application shall be \$ 5,000;
2. For projects with 100 to 249 new and retained full-time jobs, the fee to be charged at application shall be \$ 10,000;
3. For projects with 250 or more new and retained full-time jobs, but not considered a mega project, the fee to be charged at application shall be \$ 15,000; and
4. For applicants that are seeking a mega project, the fee to be charged at application shall be \$ 25,000.

**(b)** A business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

**(c)** A non-refundable fee shall be charged prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$ 10,000;
2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$ 75,000;
3. For each project with 250 or more new and retained full-time jobs, but not considered a mega project, the fee shall be \$ 165,000; and
4. For each project considered a mega project, the fee shall be \$ 250,000.

**(d)** A business shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$ 10,000;
2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$ 100,000;
3. For each project with 250 or more new and retained full-time jobs, but not considered a mega project, the fee shall be \$ 200,000; and
4. For each project considered a mega project, the fee shall be \$ 300,000.

**(e)** A business shall pay to the Authority an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(f), and for the duration of the commitment period and any period of extended commitment pursuant to N.J.A.C. 19:31-22.3(b)5iv. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the annual servicing fee shall be \$ 5,000;
2. For each project with 100 to 249 new and retained full-time jobs, the annual servicing fee shall be \$ 25,000;
3. For each project with 250 or more new and retained full-time jobs, but not considered a mega project, the annual servicing fee shall be \$ 60,000; and
4. For each project considered a mega project, the annual servicing fee shall be \$ 90,000.

**(f)** A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-22.12 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$ 5,000, and \$ 2,500 for each additional request made annually;
2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$ 10,000, and \$ 5,000 for each additional request made annually;
3. For each project with 250 or more new and retained full-time jobs, but not considered a mega project, the fee shall be \$ 15,000, and \$ 7,500 for each additional request made annually; and
4. For each project considered a mega project, the fee shall be \$ 20,000, and \$ 10,000 for each additional request made annually.

**(g)** A business shall pay, to the Authority, a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and, a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, a non-refundable fee of \$ 2,500 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$ 7,500 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;
2. For each project with 100 to 249 new and retained full-time jobs, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 15,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval; and
3. For each project with 250 or more new and retained full-time jobs, but not considered a mega project, a non-refundable fee of \$ 7,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee



of \$ 25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval; and

4. For each project considered a mega project, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 35,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

**(h)** A non-refundable fee shall be paid for the first six-month extension to the date by which the business shall submit the certification with respect to the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(f); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee for the first six-month extension shall be \$ 5,000, and \$ 7,500 for each subsequent extension;
2. For each project with 100 to 249 new and full-time retained jobs, the fee shall be \$ 10,000 for the first six-month extension and \$ 15,000 for each subsequent extension;
3. For each project with 250 or more new and retained full-time jobs, but not considered a mega project, the fee shall be \$ 15,000 for the first six-month extension and \$ 25,000 for each subsequent extension; and
4. For each project considered a mega project, the fee shall be \$ 20,000 for the first six-month extension and \$ 30,000 for each subsequent extension.

**(i)** A business seeking to terminate an existing commitment agreement in order to participate in a commitment agreement authorized pursuant to the Emerge program shall pay, to the Authority, a non-refundable fee as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 2,500, and \$ 7,500 for each termination that requires extensive staff time and Board approval;
2. For each project with 100 to 249 new and retained full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 5,000, and \$ 15,000 for each termination that requires extensive staff time and Board approval;
3. For each project with 250 or more new and retained full-time jobs, but not considered a mega project, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 7,500, and \$ 25,000 for each termination that requires extensive staff time and Board approval; and
4. For each project considered a mega project, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 10,000, and \$ 35,000 for each termination that requires extensive staff time and Board approval.

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

Rewrote (a), (c), (d), (e), (f), (g), (h) and (i).

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End of Document

## **N.J.A.C. 19:31-22.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.7 Review of completed application**

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**(a)** A business seeking an approval of tax credits for a project shall apply for tax credits prior to March 1, 2027.

**(b)** The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

**(c)** Before the Board may consider an eligible business's application for tax credits:

1. The Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the eligible business is in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the eligible business:

**(1)** As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

**(A)** Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the eligible business; and

**(B)** Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

**(2)** As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates, or issues, its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a business is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the eligible business.

3. The eligible business shall execute a non-binding letter of intent with the Chief Executive Officer of the Authority, specifying the amount and terms and conditions of tax credits that the Authority is prepared to propose for Board approval and that are intended to be a material factor in the decision by the eligible business to create or retain the proposed number of new and retained full-time jobs, and in which the eligible business certifies such tax credits are a material factor in its decision.

i. If the eligible business has taken actions to commit to the project in this State, including, but not limited to, obtained site control of the qualified business facility; signed lease without penalty-free contingency language that the lease is conditioned upon receiving the tax credits; has expended physical construction costs for a building or other structure; has taken a formal decision that selects a site; made a public announcement that it intends to locate to the State; entered into any binding contract for relocation or equipment, including, but not limited to, moving furniture, fixtures, and equipment purchases; or made non-refundable deposits prior to the execution of the letter of intent, then the Authority may rescind approval of the award of tax credits, unless the eligible business disclosed these facts prior to executing the letter of intent and the Authority determines that the award of tax credits was still a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program.

ii. The letter of intent will also include a certification from the chief executive officer of the eligible business, or an equivalent officer that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury.

iii. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.

**(d)** In determining whether the award of tax credits is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program, the Authority shall undertake a full economic analysis of all locations under consideration by the eligible business. The Chief Executive Officer of the Authority may further consider the costs associated with opening and maintaining a business in New Jersey, competitive proposals that the eligible business has received from other states, the prevailing economic conditions, and any other factors that the Chief Executive Officer of the Authority deems relevant to assist the Authority in determining whether an award of tax credits is a material factor in the eligible business's decision. Based on this information, the Authority shall independently verify and confirm the eligible business's assertion that the award of tax credits under the program is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program and, in the case of retained full-time jobs, the jobs are actually at risk of leaving the State, before the Authority may award the eligible business any tax credits under this program.

**(e)** In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-22.3(b)5 and as certified by the business's chief executive officer, or an equivalent officer, pursuant to N.J.A.C. 19:31-22.5(a)2iv, the Authority's consideration shall include, but not be limited to, the direct and indirect benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

**(f)** In making the determination of the local property tax included in the net positive economic benefit required pursuant to (e) above, the Authority may consider local property tax from new construction and shall not consider the value of any taxes exempted, abated, rebated, or retained under the Five-Year Exemption and Abatement Law, P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the Long Term Tax Exemption Law, P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et seq.), the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the business's State or local tax liability.

**(g)** Upon completion of the review of an application pursuant to (b) through (f) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Authority shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent and pursuant to N.J.A.C. 19:31-22.9(a).

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

In (c)1, substituted "shall" for "will" and deleted " compliance by being in" preceding "substantial"; in (c)3ii and (e), substituted "chief executive officer" for "owner" and "equivalent officer" for "authorized agent of the owner".

## **N.J.A.C. 19:31-22.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.8 Determination of grant amount; bonus award**

**(a)** The total amount of the tax credit for an eligible business for each new or retained full-time job shall be as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period. Unless the business demonstrates to the Authority's satisfaction that a new or retained full-time job is primarily working at the qualified business facility, the tax credit for the full-time job shall be calculated with the base amount for a qualified business facility in other eligible areas and shall not include the bonuses at (d)1, 2, 6, 7, 9, 13, 15, 16, and 17 below.

**(b)** For a project that has a complex of buildings, the total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. Subject to N.J.A.C. 19:31-22.4(c) and (d), the total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings, including location of the buildings. Notwithstanding that the total tax credit for jobs in different buildings may be calculated separately, forfeitures pursuant to N.J.A.C. 19:31-22.14 and defaults and recaptures included in the commitment agreement pursuant to N.J.A.C. 19:31-22.9(b)6 shall be based on the aggregate capital investment and eligible full-time jobs.

**(c)** The base amount of the tax credit for each new or retained full-time job for an eligible business shall be as follows:

1. For a qualified business facility located within a government-restricted municipality, or that is a mega project, \$ 4,000 per year;
2. For a qualified business facility located within an enhanced area, \$ 3,500 per year;
3. For a qualified business facility located within a distressed municipality, \$ 3,000 per year;
4. For a project in a qualified opportunity zone or an employment and investment corridor, \$ 2,500 per year; and
5. For a project in other eligible areas, \$ 500.00 per year.

**(d)** In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased with the following bonuses, except that the Authority shall not award a bonus to an eligible business with full-time jobs at the qualified business facility, whether the full-time job is subject to the tax credit award or not, that pays less than \$ 15.00 per hour or 120 percent of the minimum wage fixed at subsection a of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher:

- 1.** For an eligible business with a qualified business facility located in a municipality with a Municipal Revitalization Index distress score greater than 50, an increase of \$ 1,000 per year;
- 2.** For an eligible business with a qualified business facility that is an industrial or research and development premises for industrial or research and development use and at which the capital investment in the industrial or research and development portion of the premises is in excess of the minimum capital investment required for eligibility for the entire qualified business facility pursuant to subsection b of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(c), an increase of \$ 500.00 per year for each additional amount of investment that exceeds the minimum amount required for eligibility by 40 percent, with a maximum increase of \$ 1,500 per year, unless the project qualifies as a mega project or the qualified business facility is located in a government-restricted municipality, in which case, the maximum increase is \$ 5,000 per year;
- 3.** For an eligible business with large numbers of new full-time jobs during the eligibility period, the increases shall be in accordance with the following schedule:
  - i.** If the number of new full-time jobs is between 251 and 400, \$ 500.00 per year;
  - ii.** If the number of new full-time jobs is between 401 and 600, \$ 750.00 per year;
  - iii.** If the number of new full-time jobs is between 601 and 800, \$ 1,000 per year;
  - iv.** If the number of new full-time jobs is between 801 and 1,000, \$ 1,250 per year; and
  - v.** If the number of new full-time jobs is in excess of 1,000, \$ 1,500 per year;
- 4.** For an eligible business that annually funds a training program specific to the business's industry, which has the capacity to enroll 10 percent or more of the eligible business's full-time workforce, or pays a State educational institution to provide to the public a training program specific to the business's industry, an increase of \$ 500.00 per year; provided, however, that if the training program is provided by a State educational institution that is within 10 miles of the qualified business facility, then the increase shall be \$ 1,000 per year;
- 5.** For an eligible business that qualifies as a small business, an increase of \$ 500.00 per year;
- 6.** For an eligible business with new full-time jobs and retained full-time jobs at the qualified business facility with a median salary in excess of the existing median salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a government-restricted municipality, a business with employees in full-time positions at the project with a median salary in excess of the median salary for full-time workers residing in the government-restricted municipality, an increase of \$ 200.00 per year for the new or retained full-time employees that are at the qualified business facility during the eligibility period for each 35 percent by which the project's median salary levels exceeds the county or government-restricted municipality median salary, with a maximum increase of \$ 1,000 per year;
- 7.** For an eligible business engaged primarily in a targeted industry, an increase of \$ 500.00 per year;
- 8.** For an eligible business with a qualified business facility located in a qualified incubator facility, an increase of \$ 500.00 per year;
- 9.** For an eligible business that enters into a labor harmony agreement, an increase of \$ 2,000 per year that the portion of the project as represented by the new or retained full-time

employees that are the subject of the labor harmony agreement is in effect; provided further that an eligible business receiving a bonus under this subparagraph may exceed the limitation applicable to the eligible business pursuant to (e) below by an amount not to exceed \$ 1,000;

- 10.** For an eligible business that provides its employees access to child care either through an on-site quality child care facility free of charge to its employees or by offering employees a minimum of \$ 1,500 per employee per year in reimbursements, subsidies, or vouchers to be paid by the eligible business to its employees for the cost of child care in accordance with standards adopted by the Authority and made available on the Authority's website, an increase of \$ 1,000 per year;
- 11.** For an eligible business that enters, or has previously entered, into an active partnership with a re-entry program for the purpose of identifying and promoting employment opportunities at the eligible business for former inmates and current inmates leaving the corrections system, and that hires at least one active participant in the re-entry program as a full-time employee, an increase of \$ 500.00 per year;
- 12.** For an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Silver" rating standards, but does not exceed "Gold" rating standards, or that completes substantial environmental remediation, an additional increase of \$ 250.00 per year, or for an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Gold" rating standards, an additional increase of \$ 500.00 per year;
- 13.** For an eligible business in a targeted industry with a qualified business facility that is used by the eligible business to conduct a full-time collaborative research relationship with a college or university, including, but not limited to, a doctoral university, an increase of \$ 1,000 per year. The full-time collaborative research relationship must commence after approval of the application and must require at least 35 hours per week of collaborative activity, or any other standard of collaborative activity generally accepted by custom or practice as full-time, as determined by the Authority, and evidenced by an agreement at certification. To be eligible for this bonus, the agreement must remain in effect each year of the eligibility period;
- 14.** For an eligible business with a project that generates solar, geo-thermal, wind, or any other renewable or distributed energy on site for use within the qualified business facility of an amount that equals at least 50 percent of the qualified business facility electric supply service needs, an increase of \$ 500.00 per year;
- 15.** For an eligible business with a marine terminal project in a municipality located outside a government-restricted municipality, but within the geographical boundaries of the South Jersey Port District, an increase of \$ 1,500 per year;
- 16.** For an eligible business with a qualified business facility located in a qualified opportunity zone, an increase of \$ 1,000 per year; and
- 17.** For an eligible business if one-third or more of the members of the eligible business's governing board or other governing body self-identify as members of an underrepresented community, which shall be Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native, or lesbian, gay, bisexual, or transgender, an increase of \$ 2,000 per year for each new or retained full-time job. The Authority shall work with the State's Chief Diversity Officer or other State entities to ensure that the bonus provided pursuant to this paragraph is implemented faithfully and in compliance with the law.



**(e)** Except as provided at (d)10 above, the gross amount of the tax credit available to an eligible business for each new or retained full-time job shall be the sum of the base amount set forth at (c) above and the various additional bonus amounts for which the business is eligible pursuant to (d) above, subject to the following limitations:

1. For a mega project or a project in a government-restricted municipality, the gross amount for each new or retained full-time job shall not exceed \$ 8,000 per year;
2. For a qualified business facility located within an enhanced area, the gross amount for each new or retained full-time job shall not exceed \$ 6,000 per year;
3. For a qualified business facility within a distressed municipality, the gross amount for each new or retained full-time job shall not exceed \$ 5,000 per year;
4. For a qualified business facility in a qualified opportunity zone or an employment and investment corridor, the gross amount for each new or retained full-time job shall not exceed \$ 4,000 per year; and
5. For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$ 3,000 per year.

**(f)** The Authority shall reduce the gross amount of tax credits per full-time job if the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is less than the existing median salary for full-time workers residing in the county in which the qualified business facility is located or for a project located in a government-restricted municipality, if the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is less than the existing median salary for the municipality in which the qualified business facility is located. The Authority shall reduce the gross amount of tax credits per full-time job by an amount, in percentage points, equal to the percentage the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is below the existing median salary for full-time workers residing in the county or government-restricted municipality in which the qualified business facility is located. The Authority shall not award a tax credit to an eligible business if the median salary of new full-time jobs and retained full-time jobs that would otherwise be subject to the project agreement is 30 percent or more below the relevant existing median salary for full-time workers residing in the county or government-restricted municipality in which the qualified business facility is located.

**(g)** After the determination by the Authority of the gross amount of tax credits for which an eligible business is eligible pursuant to (e) and (f) above, the final total tax credit amount shall be calculated as follows: for each new full-time job, the eligible business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and for each retained full-time job, the eligible business shall be allowed tax credits equaling 50 percent of the gross amount of tax credits for each retained full-time job.

**(h)** Notwithstanding the provisions at (a) through (g) above to the contrary, for each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed an amount determined by the Authority to be necessary to induce the project to be sited in New Jersey, as determined by the Board. The Authority shall determine the amount necessary to complete the project through staff analysis of all locations under consideration by the eligible business and all lease agreements, ownership documents, or substantially similar documentation for the eligible business's proposed in-State locations and potential out-of-State location alternatives, competitive proposals from other states, the prevailing economic conditions, and any other information that the Authority deems relevant, that may include, but is not limited

to, public policy goals, the amount of space dedicated to eligible positions at the qualified business facility, net positive economic benefits, and leadership in targeted industries.

## History

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### **HISTORY:**

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

Rewrote (d) and (f); and in (h), substituted "at" for "of" following "provisions" and "proposed" for "current" following "business's".

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End of Document

## **N.J.A.C. 19:31-22.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.9 Approval letter and commitment agreement**

**(a)** Following approval by the Board, but before the issuance of tax credits, the Authority shall require an eligible business to execute and return an approval letter to the Authority. The Board's award of the credits will be subject to conditions subsequently set forth in the approval letter. The conditions in the approval letter must be met in order to retain the approval of the tax credits prior to their issuance and receipt by the business pursuant to (h) below. Such conditions shall include, but not be limited to, the requirement to provide an estimated date of completion of the project; submission of periodic progress reports; submission of the information required at (a)2 below; the requirement that the project complies with the prevailing wage requirements at P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b)8 and the Authority's affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3; that the project does not violate any environmental law requirements, including, but not limited to, Flood Hazard Area Control Act Rules, N.J.A.C. 7:13; and that the business submit a plan to meet the minimum environmental and sustainability standards.

1. The approval letter shall state the period within which the business must provide to the Authority evidence that the conditions have been met.
2. Commencing with the date six months following the date the Authority and an eligible business execute the approval letter, the eligible business shall be required to demonstrate that it has obtained site plan approval for, as applicable, has committed financing for, as applicable, and has site control of, the qualified business facility in accordance with the time periods set forth in this paragraph, unless otherwise modified in the approval of the application by the Board.
  - i. Within the later of 12 months following the date of application approval by the Authority or six months following the date of execution of the approval letter, each approved business shall submit the information required at (a)2 above, except that a business shall have until the later of 24 months from the date of application approval or six months following the date of execution of the approval letter to submit such information for a qualified business facility that consists of new construction.
  - ii. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's approval of the tax credits shall expire if the information required at (a)2 above is not received by the Authority within the required period of time.

**(b)** Upon satisfaction of the conditions in the approval letter, as determined by the Authority, the business shall execute a commitment agreement. The terms of the commitment agreement shall

be consistent with the applicable eligibility requirements at section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and shall include, but shall not be limited to, the following:

- 1.** A detailed description of the proposed project that will result in job creation or retention, and the number of new and retained full-time jobs that are approved for tax credits;
- 2.** For a phased project, a project phase agreement which for each phase identifies a description of the phase, the expected capital investment, and number of new full-time jobs, and the time following acceptance of the commitment agreement when each phase is to begin and be completed, with the awarding of tax credits under the commitment agreement to be predicated on the number of full-time jobs created through the fulfillment of each project phase agreement;
- 3.** The eligibility period of the tax credits or, for a phased project, the eligibility period of the tax credits for each phase;
- 4.** An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the program;
- 5.** A requirement that the eligible business maintain the project at, or associated with, a location in New Jersey for the commitment period, with at least the minimum number of full-time jobs, salaries, and withholdings as required by this program pursuant to N.J.A.C. 19:31-22.14(a), (b), and (c);
- 6.** A provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the eligible business does not remain in compliance with (b)5 above for the required term or significantly reduces the number of full-time employees, or the salaries or withholdings thereof, based on the amounts that result in forfeitures or reductions pursuant to N.J.A.C. 19:31-22.14(a), (b), and (c), to an amount less than the minimum jobs, salaries, or withholdings to which the eligible business certified at the commencement of the eligibility period, for two or more successive tax periods;
- 7.** A method for the eligible business to certify that it has met the capital investment, employment, and other eligibility requirements of the program set forth at subsections b. and c. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and to report annually to the Authority the number of new and retained full-time employees, and the withholdings and salaries thereof, for which the tax credits are to be allowed;
- 8.** Representations that the eligible business is in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury or has entered into an agreement with the departments that includes a practical corrective action plan, and that the project complies with all applicable laws, and specifically, that the project does not violate any environmental law, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
- 9.** A provision permitting an audit of the payroll records of the business and any other evidence and documentation supporting the certifications pursuant to (d) below, the annual reports pursuant to N.J.A.C. 19:31-22.10, and the addition of affiliates pursuant to N.J.A.C. 19:31-22.10(i) from time-to-time, as the Authority deems necessary;
- 10.** A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the eligible business and each contractor and subcontractor performing work at the qualified business facility is in substantial good standing, as defined at N.J.A.C. 19:31-22.7(c), or has entered into an agreement with the respective department that

includes a practical corrective action plan, as applicable; and that each contractor or subcontractor performing work at the qualified business facility is registered as required pursuant to the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

**11.** A provision providing that if the eligible business is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-22.7(c), and has been given written notice thereof, including opportunity to be heard or to contest the determination, by the respective department, then the eligible business may forfeit the issuance of tax credits pending the resolution of the underlying violation(s) or other issues;

**12.** A requirement for the eligible business to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

**13.** A provision permitting the Authority to amend the agreement;

**14.** A provision establishing the conditions under which the Authority, the eligible business, or both, may terminate the agreement;

**15.** For a small business, an attached schedule with the reduced amount of the award, if the business does not meet the projections in the growth plan;

**16.** Milestones for the project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority may rescind the award of tax credits if a project fails to advance in accordance with milestones in the commitment agreement or fails to provide progress reports required under the approval letter;

**17.** An agreement by the business that the statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

**18.** Indemnification and insurance requirements;

**19.** Default and remedies, including, but not limited, to a default if an eligible business made a material misrepresentation on its application;

**20.** The schedule indicating the repayment of the incremental tax credits received by a business that elected a period of extended commitment pursuant to N.J.A.C. 19:31-22.3(b)5iv, if the business fails to maintain the project through the expiration of that extended commitment period; and

**21.** A provision requiring a community benefits agreement if the actual total project cost upon completion of the project equals or exceeds \$ 10 million.

**(c)** For a project whose total project cost equals or exceeds \$ 10 million, in addition to the commitment agreement, an eligible business shall execute a community benefits agreement or agreements pursuant to subsection b. of section 73 of P.L. 2020, c. 156, as prescribed below:

**1.** The business shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality,

the chief executive of the county, in which the qualified business facility is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the EDA that the municipality has made the request. The Authority shall not participate in negotiations between the eligible business and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to (d)6ii below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in, and around, the community in which the qualified business facility is located.

**2.** The community benefits agreement shall include a list of contributions by the business; the monetary equivalent for any non-monetary contribution; an event of default if the business forfeits tax credits pursuant to (c)7ii below in two successive years; and the date by when the community advisory committee must submit its annual report pursuant to (c)6 below.

**3.** The eligible business and the municipality or county shall have six months, with two three-month extensions, after Authority Board approval of the business's application, to enter into a community benefits agreement. The community benefits agreement is a condition to entering into a commitment agreement.

**4.** Prior to entering a community benefits agreement, the governing body of the municipality or, if the county is executing the agreement, the governing body of the county, in which the qualified business facility is located shall hold at least one public hearing subject to the Senator Byron M. Baer Open Public Meetings Act, at which, the chief executive or designee from the chief executive's department or office, shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address. The chief executive shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

**5.** The community benefits agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

**i.** The community advisory committee created pursuant to this paragraph shall be comprised of representatives from community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the qualified business facility is located.

**ii.** The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.

**iii.** For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the qualified business facility is located, at least one representative from a community group, and at least one resident from the zip code in which the qualified business facility is located. There shall be no more than one municipal or county employee on the community advisory committee.

**iv.** For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at (c)5iii above.

v. Community advisory committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the eligible business. The certifications shall be submitted to the Authority by the business or the municipality, or if the county is executing the agreement, the county.

vi. Any report or action shall be approved by a majority of the members of the community advisory committee.

6. The community advisory committee shall produce an annual report, including an evaluation of whether the eligible business is in compliance with the terms of the community benefits agreement:

i. If the report from the community advisory committee and the certification from the eligible business pursuant to N.J.A.C. 19:31-22.10(a)4 both indicate that the eligible business is in compliance with the community benefits agreement, then the eligible business shall be in compliance with the community benefits agreement. Absent extenuating circumstances and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the eligible business shall be based on the certification from the eligible business pursuant to N.J.A.C. 19:31-22.10(a)4.

ii. If the report from the community advisory committee indicates that the eligible business is not in compliance with the terms of the community benefits agreement, the Authority shall serve as, or identify, a mediator. The community advisory committee, municipality, or county, as applicable, and the eligible business shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority.

iii. If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in nature. The business, municipality, or county, and the community advisory committee shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report. The Chief Executive Officer shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this subsection is not a contested case subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7. If the business is not in compliance as determined pursuant to (c)6 above, the following apply:

i. The amount of tax credits that the business may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the business is not in compliance if the Authority determines that:

- (1)** Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;
- (2)** The eligible business is using best efforts, with all due diligence, to proceed with the completion of the contribution; and
- (3)** The eligible business has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

**ii.** For any other noncompliance, the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

**8.** An eligible business shall not be required to enter into a community benefits agreement pursuant to this subsection if the eligible business submits to the Authority a copy of the eligible business's approval letter from the Authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement is certified by the chief executive of the municipality in which the project is located and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer pursuant to rules adopted by the Authority.

**(d)** Upon completion of the capital investment and employment requirements of the program, an eligible business shall submit to the Authority certifications evidencing that the eligible business has satisfied the conditions of the program and the project agreement relating to the capital investment, employment, and other eligibility requirements, including, but not limited to, withholdings. If applicable, the certifications shall evidence that the eligible business has satisfied the requirements related to a mega project. The business must submit supporting evidence satisfactory to the Authority. Absent extenuating circumstances and the written approval of the Authority, the eligible business shall submit the certifications as described at (h) below within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline. However, the date of certification shall not occur later than four years following the date of approval of the application. The Authority may grant one additional extension of no more than one year, taking the date of completion to five years past the date of approval of the application, but only if:

**1.** The Authority finds that:

- i.** The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;
- ii.** The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and
- iii.** The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay; and

**2.** The eligible business provides timely notice to the Authority of the delay within 30 days after the eligible business has actual or constructive knowledge of the delay, and shall provide periodic reports, not less than every 30 days, of the status of the delay and the steps the eligible business is taking to mitigate or overcome the delay.



**(e)** In addition to the extensions at (d) above, if the Governor declares an emergency, then the Chief Executive Officer of the Authority shall have the discretion to grant an extension for the duration of the emergency and the Board of the Authority, upon recommendation of the Chief Executive Officer, may grant two additional six-month extensions; provided, however, that:

1. The extensions are due to the economic disruption caused by the emergency;
2. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;
3. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and
4. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

**(f)** The certifications required at (d) above shall be in the following form:

1. The business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to the capital investment. Capital investment in a complex of buildings that are not proximate shall be certified for each building. If the project seeks to qualify for the bonus pursuant to N.J.A.C. 19:31-22.8(d)2, in addition to submitting a certification of capital investment in the qualified business facility, the business shall submit a certification for the capital investment in the industrial or research and development portion of the premises for industrial or research and development use. In the event the capital investment is reduced below the capital investment amount set forth at N.J.A.C. 19:31-22.3(c), the business shall remain eligible if the business donates the difference between the amount set forth at N.J.A.C. 19:31-22.3(c) and the amount of capital investment invested into the Infrastructure Fund. If the amount paid into the Infrastructure Fund together with the amount of capital invested is less than the capital investment in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certified capital investment, together with any donation to the Infrastructure Fund, is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.
2. The business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to employment. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits. The number of full-time jobs utilized by the Authority in the calculation of tax credits shall not be increased, regardless of additional jobs located at the qualified business facility. Except as set forth at N.J.A.C. 19:31-22.10(f), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth at N.J.A.C. 19:31-22.4(c) and (d). In the event the number and median salary of new or retained full-time jobs is reduced below the number or median salary of new or retained full-time jobs in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement set forth at N.J.A.C. 19:31-22.3(d), the business shall no longer be eligible for tax credits.
3. The Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants; provided, however, the business may select a certified public accountant that is independent to the business and not on the Authority's list of

qualified certified public accountants for purposes of the capital investment certification, or the business's chief financial officer may certify for purposes of the employment certification upon the Authority's prior approval, if the business demonstrates an extenuating circumstance prohibiting the business from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business, or the business is a small business.

4. The business shall submit a certification with a floor plan showing the qualified building facility as of the date of the certifications identifying the uses pursuant to N.J.A.C. 19:31-22.3(c) and square foot of gross leasable area for each such use.

5. The business shall submit a certification from a licensed engineer that the project has adhered in all material respects to the plan submitted by the business describing how the business would satisfy the minimum environmental and sustainability standards;

6. At, or before, the date of certifications, any modification to the project as approved by the Board, including, but not limited to, a reduction in the amount of the capital investment, new and retained full-time jobs, or square foot of gross leasable area for each use pursuant to N.J.A.C. 19:31-22.3(c), shall require review and approval by the Authority to determine that the project as modified does not undermine the basis for the tax credit award approved.

7. The Authority may request additional information or certifications from the business to determine eligibility and may seek information from the Department of Labor and Workforce Development to support the certifications.

8. The Authority may recalculate the tax credit award, which may include a reevaluation of the amount necessary to induce the project to be sited in New Jersey pursuant to N.J.A.C. 19:31-22.8(h), if the certifications demonstrate different assumptions or facts upon which the Authority relied to calculate the tax credit award at approval.

(g) In any submission required by the Authority pursuant to the approval letter or the certifications at (f) above, the chief executive officer of the eligible business, or an equivalent officer, shall certify that the information provided is true under the penalty of perjury.

(h) Once the Authority accepts the certifications at (f) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications pursuant to (e) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-22.7(g) and 22.8. The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

## History

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### HISTORY:

Amended by R.2022 d.128, effective October 3, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 900(a), 54 N.J.R. 1922(b).

Rewrote the section.

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End of Document

## N.J.A.C. 19:31-22.10

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.10 Reporting requirements and annual reports**

(a) An eligible business that is awarded tax credits under the program shall submit, annually, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment period, a report that indicates that the eligible business continues to maintain the number of new and retained full-time jobs and provides the salaries specified in the commitment agreement, including, but not limited to:

1. A certification, made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-22.9(f)3, containing the following:
  - i. The number of full-time employees and new or retained full-time jobs employed in the State;
  - ii. The list of affiliates that contributed to the full-time employees in the State;
  - iii. The number of full-time employees in the business's Statewide workforce;
  - iv. The number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application; and
  - v. A copy of the business's applicable New Jersey tax return showing business income and withholdings as a condition of its continuation in the program, and the quarterly wage report required pursuant to N.J.S.A. 43:21-14 submitted to the Department of Labor and Workforce Development together with an annual payroll report showing:
    - (1) The new full-time jobs that were created in accordance with the project agreement;
    - (2) The new full-time jobs created during each subsequent year of the commitment period; and
    - (3) The withholdings and salaries, as measured by the median salary, of the new and retained full-time jobs created and the amount of withholdings paid to New Jersey;
2. Information on any change or anticipated change in the identity of the affiliates comprising the business elected to claim all or a portion of the credit;
3. The eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required pursuant to the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by the Department of Labor and Workforce Development from engaging in or

bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury; and

**4.** A certification indicating whether or not the business is aware of any condition, event, or act that would cause the business not to be in compliance with the approval, the Act, the commitment agreement, community benefits agreement pursuant to subsection b. of section 73 of P.L. 2020, c. 156, and this subchapter.

**(b)** The certified report required pursuant to (a) above is due 120 days after the end of the business's tax privilege period; and failure to timely submit the certified report, absent extenuating circumstances and the written approval of the Authority, shall result in the forfeiture of the tax credits for that privilege period.

**(c)** An eligible business shall explain, in the certified report required pursuant to (a) above, the reason for any discrepancies between the annual payroll report submitted by the eligible business to the Authority and the quarterly wage report submitted to the Department of Labor and Workforce Development. The chief executive officer of the eligible business, or an equivalent officer, shall certify that the information provided pursuant to (a) above and this subsection is true under the penalty of perjury. Claims, records, or statements submitted by an eligible business to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

**(d)** Upon receipt and review to the Authority's satisfaction of each certified report required pursuant to (a) above submitted during the eligibility period, the Authority shall provide to the eligible business and the Director a certificate of compliance indicating the amount of tax credits that the eligible business may apply against its tax liability. The Authority shall prorate the tax credit for the first and last years of the eligibility period based on the number of full months the project was certified in the year the eligible business first certifies. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period. The certificate of compliance will indicate the amount of the tax credit certificate that will be recommended to the Division of Taxation for issuance for an identified tax privilege period.

**(e)** In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

**(f)** If the certified report required pursuant to (a) above submitted by a small business demonstrates that the business has met the number of new full-time employees specified in the growth plan pursuant to N.J.A.C. 19:31-22.3(d)1 in each year of the eligibility period, then the business shall be entitled to an increased credit amount for that tax period, and each subsequent tax period, for each additional full-time employee added above the number of full-time employees certified, until the full-time employees number meets the maximum number projected for the final year of the eligibility period. Failure to meet the projections in any year shall not constitute a default but shall cause the Authority to reduce the award in accordance with a schedule attached to the project agreement.

**(g)** An eligible business shall forfeit the credit amount for any tax period for which the eligible business's documentation remains uncertified as of the date for certification indicated in the commitment agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the eligible business.

**(h)** Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(i) A business may include an affiliate for any period, provided that the business provides a valid tax clearance certificate for the affiliate and a verification of the nature of the affiliate relationship during the relevant period, and provided further that the affiliate provides acceptable responses to the Authority's legal disclosures inquiries, as determined by the Authority, and the affiliate executes a joinder to the commitment agreement, in the form approved by the Authority. A business may remove an affiliate by notifying the Authority and the Director, in a form approved by the Authority, of the affiliate that is to be removed. A formal modification of the Authority's approval of the approval letter shall not be necessary to add or remove an affiliate after approval or execution of the approval letter.

(j) A business may change its name filed with the Authority by providing a copy of the filed amendment to the certificate of incorporation or formation, as the case may be, of the business and a valid tax clearance certificate with the business's new name. A formal modification of the Authority's approval shall not be necessary to change a business's name after approval or execution of the approval letter.

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

In (a)1i and (a)1ii, substituted "in the State" for "at, or associated with, the qualified business facility"; in (a)2 deleted "and" from the end; recodified former (a)3 as (a)4; added new (a)3; and in (c), substituted "chief executive officer" for "owner" and "equivalent officer" for "authorized agent of the owner".

## N.J.A.C. 19:31-22.11

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.11 Tax credit amount; application and allocation of the tax credit**

**(a)** Except for a small business that will have incremental or additional tax credits pursuant to a growth plan pursuant to N.J.A.C. 19:31-22.10(f), for each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter. Except as set forth at N.J.A.C. 19:31-22.10(f), the total tax credit amount that a business may apply for each year shall not exceed the maximum annual amount determined by the Board at approval pursuant to N.J.A.C. 19:31-18.7(g) and 22.8.

**(b)** Upon notification to the Director by the Authority, the Director shall allow the eligible business a tax credit. The eligible business may apply the credit allowed by the Director against the eligible business's tax liability for the tax period in which the Director allowed the tax credit or may carry forward the credit for use by the eligible business in any of the next seven successive tax periods, which credit shall thereafter expire.

**(c)** The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5.

**(d)** Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among all partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

**1.** With respect to credits passed through to a person subject to tax liability due pursuant to sections 2 or 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), the person shall be allowed to apply credits against the person's tax liability without the provision of a tax credit certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying the person's tax return, subject to the person submitting any additional authenticating or supporting information with the tax return, and the person shall be considered the tax certificate holder and be subject to this subsection.

**2.** The Authority may recapture all or part of any tax credits claimed by a person pursuant to (d)1 above with penalties and interest from the person or the business in the event the Division of Taxation in the Department of the Treasury does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the

applicable tax period. Such recapture amount may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

**(e)** The Director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of a credit applied pursuant to this section against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

**(f)** In lieu of applying any credit certificate or credit transfer certificate against tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5, the credit certificate or credit transfer certificate may be surrendered to the Division of Taxation in the Department of the Treasury for a cash payment equal to 90 percent of the amount of tax credits evidenced by the certificate, subject to appropriation and the availability of funds, provided that the issuance date of the credit certificate or credit transfer certificate to the taxpayer surrendering such certificate occurred at least two years prior to the date of surrender and the credit certificate or credit transfer certificate has not been sold or assigned previously, in a form and manner prescribed by the Director.

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

In (f), inserted "and the credit certificate or credit transfer certificate has not been sold or assigned previously".



## N.J.A.C. 19:31-22.12

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.12 Application for tax credit transfer certificate**

**(a)** An eligible business may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, within three years of the tax period in which the Director allows the eligible business a tax credit, in lieu of any amount of the tax credit against the eligible business's State tax liability. The tax credit transfer certificate, upon receipt thereof by the eligible business from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in an amount not less than \$ 25,000, within three years of the tax period in which the eligible business receives the tax credit transfer certificate from the Director, to another person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall apply the transferred credit against the same tax for which the eligible business was approved a tax credit under the program. The tax credit transfer certificate provided to the eligible business shall include a statement waiving the eligible business's right to claim the credit that the eligible business has elected to sell or assign.

**(b)** The eligible business shall not sell or assign a tax credit transfer certificate allowed pursuant to this section for consideration received by the eligible business of less than 85 percent of the transferred credit amount before considering any further discounting to present value that shall be permitted. The tax credit transfer certificate issued to the eligible business by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits under this program and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

**(c)** With respect to credits to be sold or assigned, in full or in part, pursuant to an application to the Authority for a tax credit transfer certificate by a business to a person subject to tax liability due pursuant to sections 2 or 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 or 54:18A-3), the person shall be allowed to apply the credits against the person's tax liability without the provision of a tax credit transfer certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying its tax return, subject to the person submitting any additional authenticating or supporting information with the tax return, and the person be considered a tax credit transferee and be subject to (d) below.

**(d)** The Authority may recapture all or part of any tax credits claimed by a person pursuant to (c) above with penalties and interest from the person or the business in the event the Authority or the Director does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period. Such recapture amount may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies,

plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

**(e)** The purchaser or assignee of a tax credit transfer certificate shall be subject to any limitations and conditions that apply to the use of the tax credits by the eligible business. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.

**(f)** The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferrer;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The State tax against which the transferee may apply the tax credit; and
5. The consideration received by the transferrer.

## **N.J.A.C. 19:31-22.13**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.13 Cap on total credits**

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The combined value of all credits approved by the Authority pursuant to this program shall be subject to limitations set forth at section 98 of P.L. 2020, c. 156. The amount of available tax credit shall be posted at the beginning of each calendar year on the website of the Authority.

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End of Document

## **N.J.A.C. 19:31-22.14**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.14 Reduction and forfeiture of tax credits**

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**(a)** If, in any tax period, an eligible business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under the program, then the eligible business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the eligible business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

**(b)** Except for a small business, if the annual report filed by an eligible business pursuant to section 77 of P.L. 2020, c. 156, and N.J.A.C. 19:31-22.10(a) provides that the number of new full-time employees employed by the eligible business subject to the project agreement or the salaries of the new full-time employees, as measured by the median salary, was reduced by more than 10 percent of the number of new full-time employees, or salaries thereof, in the annual report of the prior year, or the project agreement if the annual report is the first such report filed, then the Authority may reevaluate the net positive economic benefit of the project and reduce the size of the award accordingly. This reduction shall not affect any recapture pursuant to (f) below.

**(c)** If, in any tax period, the amount of withholdings paid to New Jersey or full-time employees employed by the eligible business subject to the project agreement or the salaries thereof, drops below 80 percent of the withholdings and number of new and retained full-time jobs, and the salaries thereof, specified in the project agreement or the project phase agreement, then the eligible business shall forfeit its tax credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the amount of withholdings paid to New Jersey or number of full-time employees employed by the eligible business subject to the project agreement to 80 percent of the withholdings and number of jobs specified in the project agreement or project phase agreement or the restoration of 80 percent of the salaries specified in the project agreement is reviewed and approved by the Authority.

**(d)** If the business is not in compliance with the community benefits agreement pursuant to N.J.A.C. 19:31-22.9(c), the Authority shall reduce the size of the award by the amount equal to 120 percent of the monetary value of the contribution or contributions for which the business is not in compliance. This reduction shall not affect any recapture pursuant to (f) below.

**(e)** If at any time during the eligibility period, the Authority determines that the eligible business made a material misrepresentation on the eligible business's application, the eligible business shall forfeit all tax credits awarded under the program, which shall be in addition to any other

remedies in the commitment agreement and any criminal or civil penalties to which the business and the officer may be subject.

**(f)** The Authority may recapture all, or part of, a tax credit awarded if an eligible business does not remain in compliance with the requirements of a project agreement for the duration of the commitment period. A recapture pursuant to this subsection may include interest on the recapture amount, at a rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. Failure of the eligible business to meet any program criteria shall constitute a default and shall result in the recapture of all or part of the tax credit awarded.

**(g)** With the exception of N.J.A.C. 19:31-22.12(d), if all or part of a tax credit sold or assigned pursuant to section 78 of P.L. 2020, c. 156, and N.J.A.C. 19:31-22.12 is subject to recapture, then the Authority shall pursue recapture from the eligible business and not from the purchaser or assignee of the tax credit transfer certificate.

**(h)** Any funds, net of costs incurred by the Authority, recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

## History

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### HISTORY:

Amended by R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

In (b), substituted "subject to the project agreement" for "at, or associated with, the qualified business facility," and "project" for "commitment" preceding "agreement"; rewrote (c); and in (h), inserted ", net of costs incurred by the Authority,".

## N.J.A.C. 19:31-22.15

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility**

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**(a)** A small business may move its qualified business facility, upon prior notice to the Authority, provided that the business remains in New Jersey during the commitment period and, for the purposes of this subsection, the tax credit calculation for each new or retained job will be recalculated for the new location, but the tax credit amount shall not be greater than the amount approved.

**(b)** Except for a small business:

**1.** If the qualified business facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller, provided, however, that any tax credits of tenants shall remain unaffected. If the business merges or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that an eligible business may change the location of the qualified business facility if:

**i.** The new facility:

**(1)** Meets all applicable location qualifying criteria and has a gross leasable area not less than the gross leasable area of the qualified business facility initially approved by the Authority, and the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program; or

**(2)** Does not meet all applicable location qualifying criteria or has less gross leasable area than the gross leasable area of the qualified business facility initially approved by the Authority, if the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program. The Authority shall require a cost comparison of the originally approved location and the alternate qualified business facility illustrating the economics of the occupancy at the alternate proposed qualified business facility location for the remaining duration of the commitment period compared to the economics of continuing occupancy at the qualified business facility proposed to be vacated. The alternate proposed qualified business facility must be 90 percent or more of the aggregate cost of the qualified business facility proposed to be vacated. If less than 90 percent, the Authority shall review the business's decision to relocate, including supporting documentation evidencing the reasons for relocation, to determine if the relocation to the alternate qualified business facility is consistent with the Board's approval of the application for the qualified business facility to be vacated.

The Authority shall recalculate the net positive economic benefit of the project to reflect the economics of occupancy at the alternate proposed location for the remaining duration of the net positive economic benefit test period. The award of tax credits shall be reduced consistent with the variations in qualifying criteria for the alternate qualified business facility location, as well as in a manner consistent with the revised net positive economic benefit calculation.

**(c)** In the event that the modified project economics materially deviate from the economics of the initial approval in a manner that undermines the recommendation of approval made by the staff of the Authority at the time of the initial approval, then the business requesting to relocate a qualified business facility shall be required to obtain the approval of the Board.

**(d)** If a business leases, or subleases, or otherwise reduces its tenancy in whole or in part during the eligibility period, the new tenant shall not acquire the tax credits of the business, and the business shall forfeit all tax credits for any tax period of its lease or sublease in which the business, in continued occupation of a portion of the qualified business facility, fails to maintain the number of jobs required for the business to earn tax credits for the tax period or fails to independently satisfy the minimum capital investment or sustainability requirements for the program as set forth at section 71 of P.L. 2020, c. 156. Provided, however, if the capital investment of the business in the occupied portion of the qualified business facility is below the project minimum capital investment as set forth at section 71 of P.L. 2020, c. 156, the business may include capital investment made by, or on behalf of, the new tenant in the leased or subleased portion of the qualified business facility, so long as that capital investment is not the subject of an independent application under an incentive program with the Authority. Notwithstanding the foregoing, a business may lease or sublease a portion of its qualified business facility to a new tenant that is a quality child care facility and up to five percent for any other new tenant without forfeiting any of the business's credits, provided that the new tenant's full-time employees and capital investment shall not be included in the business's eligible full-time employees or capital investment.

## History

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### **HISTORY:**

Amended by R.2022 d.128, effective October 3, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 900(a), 54 N.J.R. 1922(b).

Rewrote (b).

## N.J.A.C. 19:31-22.16

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.16 Affirmative action and prevailing wage**

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- (a) The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to construction contracts at the qualified business facility undertaken in connection with financial assistance received under the program. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.
- (b) The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-4, and 19:31-22.3(b)8 shall apply to construction work at the qualified business facility by the business or construction work incurred on behalf of the business by the landlord, as follows:
1. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and
  2. Construction contracts for work undertaken in connection with financial assistance received under the program. In accordance with section 1 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.1), nothing in this paragraph shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first certificate of compliance.
- (c) During the commitment period, prevailing wage shall apply to building services at the qualified business facility pursuant to N.J.A.C. 19:31-22.3(b)8.

### **History**

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#### **HISTORY:**

Repeal and New Rule, R.2022 d.058, effective May 16, 2022.

See: 54 N.J.R. 124(a), 54 N.J.R. 909(b).

Section was "Reinstatement of lapsed license".



## **N.J.A.C. 19:31-22.17**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.17 Appeals**

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- (a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c) Appeals that are timely submitted shall be handled by the Authority as follows:
1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

## N.J.A.C. 19:31-22.18

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.18 Recovery Infrastructure Fund**

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- (a)** The Authority shall establish a dedicated fund to be known as the Recovery Infrastructure Fund. Money in the fund shall be dedicated to the purpose of funding local infrastructure, which shall include:
1. Buildings and structures, such as schools, fire houses, police stations, recreation centers, public works garages, and water and sewer treatment and pumping facilities;
  2. Sidewalks, streets, roads, ramps, and jug handles;
  3. Open space with improvements, such as athletic fields, playgrounds, and planned parks;
  4. Open space without improvements;
  5. Public transportation facilities, such as train stations and public parking facilities; and
  6. The purchase of equipment considered vital to public safety.
- (b)** The fund shall be credited with money remitted by eligible businesses pursuant to paragraph (2) of subsection b. of section 71 of P.L. 2020, c. 156, or N.J.A.C. 19:31-22.3(c)6 or 22.9(f)1.
- (c)** Money remitted to the fund by an eligible business pursuant to N.J.A.C. 19:31-22.3(c)6 or 22.9(f)1 shall be earmarked for use on local infrastructure projects in the municipality in which the eligible business's project is located.
- (d)** A municipality shall apply to the Authority, in a form and manner prescribed by the Authority, for disbursements from the Recovery Infrastructure Fund. The Authority, in consultation with the Department of Community Affairs, shall review and approve applications for disbursements of money from the fund pursuant to the provisions of this section. Applications shall be reviewed in the order that completed applications are received. In order to be approved, an application will be required to meet a minimum score established by the Authority in consultation with the Department of Community Affairs, based on factors, including, but not limited to, whether the applicant demonstrates that it has a financing plan for the entire project and the proposed public benefit of the project. The Authority shall issue an approval with conditions to be met prior to disbursements.
- (e)** The Authority shall coordinate with the Department of Community Affairs to carry out the local infrastructure projects funded through the Recovery Infrastructure Fund. The Authority shall also coordinate with the Department of Community Affairs on the involvement by other boards, commissions, institutions, departments, agencies, and State officers and employees.

## **N.J.A.C. 19:31-22.19**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.19 Reports on implementation of program**

Beginning in 2022 and every two years thereafter, a State college or university shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the program, and submit the report to the Authority, the Governor, and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), the Legislature. Each biennial report required pursuant to this section shall include a description of each eligible business receiving a tax credit under the program, a detailed analysis of the consideration given to each applicant, an analysis of whether the incentives awarded influenced the eligible business's decisions to locate a qualified business facility in the State, the return on investment for incentives awarded, the eligible business's impact on the State's economy, and any other metrics the State college determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

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End of Document

## **N.J.A.C. 19:31-22.20**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 22. EMERGE***

### **§ 19:31-22.20 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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End of Document

## **N.J.A.C. 19:31-23.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Aspire Program Act (Act), sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160. Under the Act, the Authority shall administer the program to encourage redevelopment projects through the provision of tax credit awards to reimburse developers for certain project financing gap costs. The Authority Board may approve the award of a tax credit award to a developer upon application to the Authority pursuant to sections 58 and 59 of P.L. 2020, c. 156. The value of all tax credits approved by the Authority pursuant to the Act shall be subject to the limitations set forth at section 98 of P.L. 2020, c. 156.

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End of Document

## **N.J.A.C. 19:31-23.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Aspire Program Act, sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335), as amended by P.L. 2021, c. 160.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the developer. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563.), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414.).

"Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

"Authority" means the New Jersey Economic Development Authority established at section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Aviation district" means all areas within the boundaries of the Atlantic City International Airport, established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24), and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center.

"Board" means the Board of the New Jersey Economic Development Authority established at section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. Building services shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the prevailing wage as defined at section 2 of P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

"Cash flow" means the profit or loss that an investment property earns from rent, deposits, and other fees after financial obligations, such as debt, maintenance, government payments, and other expenses, have been paid. Cash flow shall include costs for benefits and services provided under the community benefits agreement during the eligibility period, subject to the limitations at N.J.A.C. 19:31-23.8(e)9. For purposes of cash flow, government payments shall not include, among other things, payments that are the result of a violation or a settlement of a

violation or any payment that is not reasonable and customary, as determined by the Authority.

"Co-applicant" means an entity that:

1. Is non-profit for taxation purposes under the provisions of Section 501(c)3 of the Internal Revenue Code;
2. Contributes capital, real property, or services related to the project that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and
3. Enters into a participation agreement with the developer that specifies the co-applicant's participation in the redevelopment project.

"Commercial project" means a redevelopment project that is predominantly commercial and contains 100,000 or more square feet of office and retail space, industrial space, or film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, for purchase or lease. A commercial project may include a parking component, provided that the square footage for the parking component shall not count toward the required minimum square feet and when determining if a project is a commercial or residential project, a parking component shall not constitute either a residential or commercial use.

"Community benefits agreement" means the agreement between the developer; a co-applicant, if applicable; the municipality or county; and the Authority, pursuant to N.J.A.C. 19:31-23.8(i).

"Developer" or "applicant" means a person who enters, or proposes to enter, into an incentive award agreement pursuant to the provisions of section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

"Developer contributed capital" means equity contributed by the developer.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Distressed municipality" means a municipality that is qualified to receive assistance pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Economic development incentive" means a financial incentive, awarded by the Authority, or agreed to between the Authority and a business or person, for the purpose of stimulating economic development or redevelopment in New Jersey, including, but not limited to, a bond, grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure.

"Eligibility period" means the period of 10 years for an incentive award agreement during which a developer or a co-applicant, if applicable, may claim a tax credit under the program.

"Enhanced area" means a municipality that contains an urban transit hub, as defined in section 2 at P.L. 2007, c. 346 (N.J.S.A. 34:1B-208); the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and the three

municipalities with the highest percentage of SNAP recipients according to the 2017 Municipal Revitalization Index.

"Equity" means developer-contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by the Authority. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47., Low-Income Housing Credit, 26 U.S.C. § 42., and New Market Tax Credit, 26 U.S.C. § 45.D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. For a residential project utilizing Low-Income Housing Tax Credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity includes the portion of the developer's fee that is deferred for a minimum of five years.

"Film production project" means a commercial project that is predominantly a film studio, professional stage, television studio, recording studio, screening room, or other infrastructure used for film production.

"Fiscal impact analysis" means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State.

"Food delivery source" means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to, a full-service supermarket or grocery store, and other healthy food retailers of at least 16,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals.

"Full-time employee at the redevelopment project" means a full-time employee whose primary office is at the redevelopment project and who spends at least 60 percent of his or her time at the redevelopment project, or who spends any other period of time generally accepted by custom or practice as full-time employment at the redevelopment project, as determined by the Authority.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Health care or health services center" means an establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists, or other medical practitioners.

"Hospitality establishment" means a hotel, motel, or any business, however organized, that sells food, beverages, or both, with seating for consumption by patrons on the premises.

"Incentive area" means an aviation district, a port district, or area designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1



(Metropolitan), Planning Area 2 (Suburban), or a Designated Center, provided an area designated as Planning Area 2 (Suburban) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop, as certified by the New Jersey Transit Corporation.

"Incentive award" means an award of tax credits to a developer or a co-applicant, if applicable, to reimburse a developer for all or a portion of the project financing gap of a redevelopment project pursuant to the provisions of sections 54 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Incentive award agreement" means the contract executed between a developer, any co-applicant, if applicable, and the Authority pursuant to section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), which sets forth the terms and conditions under which the developer and any co-applicant may receive the incentive awards authorized pursuant to the provisions of sections 54 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Incentive phase agreement" means, for a phased project, the capital investment requirements and the time periods in which each phase of the project shall be commenced and completed. The incentive phase agreement may be incorporated in the incentive award agreement.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

"Low-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Major rail station" means a railroad station that is located within a qualified incentive area and that provides to the public access to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Minimum environmental and sustainability standards" means the standards established by the Authority, in accordance with the green building manual prepared by the Commissioner of

the Department of Community Affairs pursuant to section 1 at P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

"Mixed-use residential project" means a residential project with less than 1,000 units that qualifies as a transformative project.

"Moderate-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal Revitalization Index" means the index created by the Department of Community Affairs ranking New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.

"Port district" means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined at Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved in the South Jersey Port District established pursuant to the South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

"Program" means the New Jersey Aspire Program established by section 56 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-324).

"Project cost" or "total project cost" means the sum of the costs incurred in connection with a redevelopment project by a developer until the earlier of the issuance of a permanent certificate of occupancy and the certification of costs pursuant to N.J.S.A. 19:23-8(f), or until such other time specified by the Authority, based upon such other documentation evidencing project completion as set forth in the incentive award agreement, for a specific investment or improvement, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus soft costs of an amount not to exceed 20 percent of the total project costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. Project cost shall not include the cost of acquiring land. Project cost shall include otherwise qualifying costs incurred by an affiliate of the developer. The fees paid by the developer or any co-applicant to the Authority associated with the application or administration of an incentive award pursuant to sections 54 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335) shall not constitute a project cost.

"Project financing gap" means the part of the total development cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer-contributed capital, which shall not be less than 20 percent of the total development cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis; provided, however, that for a redevelopment project located in a

government-restricted municipality, the developer-contributed capital shall not be less than 10 percent of the total development cost.

"Qualified incentive tract" means a population census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

"Reasonable and appropriate return on investment" or "reasonable and appropriate rate of return on investment" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment. For a residential project utilizing Federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency, the reasonable and appropriate return on investment shall be based on the approval of deferred developer fees pursuant to N.J.A.C. 5:80-33. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any Federal, State, or local tax credits.

"Redevelopment project" means a specific construction project or improvement or phase of a project or improvement undertaken by a developer, owner, or tenant, or both, and any ancillary infrastructure project. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

"Residential project" means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component. When determining if a project is a residential or commercial project, a parking component shall not constitute either a residential or commercial use.

"SDA district" means an SDA district as defined in section 3 at P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situated.

"Soft costs" means costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, and all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery. The term does not include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer, project management, or other similar costs. Soft costs shall include costs for benefits and services provided under the community benefits agreement that are not directly related to construction of the project, subject to the limitations at N.J.A.C. 19:31-23.8(e)9.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces.

"Total development cost" or "total redevelopment cost" means any and all costs incurred for and in connection with the redevelopment project by the developer and any affiliate of the

developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, which shall include, but is not limited, to project costs, soft costs, and cost of acquisition of land and buildings.

"Transit hub" means an urban transit hub, as defined in section 2 at P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 2 at P.L. 2007, c. 346 (N.J.S.A. 34:1B-208) and also located within a qualified incentive area.

"Vacant commercial building" means any commercial building or complex of commercial buildings having over 400,000 square feet of office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied for a period of over one year at the time of application to the Authority, except that the amount of square feet in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties shall be 200,000.

"Workforce housing" means housing that is affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income of more than 80 percent, but less than 120 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

## **N.J.A.C. 19:31-23.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.3 Eligibility criteria**

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- (a) Prior to March 1, 2027, a developer and co-applicant, if applicable, shall be eligible to receive an incentive award for a redevelopment project only if the developer demonstrates to the Authority at the time of application that:
1. Without the incentive award, the redevelopment project is not economically feasible;
  2. With the incentive award, the redevelopment project will be economically and commercially viable for the duration of the eligibility period;
  3. A project financing gap, which includes consideration of the project's reasonable and appropriate return on investment, exists, or the Authority determines that the redevelopment project's reasonable and appropriate return on investment is below the market rate of return and supports an incentive award of all or a portion of the project financing gap;
  4. The redevelopment project, except a film production project, is located in the incentive area;
  5. Except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application. However, the Authority may determine that the redevelopment project would not be completed without the award or, in the event the redevelopment project is to be undertaken in phases, the requested incentive award is limited to only phases for which construction has not yet commenced;
  6. The redevelopment project shall comply with minimum environmental and sustainability standards;
  7. The redevelopment project shall comply with the Authority's affirmative action requirements, adopted pursuant to section 4 at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), as provided at N.J.A.C. 19:31-23.14(a);
  8. During the eligibility period, each worker employed to perform construction work or building services work at the redevelopment project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.). In the event a portion of a redevelopment project is undertaken by a tenant and the tenant has a leasehold of more than 55 percent of space in the building owned or controlled by the developer, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire redevelopment project and all tenants therein. For

construction work, prevailing wage shall apply to all work done by tenants at the redevelopment project;

**9.** The redevelopment project shall be completed, and the developer shall be issued a temporary certificate of occupancy for the redevelopment project facilities by the applicable enforcing agency within four years of executing the incentive award agreement corresponding to the redevelopment project. A redevelopment project with a project cost in excess of \$ 50,000,000 may complete the redevelopment project in phases and have the temporary certificate of occupancy issued no more than six years from the date on which the incentive award agreement is executed, provided that:

- i.** Each phase shall be \$ 50,000,000 or more, except for the last phase;
- ii.** The developer shall obtain a temporary certificate of occupancy for each phase; and
- iii.** The first temporary certificate of occupancy shall be obtained within four years of executing the incentive award agreement;

**10.** The developer has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

**11.** The developer, all principals of the developer, and any affiliate of the developer, is not more than 24 months in arrears of any financing obligation for the redevelopment project at the time of application;

**12.** Except for a residential project, food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of the Department of Health, the overall public assistance provided to the project will result in a net positive economic benefit to the State; and

**13.** If the application includes a co-applicant, the developer and co-applicant demonstrate the following:

- i.** The co-applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39);
- ii.** The co-applicant's organizational purpose encompasses the proposed participation;
- iii.** The co-applicant has the financial and operational capability to provide the proposed contribution or services;
- iv.** The co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and
- v.** The co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

**(b)** The following are the only costs incurred prior to application that may be included as project costs:

1. For applications submitted on or after January 1, 2024, demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within two years prior to the date of the application;
  2. For applications submitted on or after January 1, 2023, and prior to January 1, 2024, demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within three years prior to the date of the application; and
  3. For applications submitted prior to January 1, 2023, demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within four years prior to the date of the application.
- (c)** To determine that the project has a project financing gap, the developer shall demonstrate that the redevelopment project has developer-contributed capital of at least 20 percent of the total development cost, except that if a redevelopment project is located in a government-restricted municipality, the developer-contributed capital shall be at least 10 percent of the total development cost.
- (d)** For a residential project to qualify for an incentive award, the residential project shall:
1. Have a total project cost of at least \$ 17,500,000, if the project is located in a municipality with a population greater than 200,000 according to the latest Federal decennial census;
  2. Have a total project cost of at least \$ 10,000,000, if the project is located in a municipality with a population less than 200,000 according to the latest Federal decennial census; or
  3. Have a total project cost of at least \$ 5,000,000, if the project is in a qualified incentive tract or government-restricted municipality.
- (e)** For a residential project or a redevelopment project consisting of newly constructed residential units to qualify for an incentive award, the developer shall reserve at least 20 percent of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).
- (f)** For all redevelopment projects, in order to include the cost of acquiring a building or buildings in the project cost of a redevelopment project involving the rehabilitation or improvement of the building or buildings, all other components of the project cost must equal or exceed the cost of acquiring the building or buildings.

## **N.J.A.C. 19:31-23.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.4 Application submission requirements**

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**(a)** Each application to the Authority made by a developer shall include the following information in an application format prescribed by the Authority:

1. The name of the business;
2. The contact information of the person identified as the primary contact for the business;
3. The prospective future address of the business (if different);
4. The type of the business;
5. The principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. The total projected number of construction employees and permanent employees at the redevelopment project;
9. A description of the project, including a breakdown of uses and related square footage and costs, and the developer's experience with similar project(s);
10. A copy of a market and/or feasibility study for the proposed use of the project site by an independent third party, which must include the firm's position regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period;
11. An anticipated construction schedule;
12. Financial information of the project, which shall include all phases, including, but not limited to, estimated project costs and total development costs, any State or local financial assistance for the project, proposed terms of financing, projected reasonable and appropriate return on investment on developer's contributed capital, net margin, and cash on cash yield, and a certification from the chief executive officer, or equivalent officer of the developer, that additional capital cannot be raised from other sources on a non-recourse basis after making all good faith efforts to raise additional capital, and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-23.3(a)2;
13. As applicable, a certification that the project meets the requirements to reserve residential units as set forth at N.J.A.C. 19:31-23.3(d);



- 14.** A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the developer is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The developer shall also submit a written certification by the chief executive officer, or equivalent officer of the developer, stating that the developer applying for the program satisfies the criteria at N.J.A.C. 19:31-23.7(b) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
- 15.** A certification that any contractors or subcontractors that will perform work at the redevelopment project are registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;
- 16.** A certification by the chief executive officer, or equivalent officer of the developer, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
- 17.** A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- 18.** Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
- 19.** A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
- 20.** The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated on the local tax map;
- 21.** A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the redevelopment project, or will be required to be issued, pending resolution of financing issues;
- 22.** A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed redevelopment project, including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;
- 23.** For a redevelopment project whose total project cost equals or exceeds \$ 10 million and for which a community benefits agreement is required pursuant to N.J.A.C. 19:31-23.8(e), a letter of support from the chief executive of the municipality or county acknowledging the requirement for a community benefits agreements for the redevelopment project and affirming that the municipality or county shall proceed to negotiate a community benefits agreement in good faith with the developer and execute the community benefits agreement within the time required at N.J.A.C. 19:31-23.8(e)3;
- 24.** Information required by the Authority to evaluate and determine the application's score pursuant to N.J.A.C. 19:31-23.7(c); and

**25.** Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and developer capacity.

**(b)** If the developer is applying with a co-applicant, the application shall also include the following information of the co-applicant:

1. The name of the business;
2. The contact information of the person identified as the primary contact for the business;
3. The prospective future address of the business (if different);
4. The type of the business;
5. The principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The co-applicant shall also submit a written certification by the chief executive officer, or equivalent officer of the eligible co-applicant, stating that the co-applicant applying for the program satisfies the criteria at N.J.A.C. 19:31-23.7(b) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
9. A certification by the chief executive officer, or equivalent officer of the co-applicant, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
10. A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
11. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
12. A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the co-applicant is requesting or receiving for the redevelopment project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
13. Organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality;
14. A description of the long-term participation agreement between the co-applicant and the developer, including a description of how the co-applicant will take an active role in the redevelopment project, including a description of the capital, real property or services related to the project that the co-applicant will provide that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the project;
15. An explanation of the need for a co-applicant to receive and sell the tax credits to finance the redevelopment project; and

**16.** Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete review of project financial review and developer capacity.

**(c)** The Authority shall not consider an application for a redevelopment project, unless the developer submits with the application a letter evidencing support for the redevelopment project from the governing body of the municipality or municipalities in which the redevelopment project is located.

**(d)** The Authority may, in its sole discretion, consider two or more applications as one application for one redevelopment project based on factors including, but not limited to, the location of the redevelopment projects, the types of uses proposed, and the developer's financing and operational plans.

**(e)** If circumstances require a developer to amend its application to the Authority, then the developer, or chief executive officer or equivalent officer of the developer, shall certify to the Authority that the information provided in its amended application is true under the penalty of perjury.

## **N.J.A.C. 19:31-23.5**

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### **§ 19:31-23.5 Fees**

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**(a)** A developer applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 30,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 50,000 without phases and \$ 75,000 with phases; and
3. For transformative projects, the fee shall be \$ 100,000 for each phase included in the proposed project.

**(b)** A developer shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

**(c)** The developer shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 50,000;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 50,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 60,000 without phases and \$ 250,000 with phases; and
3. For transformative projects, the fee shall be \$ 500,000 for each phase included in the proposed project.

**(d)** For all redevelopment projects, including transformative projects, a developer shall pay, to the Authority, a non-refundable fee prior to the receipt of the tax credit certificate. For a phased transformative redevelopment project, the developer shall pay an additional non-refundable fee prior to the approval of the project cost certification for the second phase and each subsequent phases. The fee shall be as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 50,000;

2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 50,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 60,000 without phases and \$ 250,000 with phases; and
3. For transformative projects, the fee shall be \$ 500,000 for each phase included in the approved project.

**(e)** A developer shall pay, to the Authority, an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the developer has met the eligibility requirements of the program for the respective redevelopment project, or the first phase for a phased transformative project, and for the duration of the eligibility period pursuant to N.J.A.C. 19:31-23.2. The annual servicing fee shall be paid to the Authority by the developer at the time the developer submits its annual report, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 25,000;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 30,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 40,000 without phases and \$ 100,000 with phases; and
3. For transformative projects, the fee shall be \$ 200,000 for each phase included in the approved project.

**(f)** A developer applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-23.12 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 10,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000 without phases and \$ 20,000 with phases; and
3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project.

**(g)** Upon application to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive award agreement and in the incentive awards payable thereunder, a developer shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 10,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000 without phases and \$ 20,000 with phases; and
3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project.

**(h)** A developer shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, a non-refundable fee of \$ 20,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval without phases and \$ 150,000 with phases; and
3. For transformative projects, a non-refundable fee of \$ 30,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 300,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

**(i)** A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall provide project financing and planning documentation required in the approval letter pursuant to N.J.A.C. 19:31-23.8(a); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 7,500;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 7,500. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000 without phases and \$ 15,000 with phases; and
3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project.

**(j)** A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall submit the satisfactory evidence with respect to the eligibility requirements of the program pursuant to N.J.A.C. 19:31-23.8(f) for the respective redevelopment project, or the respective phase of a phased transformative project pursuant to N.J.A.C. 19:31-23.11(d); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 7,500 for each extension;

**2.** For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 7,500 for each extension. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000 without phases and for each subsequent extension shall be \$ 15,000 and \$ 15,000 with phases and for each subsequent extension shall be \$ 30,000; and

**3.** For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project and for each subsequent extension shall be \$ 40,000 for each phase included in the approved project.

**(k)** A developer seeking to terminate an existing incentive agreement in order to participate in an incentive award agreement authorized pursuant to the Aspire program shall pay to the Authority a non-refundable fee, as follows:

**1.** For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 25,000;

**2.** For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 25,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 50,000; and

**3.** For transformative projects, the fee shall be \$ 100,000 for each phase included in the approved project.

**(l)** The fees paid to the Authority pursuant to this section shall not affect or reduce any fees due to the Agency.

## **N.J.A.C. 19:31-23.6**

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### **§ 19:31-23.6 Financing gap and fiscal impact analysis**

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**(a)** The Authority shall review the proposed total development cost and evaluate and validate the project financing gap estimated by each developer applying for an incentive award, as follows:

- 1.** The Authority shall evaluate the proposed total redevelopment costs to develop, and the components of, the redevelopment project against reasonable market costs and components of comparable projects;
- 2.** The Authority shall determine if the developer's submitted financial information for the project and, if applicable, all phases, is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap, including the reasonable and appropriate return on investment; and
- 3.** The project financing gap analysis shall include, but not be limited to, an evaluation of the total development cost, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, reasonable and appropriate return on investment, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable project available to the developer or its tenants.

**(b)** The Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State, provided that the net positive economic benefit analysis shall not apply to a residential project, to a capital investment for a food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of the Department of Health. In determining whether a project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained pursuant to the Five-Year Exemption and Abatement Law, P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the Long Term Tax Exemption Law, P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et seq.), the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed redevelopment project for which an award of tax credits is being sought.



**(c)** For a redevelopment project subject to the requirement at (b) above to be eligible for any tax credits under the program, a developer shall demonstrate to the Authority that the award of tax credits will yield a net positive economic benefit to the State not less than 185 percent of the award, except that a redevelopment project located in a government-restricted municipality shall yield a net positive economic benefit to the State not less than 150 percent of the incentive award. The net positive economic benefit shall be evaluated for the duration of the eligibility period. The chief executive officer or equivalent officer of the developer shall certify, under the penalty of perjury, that all documents submitted and factual assertions made to the Authority to demonstrate that the award of tax credits will yield a net positive economic benefit to the State in accordance with this subsection are true and accurate at the time of submission.

**(d)** In determining whether the redevelopment project yields the net positive economic benefit pursuant to (b) above and as certified by the chief executive officer or equivalent officer of the developer pursuant to (c) above, the Authority's consideration shall include, but not be limited to, the direct and indirect benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefit derived from the capital investment commenced after the submission of an application to the Authority. For the purposes of calculating employee wages at the redevelopment project site to be included in the evaluation of the net positive economic benefit, the Authority shall rely upon the average wages in the region in which the respective redevelopment project is located.

**(e)** If, during the administration of the program, the methodology used by the Authority in evaluating the net positive economic benefit of redevelopment projects is modified, the Authority shall apply such modification to the methodology prospectively. Prospective application means using the modified methodology to pending applications and to redevelopment projects that have been previously approved if the developer requests a modification, or this subchapter or the incentive award agreement requires, or authorizes, the Authority to conduct a reevaluation of the net positive economic benefit.

**(f)** In determining net positive economic benefits for any business or person considering locating in a redevelopment project and applying to receive from the Authority any other economic development incentive subsequent to the award of tax credits pursuant to the Act and this subchapter, the Authority shall not credit the business or person with any benefit that was previously credited to the redevelopment project.

## **N.J.A.C. 19:31-23.7**

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### **§ 19:31-23.7 Approval of completed application; tax credit amounts**

**(a)** Prior to March 1, 2027, for redevelopment projects eligible pursuant to section 57 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-325) and this subchapter, the Authority shall award incentive awards based on the order in which complete, qualifying applications are received by the Authority. If interest in the program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

**(b)** Before the Board may consider a developer's application for tax credits:

1. The Authority shall confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer and any co-applicant is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the developer, or any co-applicant, as applicable, has entered into an agreement with the respective department and any co-applicant, which may include a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the developer and any co-applicant:

**(1)** As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

**(A)** Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the developer and any co-applicant; and

**(B)** Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

**(2)** As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the developer and any co-applicant.

3. Any contractors or subcontractors that will perform work at the redevelopment project shall be registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), shall not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and shall possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

(c) Provided that the requirements at (b) above are satisfied, the Authority shall allocate incentive awards to redevelopment projects according to the redevelopment project's score and until either the available incentive awards are exhausted or all redevelopment projects obtaining the minimum score receive an incentive award, whichever occurs first. The scoring shall be based on factors including, but not limited to, consistency of proposed use with applicable land use requirements or redevelopment plans; whether the redevelopment project adheres to smart growth, equitable development, and transit-oriented development principles; whether the redevelopment project has environmental or public health stressors and is located in an overburdened community pursuant to P.L. 2020, c. 92; whether the redevelopment project design anticipates long-term risks of climate change to the redevelopment project; and inclusion of workforce housing in a residential project not located in a distressed municipality. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

(d) If a developer intends to apply to both the Authority and the Agency for tax credits, subsidies, or other financing, the developer shall notify the Agency simultaneously with any application made to the Authority. The Authority shall transmit its grant determination for such residential projects to the Agency, along with any information developed by the Authority and confirmation of the Authority's intent to provide an incentive award or award to the project. Approval of an application by the Agency, subject to the Agency's rules and guidelines for the applicable Agency program, shall be the final determination required for an incentive award for a residential project pursuant to this section.

(e) Up to the limits established at (f) and (g) below, and in accordance with an incentive award agreement, beginning upon completion of the capital investment and the receipt of the temporary certificate of occupancy for the redevelopment project or the first phase of an approved phased transformative project, or upon any other event evidencing project completion as set forth in the incentive award agreement, a developer shall be allowed a total tax credit under this program that shall not exceed the percentages in this subsection. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded under this program.

1. Sixty percent of the total project cost for the new construction of a residential project that receives a four-percent allocation under the Federal Low-Income Housing Tax Credit Program;

2. Fifty percent of the total project cost for a commercial project that is located in a government-restricted municipality; or

**3.** Forty-five percent of the total project cost for any other redevelopment project.

**(f)** Notwithstanding the provisions at (e) above, for projects with tax credits under the Federal Low-Income Housing Tax Credit Program, in no event shall the sum of all tax credits awarded under any program administered by the Authority and the Federal Low-Income Housing Tax Credit Program exceed 90 percent of the project cost. For all other projects, in no event shall the sum of all tax credits awarded under any program administered by the Authority exceed 80 percent of the project cost.

**(g)** The value of all tax credits approved by the Authority under the program shall not exceed \$ 60,000,000 per redevelopment project or phase for a residential project that is allowed a tax credit pursuant to (e)1 above, or a redevelopment project or phase that is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50, and \$ 42,000,000 for any other redevelopment project or phase.

**(h)** The maximum amount of tax credits available to a developer to apply annually shall be equal to the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

## **N.J.A.C. 19:31-23.8**

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### **§ 19:31-23.8 Approval letter; incentive award agreement**

(a) Upon receipt of a recommendation from the Authority staff on the redevelopment project, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its capital investment in a redevelopment project, and promptly notify the applicant and the Director of the Division of Taxation of the determination.

1. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant and any co-applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and the requirement that the minimum environmental and sustainability standards are incorporated into the proposed project. The approval letter will require that the qualified residential project will be monitored by an administrative agent as defined at N.J.A.C. 5:80-26.2 during the eligibility period for purposes of the affordable housing reservation at N.J.A.C. 19:31-23.3(e). The approval letter shall also provide the requirements necessary for the Authority to execute the incentive award agreement.
2. The approval letter shall require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the developer or an affiliate of the developer, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals and permits. If the Authority approval included a co-applicant, the required documents shall also include the executed participation agreement between the co-applicant and the developer with a term that extends for the duration of the eligibility period. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the developer or co-applicant, as applicable, does not submit the documentation required in this paragraph within a year after approval of the application.
3. If the terms of the financial commitment contained in the evidence required by the approval letter are materially different from the projected terms in the application, the Authority may re-evaluate the project financing gap and reduce the size of the incentive award, accordingly.
4. The approval letter shall provide an estimated date of completion and include a requirement for periodic progress reports. If the Authority does not receive a progress report when required, or if the progress report demonstrates unsatisfactory progress, then the

Authority, upon consultation with the Agency if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the incentive award. If the Authority rescinds an incentive award in the same calendar year in which the Authority approved the incentive award, then the Authority may allocate the unused tax credits to another applicant.

**(b)** Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the developer and any co-applicant. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the incentive award agreement on behalf of the State. The awarding of tax credits shall be conditioned on the developer's and any co-applicant's compliance with the requirements of the agreement.

**(c)** The incentive award agreement shall specify and include:

1. A detailed description of the proposed redevelopment project. For a phased project, the incentive award agreement may include an incentive phase agreement for each phase, which shall contain a description of the phase, the expected project cost and total development cost, and the commencement and completion for the respective phase;
2. The maximum amount of project cost and the maximum percentage of the project cost that will be used to calculate the amount of tax credits. If the actual project costs are less than the project cost set forth in the application, the tax credit shall be calculated based on the actual project cost;
3. The duration of the eligibility period;
4. A description of the occupancy permit or other event evidencing project completion that begins the eligibility period;
5. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the program;
6. A requirement that the developer shall not cease to operate the redevelopment project during the eligibility period;
7. A method for the developer to certify that it has met the project cost and other eligibility requirements of the program;
8. A requirement for the developer to provide annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;
9. Representations that the developer will comply with the minimum environmental and sustainability standards;
10. Representations that the developer and any co-applicants are in substantial good standing and that the redevelopment project will comply with all applicable laws, including, but not limited to, prevailing wage requirements pursuant to N.J.A.C. 19:31-23.14(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31-23.14(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
11. A provision permitting an audit of evidence and documentation, of the developer and any co-applicant, supporting the certifications pursuant to (f) below, and the annual reports pursuant to N.J.A.C. 19:31-23.9, as the Authority deems necessary;
12. Reporting requirements pursuant to N.J.A.C. 19:31-23.9;

- 13.** A provision permitting the Authority to amend the agreement;
- 14.** A provision establishing the conditions under which the Authority, the developer and any co-applicant, or all parties, may terminate the agreement;
- 15.** Milestones for the redevelopment project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority, upon consultation with the Agency, if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the award of tax credits if a project fails to advance in accordance with milestones in the incentive award agreement or fails to provide progress reports required under the approval letter;
- 16.** A provision to verify the financing gap at the time the developer provides executed permanent financing commitments to the Authority and a verification of the developer's projected cash flow at the time the developer submits the evidence of the completion of the project pursuant to (f) below. To ensure the protection of taxpayer money, if the Authority determines at project certification that the actual capital financing approach utilized by the project has resulted in a financing gap that is smaller than the financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit or accept payment from the developer on a pro rata basis. If there is no project financing gap due to the actual capital financing approach utilized by the project, then the developer shall forfeit the incentive award;
- 17.** A provision requiring that at the end of the seventh year of the eligibility period, the Authority shall evaluate the developer's reasonable and appropriate rate of return on investment and compare that reasonable and appropriate rate of return on investment to the reasonable and appropriate rate of return at the time of Board approval. If the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of Board approval by more than 15 percent, the Authority shall require the developer to pay 20 percent of the amount in excess of the reasonable and appropriate rate of return on investment. The Authority shall require an escrow account to be held by the Authority until the end of the eligibility period. Following the final year of the eligibility period, the Authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. If the final rate of return does not exceed the reasonable and appropriate rate of return determined at Board approval, the Authority shall release to the developer the escrowed funds. If the project final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval, the Authority shall require the developer to pay 20 percent of the amount of the excess, which shall include the funds held in escrow, and such funds shall be deposited in the State General Fund;
- 18.** A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth at N.J.A.C. 19:31-23.7(b)1, that the developer, and any co-applicant, is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;
- 19.** A provision providing that if the developer, and any co-applicant, is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-23.7(b)1, and after being given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the developer and any co-applicant shall

forfeit the tax credits in any year in which the developer and any co-applicant is neither in substantial good standing with each department nor has entered into a practical corrective action;

**20.** A requirement that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: is registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The incentive award agreement shall also include a provision that the Authority may suspend the tax credits if the developer is not in compliance with this requirement, and if the suspension continues for two years, then, at the Authority's sole option, the developer and any co-applicant may forfeit the tax credits for those years;

**21.** A requirement for the developer to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

**22.** The incentive award agreement shall include a provision allowing the Authority to extend, in individual cases, the deadline for any annual reporting or project completion certification requirement;

**23.** Indemnification and insurance requirements from the developer and any co-applicant;

**24.** Events that would trigger forfeiture, reduction, or recapture of the tax credits, including, but not limited to, provisions in this subchapter; and

**25.** Default and remedies, including, but not limited to, a default if a developer or any co-applicant made a material misrepresentation on its application.

**(d)** The Authority shall not enter into an incentive award agreement for a redevelopment project that includes at least one retail establishment which will have more than 10 full-time employees, at least one distribution center that will have more than 20 full-time employees, or at least one hospitality establishment which will have more than 10 full-time employees, unless the incentive award agreement includes a precondition that any business that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment enters into a labor harmony agreement with a labor organization or cooperating labor organizations that represent retail or distribution center employees in the State. A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The Authority may enter into an incentive award agreement with a developer and any co-applicants without the labor harmony agreement required under this subsection, if the Authority determines that the redevelopment project would not be able to go forward if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.

**(e)** For a redevelopment project whose total project cost equals or exceeds \$ 10 million, in addition to the incentive award agreement, the developer shall execute a community benefits agreement or agreements pursuant to subsection e. of section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), as prescribed below. Any co-applicant that is responsible or required to provide services under the community benefits agreement shall also execute the community benefits agreement.



- 1.** The developer shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the redevelopment project is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the Authority that the municipality has made the request. The Authority shall not participate in negotiations between the developer and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to (e)6ii below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the redevelopment project is located, as well as any other program element, on the project site or in the host community, intended to improve community health, safety, access to opportunity, recreational opportunity, environmental resilience and environmental quality, quality of life, or other locally-prioritized community benefit.
- 2.** The community benefits agreement shall include a list of contributions by the developer; the monetary equivalent for any non-monetary contribution; an event of default, if the developer forfeits tax credits pursuant to (e)7ii below in two successive years; and the date by which the community advisory committee must submit its annual report pursuant to (e)6 below.
- 3.** The developer and the municipality or county shall have six months, with two three-month extensions, after Authority Board approval of the developer's application, to enter into a community benefits agreement. The community benefits agreement is a condition to entering into an incentive award agreement.
- 4.** Prior to entering a community benefits agreement, the governing body of the municipality or, if the county is executing the agreement, the governing body of the county, in which the redevelopment project is located shall hold at least one public hearing subject to the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6, at which the chief executive or designee from the chief executive's department or office, shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address. The chief executive shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.
- 5.** The community benefits agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

  - i.** The community advisory committee created pursuant to this paragraph shall be comprised of representatives from diverse community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the redevelopment project is located.
  - ii.** The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.
  - iii.** For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the redevelopment project is located, at least one representative from a

community group, and at least one resident from the zip code in which the redevelopment project is located. There shall be no more than one municipal or county employee on the community advisory committee.

**iv.** For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at (e)5iii above.

**v.** Community advisory committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the developer and any co-applicant. The certifications shall be submitted to the Authority by the developer or the municipality, or if the county is executing the agreement, the county.

**vi.** Any report or action shall be approved by a majority of the members of the community advisory committee.

**6.** The community advisory committee shall produce an annual report, including an evaluation of whether the developer is in compliance with the terms of the community benefits agreement:

**i.** If the report from the community advisory committee and the certification from the developer pursuant to N.J.A.C. 19:31-23.9(b)1 both indicate that the developer is in compliance with the community benefits agreement, then the developer shall be in compliance with the community benefits agreement. Absent extenuating circumstances, and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the developer shall be based on the certification from the developer pursuant to N.J.A.C. 19:31-23.9(b)1.

**ii.** If the report from the community advisory committee indicates that the developer is not in compliance with the terms of the community benefits agreement, the Authority shall serve as, or identify, a mediator. The community advisory committee, municipality or county, as applicable, and the developer shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority.

**iii.** If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in nature. The developer, municipality or county, and the community advisory committee shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report. The Chief Executive Officer shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this subsection is not a contested case subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**7.** If the developer is not in compliance as determined pursuant to (e)6 above, the following shall apply:

**i.** The amount of tax credits that the developer may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the developer is not in compliance, if the Authority determines that:

**(1)** Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the eligible developer's control and without its fault or negligence;

**(2)** The developer is using best efforts, with all due diligence, to proceed with the completion of the contribution; and

**(3)** The developer has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

**ii.** For any other noncompliance, the developer shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority. The full amount of the credit shall be allowed for the first tax period in which the Authority has approved compliance and each subsequent tax credit for which the Authority approves compliance.

**8.** A developer shall not be required to enter into a community benefits agreement pursuant to this subsection if the developer submits, to the Authority, a copy of either the developer's approval letter from the Authority or a redevelopment agreement applicable to the redevelopment project, provided that the approval letter or redevelopment agreement is certified by the municipality in which the redevelopment project is located, and includes provisions that meet or exceed the standards pursuant to (e)2 above required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer.

**9.** The sum of costs for benefits and services provided under the community benefits agreement included as soft costs or to determine cash flow shall not exceed five percent of project cost. For purposes of this paragraph, costs for benefits and services incurred during the eligibility period shall be discounted to present value.

**(f)** A developer shall submit, prior to the issuance of tax credits under the incentive award agreement, but no later than six months following project completion, satisfactory evidence of the completion of the redevelopment project and satisfaction of the program eligibility requirements, which shall include, but not be limited to, the documents in this subsection. The Authority may provide any information contained in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

**1.** Evidence of a temporary certificate of occupancy or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement;

**2.** A certification by a qualified independent certified public accountant of the actual project costs. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority. If the project cost is reduced below the relevant minimum project cost for eligibility, the redevelopment project shall no longer be eligible. If the project cost in the certification is less than the project cost in the approval of the application, the Authority may re-evaluate the net positive economic benefit and reduce the size of the tax credits accordingly. The Authority shall qualify certified public accountants and provide to the

developer the list of qualified certified public accountants; provided, however, the developer may select a certified public accountant that is independent to the developer and any co-applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification if the developer demonstrates an extenuating circumstance prohibiting the developer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the developer;

3. A floor plan identifying the actual and proposed uses and square foot of gross leasable area for each such use. For a redevelopment project approved as a commercial project, evidence that the redevelopment project is predominantly commercial; and for a redevelopment project approved as a residential project, evidence that the redevelopment project is predominantly residential;
4. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the approval, the Act, or this subchapter;
5. Documentary evidence that a deed restriction reserving units pursuant to N.J.A.C. 19:31-23.3(e) or 23.11(e) has been recorded against each residential component of the redevelopment project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;
6. If the redevelopment project was approved as a film production project, evidence that the redevelopment project qualifies as a film production project;
7. A certification from a licensed engineer that the redevelopment project has adhered in all material respects to the plan submitted by the developer describing how the developer would satisfy the minimum environmental and sustainability standards;
8. A certification by the chief executive officer or equivalent officer of the developer that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a developer to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws; and
9. If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default.

**(g)** A developer shall forfeit the credit amount for any tax period for which the developer's documentation remains uncertified by the Authority as of the date for certification indicated in the incentive award agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the developer.

**(h)** Once the Authority accepts the documentation required at (f) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the developer and notify the Director, and the developer shall receive its tax credit certificate that will be based on the information submitted in the certification pursuant to (f) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-23.7(e), (f), and (g). The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

**(i)** At, or before, the date of certification, any modification to the redevelopment project as approved by the Board, including, but not limited to, a reduction in the amount of the project cost, or square feet, shall require review and approval by the Authority to determine that the redevelopment project as modified does not undermine the basis for the tax credit award approved.

## **N.J.A.C. 19:31-23.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.9 Reporting requirements and annual report**

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**(a)** A developer approved for an incentive award and that enters an incentive award agreement shall submit annually, commencing in the year in which the incentive award is issued and for the remainder of the eligibility period, a report indicating whether the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the incentive award agreement or the provisions of this subchapter and the Act and any additional reporting requirements contained in the incentive award agreement or tax credit certificate. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. The Authority may provide any information contained in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

**(b)** The annual report shall consist of:

- 1.** A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the approval, the Act, the incentive award agreement, community benefits agreement pursuant to subsection f. of section 60 at P.L. 2020, c. 156 and N.J.A.C. 19:31-23.8(e), or this subchapter;
- 2.** A certification indicating that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
- 3.** For the two years after the first certificate of compliance is issued, evidence that the redevelopment project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31-23.14(a);
- 4.** Evidence that the redevelopment project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-23.14(b) and (c);
- 5.** A tax clearance certificate as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer and any co-applicant;
- 6.** A certification from the developer that the project is still operating and that the redevelopment project is predominantly residential or commercial in accordance with the approval of the project. If the redevelopment project was approved as a film production project, the developer shall certify that the redevelopment project remains a film production project;

- 7.** For a commercial project, a list of all tenants, the gross leasable area leased by each tenant, and whether the tenant is operating its business at the premises leased by the tenant;
  - 8.** For a project with residential units, documentary evidence that the deed restriction required pursuant to N.J.A.C. 19:31-23.8(f)6 remains recorded, and documentation from the administrative agent that the redevelopment project remains in compliance with the affordability controls pursuant to the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.);
  - 9.** The rent roll for all residential units;
  - 10.** Annual financial statement, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;
  - 11.** A certification indicating compliance with the community benefits agreement required pursuant to N.J.A.C. 19:31-23.8(e);
  - 12.** If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23.8(d);
  - 13.** For the first annual report, the permanent certificate of occupancy covering the entire redevelopment project;
  - 14.** If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required under the participation agreement; and
  - 15.** In conducting its annual review, the Authority may require a developer to submit any information determined by the Authority to be necessary and relevant to its review.
- (c)** The report required at (a) above is due 120 days after the end of the developer's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.
- (d)** Upon receipt, review, and acceptance of each report submitted during the eligibility period, the Authority shall provide to the developer and the Director a certificate of compliance indicating the amount of tax credits that the developer may apply against the developer's tax liability. If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the developer. The Authority shall prorate the tax credit for the first and last years of the eligibility period based on the number of full months the project was certified in the year the developer first certifies. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period.
- (e)** Upon receipt by the Director of the certificate of compliance, the Director shall allow the developer or co-applicant a credit against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). A developer, or co-applicant, shall apply the credit awarded against the developer's liability under section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5 for the tax period during which the Director allows the developer or co-applicant a tax credit pursuant to this subsection. A developer, or co-applicant, shall not carry forward an unused credit, unless the developer or co-applicant was unable to use the credit because the developer's redevelopment project was directly impacted by a natural disaster, State

emergency, national emergency, or a situation that was out of the developer's control that adversely affected the developer's or co-applicant's use of the credit that year. The developer or co-applicant may be permitted to carry forward an unused credit for up to two years, providing one or both has submitted evidence of the developer's redevelopment project being directly impacted by such a circumstance and receiving approval from the Authority and the Director. Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

**(f)** The Director shall prescribe the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of the credit applied pursuant to this section against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a tax privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at subsection (e) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).



## **N.J.A.C. 19:31-23.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.10 Reduction, forfeiture, and recapture of tax credits**

**(a)** The developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period, if:

- 1.** The developer changes a project that has been approved as a residential project to a commercial project or changes a project that has been approved as a commercial project to a residential project;
- 2.** The developer changes a project that has been approved as a film production project outside the incentive area to a project that is not a film production project;
- 3.** Absent prior written approval of a modification by the Authority, the developer changes the uses of the redevelopment project that were utilized to determine the net positive economic benefit pursuant to N.J.A.C. 19:31-23.6(b) and 23.11( ) or of a transformative project that were utilized to determine the anticipated employee occupancy pursuant to N.J.A.C. 19:31-23.11(a)4i(1); or
- 4.** The developer changes the project, so that the project would score less than the minimum score pursuant to N.J.A.C. 19:31-23.7(e).

**(b)** If any labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23.8(d) is not satisfied during the relevant tax period, then the developer and any co-applicant shall forfeit all credit for the tax period in which the labor harmony agreement requirements are not satisfied and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.

**(c)** If, during the eligibility period, the occupancy of a project is reduced to less than 60 percent, the developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of occupancy to the threshold level required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed. For the purposes of this subsection, a residential unit shall be considered occupied if the unit is leased; and commercial space shall be considered occupied if the space is leased and the tenant is operating its business in the leased space. Occupancy for the tax period shall be determined as the average of the monthly occupancy for the period.

**(d)** As of the date of the annual report pursuant to N.J.A.C. 19:31-23.9, if any worker employed to perform construction work or building services work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31-23.3(a)8 during

the relevant tax period, then the developer and any co-applicant shall forfeit all credit for the tax period in which the prevailing wage is not paid and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.

**(e)** If the developer or co-applicant, if a party to the community benefits agreement, is not in compliance with the community benefits agreement pursuant to N.J.A.C. 19:31-23.8(e), the Authority shall reduce the size of the award by the amount equal to 120 percent of the monetary value of the contribution or contributions for which the developer or co-applicant, if applicable, is not in compliance. This reduction shall not affect any recapture pursuant to any provisions in this section.

**(f)** If, based on new information, the Authority determines that forfeiture or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits for the relevant tax period(s).

**(g)** If, at any time, the Authority determines that the developer or co-applicant made a material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions, the developer and any co-applicant shall forfeit, and the Authority may recapture any or all of, the incentive award and all tax credits awarded under the program, which shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the developer, co-applicant, and the respective officer may be subject.

**(h)** The developer shall provide an updated project pro forma and other relevant financial documentation to the Authority when the incentive award agreement is to be terminated. The Authority shall evaluate the reasonable and appropriate return on investment as of the date of termination in the same manner as at the end of the eligibility period pursuant to N.J.A.C. 19:31-23.7(c)17.

**(i)** If the developer fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment pursuant to (h) above or N.J.A.C. 19:31-23.8(c)17, the Authority shall recapture all of the tax credits awarded.

**(j)** Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

**(k)** The Authority shall notify the Agency of any reduction, forfeiture, or recapture of tax credit if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

**(l)** If all or part of a tax credit sold or assigned pursuant to section 63 at P.L. 2020, c. 156, and N.J.A.C. 19:31-23.12(a) is subject to recapture, then the Authority shall pursue recapture from the developer and to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

**(m)** Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

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End of Document

## N.J.A.C. 19:31-23.11

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.11 Transformative projects**

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**(a)** To be eligible as a transformative project, the redevelopment project must satisfy the following criteria:

1. Has a project financing gap;
2. Has a total project cost of at least \$ 100,000,000;
3. Includes:
  - i. 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space, exclusive of any parking component; or
  - ii. 250,000 or more square feet of film, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, exclusive of any parking component;
4. For commercial projects, is of special economic importance and creates modern facilities that enhance the State's competitiveness in attracting targeted industries by meeting the following criteria:
  - i. Except for a redevelopment project with 250,000 or more square feet of film, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, either:
    - (1) Creates 500 new full-time jobs, which shall be demonstrated by determining the anticipated employee occupancy based on the regional averages for employment density for the type of use or uses at the redevelopment project; or
    - (2) Involves the substantial renovation of a vacant commercial building; and
  - ii. Provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to, being undertaken by a developer that is making an industry leading investment in a new technology or high-growth sub-industry or catalyzing a new sub-industry or industry-cluster within the State;
5. For residential projects:
  - i. Is of special economic importance by meeting one of the following criteria:
    - (1) The project is located in a government-restricted municipality, enhanced area, or distressed municipality;
    - (2) The project is not located in a government-restricted municipality, enhanced area, or distressed municipality and includes at least 20 percent of new residential units for

low- and moderate-income households or workforce housing, in addition to the 20 percent of the new residential units for occupancy by low- and moderate-income households required pursuant to (e) below; or

**(3)** Involves the substantial renovation of a vacant commercial building; and

ii. Either includes:

**(1)** The construction of 1,000 or more new residential units; or

**(2)** Is a mixed-use residential project with construction of 100,000 square feet or more of retail or commercial space, exclusive of any parking component and with the majority of such non-residential use being commercial, and includes one of the following:

**(A)** If the project is located in a government-restricted municipality, includes the construction of 250 or more new residential units;

**(B)** If the project is located in an enhanced area, includes the construction of 350 or more residential units; or

**(C)** If the project is not located in a government-restricted municipality or enhanced area, and includes the construction of 600 or more residential units; and

**6.** Leverages the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets, in attracting or retaining both employers and skilled workers generally or in targeted industries by providing employment or housing.

**(b)** A transformative project shall not include a redevelopment project at which more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail, including, but not limited to, hotels and hospitals.

**(c)** A transformative project, other than a project that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production, shall be located in an incentive area, a distressed municipality, a government-restricted municipality, or an enhanced area. A transformative project receiving an incentive award pursuant to this section that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production may be located anywhere in the State. No more than two transformative projects receiving an incentive award pursuant to this section shall be located in the same municipality. The Authority shall not consider an application for a transformative project unless the applicant submits with its application a letter evidencing support for the transformative project from the governing body of the municipality in which the transformative project is located.

**(d)** A transformative project may be completed in phases, which phases may be determined by the Authority based on factors, such as written architectural plans and specifications completed before or during the physical work, certificates of occupancy, or financial and operational plans.

**(e)** All transformative projects that include newly constructed residential units shall reserve at least 20 percent of the new residential units for occupancy by low- and moderate-income households with affordability controls as required under the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

- (f)** The Authority shall review and determine whether to approve an incentive award to a transformative project in accordance with the provisions applicable to any redevelopment project, unless otherwise provided in this section.
- (g)** For transformative projects completed in phases, the developer and any co-applicant shall enter into a transformative phase agreement with the Authority. As used in this subsection, "transformative phase agreement" shall mean a sub-agreement of the incentive award agreement that governs the timing, capital investment, and other applicable details of the respective phase of a phased project. The transformative phase agreement may be incorporated in the incentive award agreement.
- (h)** Notwithstanding the provisions of section 57 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-325), any other section at P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), or other sections in this subchapter to the contrary, for transformative projects completed in phases, the transformative project shall be completed, and the developer shall be issued temporary certificates of occupancy for all phases of the transformative project by the applicable enforcing agency within eight years of executing either the incentive award agreement or the first transformative phase agreement corresponding to the transformative project. For a project component to be allowed as a phase, a developer shall obtain a temporary certificate of occupancy for the entirety of the component and the component shall be \$ 50,000,000 or more except for the last component.
- (i)** Notwithstanding the provisions of sections 55 and 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-323 and 34:1B-328), any other section at P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), or other sections in this subchapter to the contrary, each phase of a transformative project completed shall have a separate eligibility period. After completing each phase, the developer shall submit a certification that the phase is completed with the documents required pursuant to N.J.A.C. 19:31-23.8(f). In the certification for the project cost for that phase, any infrastructure work completed at the same time shall be included in the certification for that phase. If the Authority approves the certification, the tax credit allowed to the developer or co-applicant shall be increased by the tax credit amount corresponding to that phase, which shall include only the infrastructure attributable to that phase. Notwithstanding the different eligibility periods for each phase, all conditions and requirements applicable during an eligibility period pursuant to sections 55 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-323 through 34:1B-335) and all other sections in this subchapter shall apply to the entire transformative project until the end of the eligibility period for the last phase. If, upon review of the certification and documentation for any phase, the project no longer qualifies as a transformative project, the developer and any co-applicant shall forfeit all tax credits for that tax period and all subsequent tax periods.
- (j)** Notwithstanding the provisions of section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), any other section at P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), or other sections in this subchapter to the contrary, for a transformative project completed in phases, a review of the project financing gap shall be performed at the certification of completion of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases. The Authority shall re-evaluate the developer's reasonable and appropriate return on investment in the seventh year and at the end of the eligibility period for the last phase, provided that the Authority may also re-evaluate the developer's reasonable and appropriate return on investment during the fifth year of any earlier phase.
- (k)** The Authority shall review the transformative project cost, and evaluate and validate the project financing gap estimated by the developer. The Authority shall perform a single project financing gap analysis for a transformative project.

**(l)** The Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the transformative project will result in a net positive economic benefit to the State in accordance with the percentages pursuant to N.J.A.C. 19:31-23.6(c). The Authority shall determine a single net positive economic benefit for a transformative project, including a phased transformative project, and the net positive economic benefit evaluation shall be conducted for the period beginning with the first eligibility period and ending with the last eligibility period. In determining whether a transformative project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the Five-Year Exemption and Abatement Law, P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the Long Term Tax Exemption Law, P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et seq.), the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-1 et seq.), or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based upon the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed transformative project for which an award of tax credits is being sought. Projects that are predominantly residential shall be excluded from the calculation of the net positive economic benefit test required pursuant to this subsection.

**(m)** In determining net positive economic benefits for any business or person considering locating in a transformative project and applying to receive from the Authority any other economic development incentive subsequent to the award of transformative project tax credits pursuant to section 65 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-333) and this section, the Authority shall not credit the business or person with any benefit that was previously credited to the transformative project pursuant to section 65 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-333) and this section.

**(n)** The Authority shall administer the credits awarded pursuant to this section, in accordance with the provisions of sections 62 and 63 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-330 and 34:1B-331); and N.J.A.C. 19:31-23.9, 23.10, 23.12, and 23.13.

**(o)** Prior to allocating an incentive award to a developer, the Authority shall confirm that the transformative project satisfies the requirements at N.J.A.C. 19:31-23.7(b)1 for substantial good standing or agreement with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, the Department of the Treasury, and N.J.A.C. 19:31-23.7(b)3 regarding contractors and subcontractors.

**(p)** Notwithstanding the limitation on incentive awards set forth at subsection b. of section 61 and section 98 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-329 and 34:1B-362) and any other sections in this subchapter to the contrary, the Authority may allow a developer of a transformative project a tax credit, as reimbursement for certain project financing gap costs, in an amount not to exceed 40 percent of the total project cost, the total value of the project financing gap, or \$ 350,000,000, whichever is less, provided, however, that for a transformative project that is developed in phases, the \$ 350,000,000 limitation on incentive awards set forth in this subsection shall apply to the total aggregate award for all phases of the transformative project. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded under this program.

**(q)** For a transformative project, the approval letter shall contain conditions that must be satisfied and documents and certifications that must be submitted for each phase. Until the developer

submits the certification for the last phase, the developer shall submit progress reports for each phase that has not yet been certified.



## **N.J.A.C. 19:31-23.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.12 Application for tax credit transfer certificate**

**(a)** A developer or co-applicant may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years, in lieu of the developer or co-applicant being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer or co-applicant from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000, in the privilege period during which the developer or co-applicant receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 at P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the developer or co-applicant shall include a statement waiving the developer's or co-applicant's right to claim the amount of the credit that the developer has elected to sell or assign against the developer's tax liability.

**(b)** The developer or co-applicant shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The developer or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits that may include, but not be limited to, the purchase agreement, except:

- 1.** A developer or co-applicant of a residential project consisting of newly constructed residential units may assign a tax credit transfer certificate for consideration of less than 85 percent subject to the submission of a plan to the Authority and the agency to use the proceeds derived from the assignment of tax credits to complete the residential project, which plan must demonstrate that the developer or co-applicant is receiving no less than 75 percent of the transfer credit amount before considering any discounting to present value; and
- 2.** Notwithstanding the provisions at (b)1 above, a developer or co-applicant of a residential project consisting of newly constructed residential units that has received tax credits under the Federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42.(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 65 percent of the transfer credit amount before discounting to present value subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project.

**(c)** The tax credit transfer certificate issued to a developer or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant

to sections 54 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335) and any other terms and conditions that the Director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

**(d)** A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

**(e)** The Authority shall publish, on its Internet website, the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferrer;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The State tax against which the transferee may apply the tax credit; and
5. The consideration received by the transferrer.

## N.J.A.C. 19:31-23.13

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 23. ASPIRE***

### **§ 19:31-23.13 Assignment of rights of incentive award agreement**

**(a)** A developer who has entered into an incentive award agreement pursuant to section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328) may, upon notice to and written consent of the Authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the developer under the incentive award agreement. To decide whether to consent, the Authority and State Treasurer will consider the purchase price and terms of the pledge, assignment, transfer or sale, the allocation of the purchase price to the tax credit, and the impact of the transaction to the reasonable and appropriate return on investment for the seller(s) and the purchaser. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. If the Authority approval included a co-applicant, prior to requesting the consent of the Authority and State Treasurer, the developer shall obtain, in writing, the co-applicant's consent, and the developer shall provide the co-applicant's written consent to the Authority and State Treasurer with the developer's notice.

**(b)** A co-applicant who has entered into an incentive award agreement pursuant to section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328) may, upon notice to and written consent of the Authority and State Treasurer, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the co-applicant under the incentive award agreement, provided that the purchaser shall be a non-profit pursuant to Section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority and State Treasurer will consider the contributions of the co-applicant, the proposed contributions by the purchaser, the purchase price and terms of the assignment, transfer or sale, and the allocation of the purchase price to the tax credit. The new purchaser shall be the co-applicant and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation agreement with the developer. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Prior to requesting the consent of the Authority and State Treasurer, the co-applicant shall obtain, in writing, the developer's consent, and the co-applicant shall provide the developer's written consent to the Authority and State Treasurer with the co-applicant's notice.

**(c)** Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and

binding against all parties having claims of any kind, in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. As a condition of any incentive grant, the grantee, assignee, pledgee, or subsequent holder of the incentive grant shall immediately file notice of the same with the clerk of the county in which the project is located.

**(d)** The Authority shall publish, on its Internet website, the following information concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in an incentive grant agreement or tax credit agreement;
2. The name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the incentive grant agreement or tax credit agreement;
3. The value of the right, title, or interest in the incentive grant agreement or tax credit agreement; and
4. The consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the incentive grant agreement or tax credit agreement.

## **N.J.A.C. 19:31-23.14**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-23.14 Affirmative action and prevailing wage**

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**(a)** The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project, including, but not limited to, construction contracts for work performed before the application and after November 15, 2021 (the effective date of this subchapter) and included in the project cost. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.

**(b)** The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1); and N.J.A.C. 19:30-3 and 19:31-23.3(a)8 shall apply to the redevelopment project, including, but not limited to, the following:

1. Construction contracts for work performed before the application and included in the project cost;
2. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and
3. Construction contracts for work performed during the eligibility period.

**(c)** During the eligibility period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:23.3(a)8.

## **N.J.A.C. 19:31-23.15**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-23.15 Appeals**

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- (a)** The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b)** An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.; and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c)** Appeals that are timely submitted shall be handled by the Authority as follows:
  - 1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  - 3.** The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  - 4.** Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

## **N.J.A.C. 19:31-23.16**

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### **§ 19:31-23.16 Reports on implementation of program**

Beginning in 2022 and every two years thereafter, a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the program, and submit the report to the Authority, the Governor, and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required pursuant to this section shall include a description of each redevelopment project receiving a tax credit under the program, a detailed analysis of the consideration given in each project to the factors set forth in sections 58 and 59 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-326 and 34:1B-327) and N.J.A.C. 19:31-23.6 and 23.7, in the case of a commercial project, the return on investment for incentive awards provided and the commercial project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

## **N.J.A.C. 19:31-23.17**

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### **§ 19:31-23.17 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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End of Document



## **N.J.A.C. 19:31-24.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 24. PPE MANUFACTURING TAX CREDIT PROGRAM***

### **§ 19:31-24.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement sections 106 and 107 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, establishing the PPE Manufacturing Tax Credit Program. The Act authorizes the Authority to administer the program to encourage economic development, job creation, and the production of PPE within the State. The Board may approve the award of tax credits to a taxpayer upon application of the taxpayer and following the execution of an approval letter and the payment of fees, subject to the limitations set forth in this subchapter.

## **N.J.A.C. 19:31-24.2**

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### **§ 19:31-24.2 Definitions**

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The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means sections 106 and 107 of P.L. 2020, c. 156.

"Approval letter" means the letter sent by the Authority to the applicant that sets forth the conditions to maintain the approval and to receive the tax credits, the amount of tax credits, the date the commitment period commences, and other requirements to comply with the Program. The approval letter will require the applicant to submit certain additional information on an annual basis in order to preserve the approval of the tax credits.

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Capital investment" means expenses at a qualified facility that a taxpayer incurs prior to the submission of an application to the Authority but by no earlier than March 9, 2020, for:

1. Site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, and transportation infrastructure improvements, and plantings, solar panels and components, energy storage components, installation costs of solar energy systems, or other environmental components required to attain the level of silver rating and gold rating standards or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding sources, including N.J.S.A. 52:27H-80 et seq.;
2. Obtaining and installing, furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation pursuant to sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168. and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property, or any combination of the foregoing. Capital investment shall include the value of a capital lease, as defined by generally accepted accounting practices (GAAP), of furnishings and machinery, apparatus, or equipment, based on the shorter of the useful life of the leased property or the commitment period;
3. Associated soft costs, which shall not exceed 20 percent of all capital investment; and
4. Capital investment does not include site acquisition or vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement.

"College or university" means a county college, an independent institution of higher education, a public research university, or a State college.

"Commitment period" means a five-year period commencing with the date on which an eligible business may claim a tax credit pursuant to the program.

"Completion date of capital investment" means the date of the certificate of occupancy or other indication of completion acceptable to the Authority.

"County college" means an educational institution established by one or more counties, pursuant to Chapter 64A of Title 18A of the New Jersey Statutes.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Independent institution of higher education" means a college or university incorporated and located in New Jersey, which by virtue of law, character, or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education that is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

"Manufacturing" or "manufacture" means the performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition, or character different from that in which they were acquired. The change must be substantial and must result in a transformation of property into a different or substantially more useable product.

"Mask" means any one of the following: (i) an N95 respirator regulated by the United States National Institute for Occupational Safety and Health (NIOSH); (ii) any other respirator approved or allowable under an active Emergency Use Authorization by the United States Food and Drug Administration; (iii) a tightly-fitting face covering made of multiple layers of non-woven material, with a nose wire and ear loops; or (iv) a tightly-fitting face covering made of multiple layers of cloth or other woven material or breathable fabric, with a nose wire and ear loops. "Mask" does not include a face-covering that allows light to shine through when held up to a light source or that contains exhalation valves or vents.

"New hire" or "new qualifying full-time job" means a qualifying full-time job created by the taxpayer that did not previously exist in this State prior to the start date of capital investment. To qualify as a "new hire," the employee filling the qualifying full-time job shall have been hired between the start date of capital investment and the earlier of: (i) 12 months after the completion date of capital investment; or (ii) the application date. "New hire" shall not mean a full-time job filled by an existing employee who was not involved in the manufacturing of personal protective equipment who is transferred to a full-time job involved in the manufacturing of personal protective equipment.

"Northern counties" means Bergen County, Essex County, Hudson County, Hunterdon County, Mercer County, Middlesex County, Monmouth County, Morris County, Passaic County, Somerset County, Sussex County, Union County, or Warren County.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Personal protective equipment" or "PPE" means coveralls, face shields, gloves, gowns, masks, respirators, footwear coverings, head coverings, safeguard equipment, and other equipment designed to protect the wearer from the spread of infection or illness.

"Privilege period" means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, N.J.S.A. 54:10A-5.

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

"Program" means the PPE Manufacturing Tax Credit Program established by sections 106 and 107 of P.L. 2020, c. 156.

"Project" means the capital investment and the employment commitment at a qualified facility required by the Act and this subchapter. The capital investment must be completed during privilege periods 2020, 2021, or 2022.

"Public research university" means a public research university as defined in section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

"Qualified facility" means a facility, or a portion of a facility used in connection with the manufacture of PPE, including pro rata areas such as bathrooms, breakrooms, or administrative spaces that support the manufacture of personal protective equipment, that is:

1. Located in a redevelopment area or rehabilitation area as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3);
2. Located in a Smart Growth Area as identified by the Office of Planning Advocacy;
3. A facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State;
4. A facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or community college located within the State; or
5. A building vacant for not less than seven years, in need of rehabilitation with a minimum of 250,000 square feet.

"Qualifying full-time job" means a full-time position in a business in this State at a qualified facility, which the taxpayer has filled with a full-time employee at least 50 percent of whose time is dedicated to the manufacturing of personal protective equipment in this State or to the support of such manufacturing. The employee's primary place of business shall be the qualified facility, and the employee shall spend at the qualified facility at least 80 percent of the employee's time, or any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority. The employee shall be employed for at least 35 hours a week and shall be paid employee wages at a rate of not less than \$ 15.00 per hour, and the employee's wages shall be subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. A qualifying full-time job shall also include a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the taxpayer and the professional employer organization for the manufacturing of personal protective equipment in this State for at least 35 hours a week and who shall be paid employee wages at a rate of not less than \$ 15.00 per hour, and the person's wages shall be subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. The Authority may determine any other standard of service generally accepted by custom or practice as full-time employment. A qualifying full-time job shall not include any person who works as an independent contractor or on a consulting basis for the taxpayer. A qualifying full-time job includes only a position for

which the taxpayer provides employee health benefits no later than 90 days following the date of hire under a health benefits plan authorized pursuant to State or Federal law.

"Retained qualifying full-time job" means a qualifying full-time job in a business in this State that was at risk of being eliminated because the taxpayer was negatively impacted by the COVID-19 pandemic or the mitigation measures required by the State after the declared state of emergency on March 9, 2020, including, but not limited to, the taxpayer's business was temporarily shut down, was required to reduce hours, had at least a 20 percent drop in revenue, had been materially impacted by employees who could not work due to the pandemic, or relied on a supply chain that has been materially disrupted and therefore slowed firm-level production. A retained qualifying full-time job may include an employee who was not involved in the manufacturing of personal protective equipment who is transferred to a qualifying full-time job.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery, but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

"Southern counties" means the following counties in New Jersey: Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County. A facility that is located partially in a southern county and partially in a northern county shall be treated as located entirely within the southern county.

"Square foot of gross leasable area" means a rentable area of the building or structure as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building or structure that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building or structure and is not affected by changes in corridor sizes or configuration.

"Start date of capital investment" means the date of execution of the first contract under which the taxpayer incurs expenses for eligible capital investments at the qualified facility or the date of the first invoice for such expenses, but no earlier than March 9, 2020.

"State college" means a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey statutes.

"Taxable year" means the calendar or fiscal accounting period for which a tax is payable under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

"Taxpayer" means the individual, estate, or trust filing a tax return pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or the entity filing a tax return pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). A taxpayer shall also include a partnership, a New Jersey S Corporation, or any entity treated as a partnership for tax purposes.

"Technical school" means a program approved by the Department of Education that offers a sequence of courses that provide students with the coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions. A technical

education program provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree.

## **N.J.A.C. 19:31-24.3**

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### **§ 19:31-24.3 Eligibility criteria**

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**(a)** A taxpayer eligible pursuant to this section may submit an application to the Authority in accordance with N.J.A.C. 19:31-24.5 on or after August 5, 2021, the effective date of this subchapter, but prior to the earlier of 18 months following the completion date of capital investment, or July 1, 2024.

**(b)** The Authority shall make the determination that an applicant has met the criteria for eligibility for an award and shall determine the amount of the award. A taxpayer shall be eligible for tax credits if the Authority finds that as of the date of the taxpayer's application:

1. The taxpayer has made a capital investment in the qualified facility equal to or greater than the applicable amount set forth at (c) below with a completion date of capital investment during the privilege periods or taxable years 2020, 2021, or 2022; and
2. The taxpayer has new qualifying full-time jobs or retained qualifying full-time jobs in an amount equal to or greater than the applicable number set forth at (d) below.

**(c)** The minimum capital investment in a qualified facility required for eligibility under the program shall be as follows:

1. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises, a minimum investment of:
  - i. \$ 10.00 per square foot of gross leasable area for a qualified facility located in any of the southern counties; and
  - ii. \$ 20.00 per square foot of gross leasable area for a qualified facility located in any of the northern counties.
2. For the new construction of a premises:
  - i. \$ 100.00 per square foot of gross leasable area for qualified facilities located in any of the southern counties; and
  - ii. \$ 120.00 per square foot of gross leasable area for qualified facilities located in any of the northern counties.

**(d)** The minimum number of new or retained qualifying full-time jobs required to be eligible for tax credits under the program shall be as follows:

1. For a qualified facility located in any of the southern counties, a minimum of five new or 15 retained qualifying full-time jobs; and

**2.** For a qualified facility located in any of the northern counties, a minimum of 10 new or 25 retained qualifying full-time jobs.

**(e)** The Authority shall not award tax credits under this program to a taxpayer that has previously received incentives administered by the Authority, unless the capital investment incurred and the new or retained qualifying full-time jobs identified in the taxpayer's application are separate and apart from any capital investment or jobs underlying the previous award of incentives.



## **N.J.A.C. 19:31-24.4**

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### **§ 19:31-24.4 Application submission requirements**

(a) Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Taxpayer information, which shall include the following:

- i. The name of the taxpayer;
- ii. Any other name(s) under which the taxpayer conducts business, if applicable;
- iii. The name and contact details (name, telephone, and email address) of the primary contact person and, if different, the name and contact details of a person with authority to sign on behalf of the taxpayer;
- iv. The taxpayer's address;
- v. The address of the qualified facility, if different than the taxpayer address;
- vi. The type of business organization;
- vii. The New Jersey tax identification number;
- viii. The Federal tax identification number;
- ix. A list of all New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the owner or business is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The taxpayer shall also submit a written certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, stating that the taxpayer applying for the program is in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury as set forth at N.J.A.C. 19:31-24.6(b), and that the individual has reviewed the application information submitted and that the representations contained therein are accurate, under the penalty of perjury;
- x. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- xi. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101; and

**xii.** Any other necessary and relevant information as determined by the Authority for a specific application.

**2.** Project information shall include the following:

**i.** Site control documentation, for example, deed or lease;

**ii.** An overall description of the completed project;

**iii.** A written certification of an independent certified public accountant that is qualified pursuant to (b) below, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to the capital investment. If the certified capital investment is less than the minimum eligibility requirement set forth at N.J.A.C. 19:31-24.3(c), the taxpayer shall not be eligible for the tax credit;

**iv.** Whether the project involved new construction or the rehabilitation, retrofit, improvement, or fit-out of an existing premises;

**v.** An explanation of how the facility at which the capital investment was made meets the definition of a qualified facility;

**vi.** The start date of capital investment and the completion date of capital investment;

**vii.** A floor plan of the qualified facility that identifies functionality and square footage;

**viii.** The types and descriptions of the personal protective equipment manufactured at the qualified facility;

**ix.** An acknowledgement by the taxpayer that it must maintain the new qualifying full-time jobs for the duration of the commitment period and that failure to do so may result in the Authority recapturing all or part of the tax credits awarded;

**x.** Documentation evidencing that the taxpayer has met the criteria for the tax credit amounts at N.J.A.C. 19:31-24.7(b);

**xi.** Evidence to the Authority's satisfaction that the taxpayer complied with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), for all capital investment and with the Authority's affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), commencing with August 5, 2021 (the effective date of this subchapter); and

**xii.** Any other necessary and relevant information as determined by the Authority for a specific application.

**3.** Employee information shall include the following:

**i.** A list of all current new and retained qualifying full-time jobs and all employees at the qualified facility, certified by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under penalty of perjury;

**ii.** The WR 30s of the taxpayer for the quarter immediately preceding the commencement date of capital investment and the quarter immediately preceding date of application;

**iii.** The taxpayer shall submit a certification of an independent certified public accountant that is qualified pursuant to (b) below, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to employment. The number of all new and retained qualifying full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of

additional jobs located at the qualified facility. If the certification indicates that the employment is less than the minimum eligibility requirement set forth at N.J.A.C. 19:31-24.3(d), the taxpayer shall not be eligible for the tax credit; and

**iv.** Any other necessary and relevant information as determined by the Authority for a specific application.

**(b)** The Authority shall qualify certified public accountants and provide to the taxpayer the list of qualified certified public accountants, provided however, the taxpayer may select a certified public accountant that is independent to the taxpayer and not on the Authority's list of qualified certified public accountants for purposes of the capital investment certification, or the taxpayer's chief financial officer may certify for purposes of the employment certification upon the Authority's prior approval, if the taxpayer demonstrates an extenuating circumstance prohibiting the taxpayer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the taxpayer, or the taxpayer is a business with fewer than 100 employees, as measured on a full-time equivalent basis.

**(c)** The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete.

## **N.J.A.C. 19:31-24.5**

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### **§ 19:31-24.5 Fees**

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- (a)** A business applying for benefits under this program shall submit a one-time non-refundable application fee of \$ 2,000.
- (b)** A business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.
- (c)** A non-refundable fee of \$ 5,000 shall be charged prior to the approval of the tax credit by the Authority, except that the fee shall be refunded if the Authority does not approve the tax credit.
- (d)** A business shall pay to the Authority an annual servicing fee of \$ 2,000 at the time the business submits its annual report.
- (e)** A business shall pay to the Authority a non-refundable fee of \$ 1,000 for each request for any administrative changes, additions, or modifications to the tax credit. If the Authority deems the changes, additions, or modifications to be major, such as those requiring extensive staff time and Board approval, the fee shall be \$ 2,500.
- (f)** A business seeking to terminate an existing incentive agreement in order to participate in the PPE Manufacturing Tax Credit Program shall pay to the Authority a non-refundable fee of \$ 2,500 for a termination that does not require extensive staff time and Board approval and \$ 7,500 for a termination that requires extensive staff time and Board approval.

## **N.J.A.C. 19:31-24.6**

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### **§ 19:31-24.6 Evaluation process; approval and award of tax credits**

- (a) The Authority shall conduct a review of the applications on a first in time rolling basis commencing with the completed application bearing the earliest submission date, subject to an annual cap of \$ 10 million in any State fiscal year. Completed applications submitted in a fiscal year where the annual cap has been met will be considered first in the subsequent fiscal year. The review will determine whether the applicant:
1. Complies with all program eligibility criteria;
  2. Satisfies the submission requirements, including fee requirements; and
  3. Provides adequate information for the subject application.
- (b) Before the Board may consider a taxpayer's application for tax credits:
1. The Authority will confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the taxpayer is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the taxpayer has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.
    - i. Substantial good standing shall be determined by each department and mean, at a minimum, that the taxpayer:
      - (1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:
        - (A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the taxpayer; and
        - (B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and
      - (2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.
    - ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a taxpayer is in substantial good standing.

**2.** The Authority may contract with an independent third-party to perform a background check on the taxpayer.

**(c)** Upon completion of the review of an application pursuant to (a) and (b) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, and the maximum amount of tax credits to be granted and shall promptly notify the applicant and the Director of the Division of the determination.

**(d)** Upon Board approval, the Authority shall provide the taxpayer with the approval letter set forth at N.J.A.C. 19:31-24.8. The taxpayer shall execute and return the approval letter to the Authority within the period of time required by the Authority. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the Authority does not receive the approval letter within the required period of time.

**(e)** Upon receipt of the executed approval letter from the taxpayer, the Authority shall notify the Director of receipt of the approval letter, and the taxpayer shall receive its tax credit certificate.

## **N.J.A.C. 19:31-24.7**

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### **§ 19:31-24.7 Determination of tax credit amount; application of the tax credit**

**(a)** The tax credit for each new qualifying full-time job shall be the sum of \$ 10,000 and the amount set forth at (b) below. The tax credit for each retained qualifying full-time job shall be the amount set forth at (b) below.

**(b)** The taxpayer shall receive the sum of the following amounts as tax credit for each new or retained qualifying full-time job:

- 1.** \$ 1,000 if the qualified facility is a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet.
- 2.** \$ 1,500 for a qualified facility in which at the date of application the manufacturing of personal protective equipment, is part of a research collaboration between the taxpayer and a college or university located within the State. The research collaboration must require at least 35 hours per week of collaborative activity, or any other standard of collaborative activity generally accepted by custom or practice as full-time, as determined by the Authority, and evidenced by an agreement at application.
- 3.** \$ 1,000 for a qualified facility in which at the date of application, the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or county college located within the State. The apprenticeship program or pre-apprenticeship program must require at least 35 hours per week of employment or training, or any other standard of apprenticeship or pre-apprenticeship activity generally accepted by custom or practice as full-time, as determined by the Authority, and evidenced by an agreement at application.

**(c)** The total amount of all tax credits allowed to a taxpayer under this program shall not exceed \$ 500,000.

**(d)** The amount of tax credit per job will not be prorated if the number of qualifying full-time jobs in the application would have resulted in a tax credit amount that is reduced to the \$ 500,000 cap per taxpayer pursuant to (c) above. For purposes of this program, the number of new and retained jobs shall be the number of new and retained qualifying full-time jobs for which the taxpayer receives a tax credit after the project cap is applied.

**(e)** The amount of credit awarded to a taxpayer may be applied against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) or the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., as relevant to tax liability of the taxpayer.

**(f)** Notwithstanding the minimum tax schedule imposed pursuant to subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), if the amount of the tax credit allowed exceeds the amount

of corporation business tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), the amount of excess shall be treated as a refundable overpayment except that interest shall not be paid pursuant to P.L. 1992, c. 175 (N.J.S.A. 54:49-15.1) on the amount of overpayment attributable to this credit amount.

**(g)** If the credit exceeds the amount of tax liability otherwise due pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., that amount of excess shall be an overpayment for the purposes of N.J.S.A. 54A:9-7; provided, however, that subsection (f) of N.J.S.A. 54A:9-7 shall not apply.

**(h)** A taxpayer that is classified as a partnership or an entity treated as a partnership for tax purposes shall not be allowed a tax credit directly, but the amount of credit of each member or partner taxpayer in respect to the distributive share of partnership income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., shall be determined by allocating to each member or partner taxpayer that proportion of the credit acquired by the partnership or entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership or entity for its taxable year ending within or with the taxpayer's taxable year.

**(i)** A New Jersey S Corporation shall not be allowed a tax credit against the tax imposed pursuant to the New Jersey Gross Income Tax, N.J.S.A. 54A:1-1 et seq., directly, but the amount of gross income tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the gross income tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

**(j)** The order of priority in which the tax credit allowed by this section and any other credits allowed by law may be taken, shall be as prescribed by the Director.



## **N.J.A.C. 19:31-24.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 24. PPE MANUFACTURING TAX CREDIT PROGRAM***

### **§ 19:31-24.8 Approval letter**

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- (a) The Board's award of the credit will be subject to conditions in the approval letter that the taxpayer must satisfy to remain in compliance with the program.
- (b) The terms of the approval letter shall include, but shall not be limited to, the following:
1. A detailed description of the project that has resulted in job creation or retention, and the number of new and retained qualifying full-time jobs that are approved for tax credits;
  2. The taxable year or privilege period of the tax credits;
  3. The dates of the commitment period, a requirement that the taxpayer maintain the new qualified full-time jobs for such period, and a provision allowing the Authority to recapture all or part of any tax credits awarded, at its discretion, if the taxpayer does not remain in compliance with this provision;
  4. A method for the taxpayer to report annually as required pursuant to N.J.A.C. 19:31-24.9;
  5. A provision permitting an audit of the payroll records of the taxpayer and any other evidence and documentation supporting the applications and certifications made pursuant to the requirements of the program;
  6. A provision establishing the conditions under which the Authority, the taxpayer, or both, may terminate compliance with the requirements of the program;
  7. An agreement by the taxpayer that the statute of limitations for the collection and assessment of corporation business tax or gross income tax, as applicable, will be extended to the period of the commitment period;
  8. A requirement that the taxpayer indemnify and insure the Authority and the State;
  9. Default and remedies, including, but not limited to, a default if a taxpayer made a material misrepresentation on its application; and
  10. A provision requiring that the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), apply for two years after the tax credit certificate is issued.

## **N.J.A.C. 19:31-24.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 24. PPE MANUFACTURING TAX CREDIT PROGRAM***

### **§ 19:31-24.9 Annual compliance certificate; compliance**

**(a)** For each year of the commitment period, not later than 120 days following the end of the business's tax privilege period beginning with the year in which the capital investment was certified, the taxpayer shall provide the Authority with its annual compliance certificate in a form satisfactory to the Authority. The annual compliance certificate shall include, but shall not be limited to:

- 1.** A certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under the penalty of perjury, that the taxpayer has met its commitment to maintain the new qualifying full-time jobs that were used in calculating the awarded tax credits under the program. New qualifying full-time jobs for a year shall be determined as the average of the monthly new qualifying full-time jobs for the period.
- 2.** For the purposes of the annual reports required pursuant to (a)1 above, if a taxpayer has received an award for both new and retained qualifying full-time jobs, the taxpayer shall meet the employment requirements related to the retained qualifying full-time jobs before receiving tax credits for the new qualifying full-time jobs.
- 3.** To the extent a retained qualifying full-time job that was the basis of an award no longer exists, the taxpayer shall include as a retained qualifying full-time job, a new qualifying full-time job that is filled by a new hire, provided that the position is included in the order of date of hire and is not the basis for any other incentive award.
- 4.** A certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under penalty of perjury, indicating whether or not the taxpayer is aware of any condition, event, or act, which would cause the business not to be in compliance with the approval, the Act, or the approval letter.

**(b)** In the event a taxpayer fails to retain during the commitment period, the number of new qualifying full-time jobs for which tax credits were awarded, and such failure continues for two years, the Authority may recapture, at its sole discretion, all or a portion of the tax credits awarded. In determining the amount to recapture, the Authority shall recognize the period of time the taxpayer has been in compliance and the number of new qualifying full-time jobs that the taxpayer has maintained.

**(c)** Failure to submit the annual compliance certificate by the dates established at (a) above shall result in a recapture of the awarded tax credits in accordance with the provisions at (b) above.

**(d)** In the event that any certification required from the taxpayer, including, but not limited to, the certification required pursuant to (a) above, is found to be willfully false or that the taxpayer submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority or the Division of Taxation, the Authority may, at its sole discretion, and, in addition to, any other remedies available, revoke any award of tax credits in their entirety and may require repayment of all tax credits received by the taxpayer.

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End of Document

## **N.J.A.C. 19:31-24.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-24.10 Appeals**

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- (a)** The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b)** An applicant may appeal the Board's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c)** Appeals that are timely submitted shall be handled by the Authority, as follows:
  - 1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing the hearing officer's finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  - 3.** The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  - 4.** Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

## **N.J.A.C. 19:31-24.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-24.11 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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End of Document

## **N.J.A.C. 19:31-25.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 25. EVERGREEN***

### **§ 19:31-25.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Innovation Evergreen Act (Act), sections 20 through 34 of P.L. 2020, c. 156, as amended. Under the Act, the Authority shall administer a program to invest in innovation as a catalyst for economic growth and to advance the competitiveness of the State's businesses in the global economy. The Authority shall auction corporate business tax credits and will deposit the amounts received in a dedicated fund to be known as the New Jersey Innovation Evergreen Fund (Fund). The Authority shall use the money in the Fund to carry out the purposes enumerated in this subchapter.

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End of Document

## **N.J.A.C. 19:31-25.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.2 Definitions**

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The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Innovation Evergreen Act, sections 20 through 34 of P.L. 2020, c. 156, as amended (N.J.S.A. 34:1B-288 through 34:1B-302).

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, another entity. Control exists in all cases in which the entities are members of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entities are an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414).

"Authority" means the New Jersey Economic Development Authority established by section 4 at P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Evergreen special purpose vehicle" means an entity controlled by or under common control with a qualified venture firm that is formed solely by the qualified venture firm for the purpose of the fund investing in a qualified business alongside the investment from the qualified venture firm active fund.

"Evergreen special purpose vehicle manager" means the managing member or general partner of an Evergreen special purpose vehicle.

"Filling a position in New Jersey" means filling a position with a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of their time in New Jersey, or any other period of time generally accepted by custom or practice as full-time employment at a location, as determined by the Authority.

"Follow-on investment" means a subsequent investment in a qualified business made by the fund, through an Evergreen special purpose vehicle, corresponding to the additional investment made by a qualified venture firm that has a previous qualified investment in such qualified business.

"Full-time employee" means a person who is in a position in the United States that is employed by a qualified business on a permanent or indefinite basis for consideration for at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, or who is a partner of a qualified business who works for the partnership for at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority,

as full-time employment. A "full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for a qualified business; any person who works as an intern, as a temporary employee, or in a temporary position; or any employee in a position that is primarily engaged in final point-of-sale retail.

"Fund" means the New Jersey Innovation Evergreen Fund established by section 23 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-291).

"High-growth business" means a business that is growing significantly faster than the average growth rate of the economy or, in the absence of historic data necessary to verify the business's past operations, is a start-up business that is investing in developing a product or new business model that will allow it to grow significantly faster than the average growth rate of the economy within the next three to five years. The Authority shall establish, and publish on its website, metrics for determining the growth rate of the economy and the relative rate of growth of businesses, which may be based on revenues, number of customers, or valuation and may take into consideration the growth rate of the industry of the high-growth business.

"Incentive area" means an area in this State designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan); or that has been designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1.

"Innovation ecosystem" means funding, programs, and events that support the establishment and expansion of high-growth business in targeted industries. Examples of such funding, programs, and events include, but are not limited to, mentoring programs for start-ups, meet-up or networking events, funding for locating a business in a collaborative workspace, programs that provide business services, and entrepreneurial education to businesses.

"Intellectual property" means property protected by patent pending, patent awaiting approval, approved patent, registered copyright, or intellectual property licensed from a college or university in New Jersey. For purposes of this definition, "licensed" means intellectual property used pursuant to an agreement that states that it is granting an exclusive license that authorizes the licensee to control aspects of the development of the protected proprietary intellectual property.

"New Jersey S corporation" means the same as the term is defined in section 12 at P.L. 1993, c. 173 (N.J.S.A. 54A:5-10).

"Opportunity zone" means a Federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Principal business operations" means at least 50 percent of the business's full-time employees reside in the State, or at least 50 percent of the business's payroll for full-time employees is paid to individuals living in this State. For purposes of this definition, payroll shall mean wages.

"Program" means the New Jersey Innovation Evergreen Program established by section 22 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-290).

"Qualified business" means a high-growth business that, at the time of the first qualified investment in the business, and throughout the qualified business compliance period, is registered to do business in this State with the Director of the Division of Revenue and Enterprise Services in the Department of the Treasury; has its principal business operations located in the State and intends to maintain its principal business operations in the State after



receiving a qualified investment under the program; is engaged in a targeted industry; and employs fewer than 250 full-time employees at the time of the qualified investment.

"Qualified business compliance period" means the period starting with the qualified investment in a qualified business and ending on the sale or other disposition of all shares of stock of the qualified business from the Evergreen special purpose vehicle, including any distribution of the shares to the Authority. If the distribution of the shares of stock from the Evergreen special purpose vehicle to the Authority occurs in less than five years after the qualified investment, the qualified business compliance period shall be five years or such other shorter qualified business compliance period determined by the Authority, which may be based on factors including, but not limited to, the number of the qualified business full-time employees filling a position in New Jersey.

"Qualified business side agreement" means the agreement entered into by the Authority, the qualified venture firm, and the qualified business relating to the qualified investment in the qualified business.

"Qualified investment" means the direct investment of money by the Fund, through an Evergreen special purpose vehicle, corresponding with a qualified venture firm's initial investment in a qualified business for the purchase of shares of stock, which may include option or warrant rights, and the right to make a follow-on investment at a later date, all of which is matched by the initial investment by a qualified venture firm. The exercise of the option or warrant, or the decision to make a follow-on investment, shall be at the discretion of the Authority.

"Qualified venture firm" means a venture firm that is certified by the Authority as a qualified venture firm pursuant to section 29 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-297) and N.J.A.C. 19:31-25.7.

"Qualified venture firm active fund" means the entity managed by the qualified venture firm or an affiliate of the qualified venture firm from which the qualified venture firm invests in a qualified business alongside the qualified investment.

"Qualified venture firm agreement" means the agreement entered into by the Authority and the qualified venture firm regarding the participation of the qualified venture firm in the program.

"Qualified venture firm managing individual" means the individual with the authority to execute and bind the qualified venture firm to agreements.

"Reserves" means capital in the Fund that has been reserved for the purposes set forth at N.J.A.C. 19:31-25.3(e).

"Strategic commitment" means the commitment by the tax credit purchaser to strengthen the State's innovation ecosystem, which may include, but is not limited to, providing mentorship, networking, sales and distribution pipeline access, and collaboration opportunities to qualified businesses that receive qualified investments.

"Targeted industry" means any industry identified from time to time by the Authority that shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-final point of sale retail food and beverage businesses, including food innovation, and other innovative industries that disrupt current technologies or business models. A qualified business shall be considered to be in a targeted industry if the business is engaged primarily in a targeted industry. The Authority may consider whether a qualified business is engaged primarily in another innovative industry that

disrupts current technologies or business models, by assessing factors including, but not limited to, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new businesses to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based businesses to collect a share of revenues that were traditionally only available to companies in other geographies.

"Tax credit bid" means the submission of the strategic commitment, the tax credit purchase offer, and all other documents required pursuant to N.J.A.C. 19:31-25.4(e) for a bid for tax credit as part of the tax credit auction.

"Tax credit purchase offer" means the specific cash dollar amount offered by a potential tax credit purchaser to purchase a specific amount of tax credits.

"Tax credit purchaser" means an entity registered to do business with the Director of the Division of Revenue and Enterprise Services in the Department of the Treasury, subject to tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), and that purchases an allocation of tax credits under the program.

"University spin-off business" means a business whose primary function is to commercialize proprietary intellectual property developed at a New Jersey-based college or university, or a business that was created by a then-current faculty member or then currently enrolled student utilizing the facilities and/or resources of such college or university. To be a "university spin-off business," the business must have been formed less than 10 years prior to the date of the qualified investment application. Formation shall be based on the earliest use of the intellectual property of a predecessor entity, irrespective of the corporate structure, or tax status of the business.

"Venture firm" means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.

## **N.J.A.C. 19:31-25.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 25. EVERGREEN***

### **§ 19:31-25.3 New Jersey Innovation Evergreen Fund (Fund)**

**(a)** The Authority shall establish and maintain a dedicated fund to be known as the New Jersey Innovation Evergreen Fund (Fund). The Authority shall use the money in the Fund to carry out the purposes enumerated in the Act and this subchapter.

**(b)** The Authority shall credit the Fund with money paid by tax credit purchasers from the sale of tax credits pursuant to N.J.A.C. 19:31-25.4; distributions from payments or repayments made to the Authority, in accordance with subsection c. of section 31 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-299) and N.J.A.C. 19:31-25.8( l); earnings received, if any, from the investment or reinvestment of money credited to the Fund; money received pursuant to payments, repayments, or redemptions required pursuant to N.J.A.C. 19:31-25.10, except for the recapture of tax credits pursuant to N.J.A.C. 19:31-25.10(b); and any money that, from time to time, may otherwise become available for the purposes of the Fund.

**(c)** Subject to availability of funds, the Authority shall allocate the money in the Fund to qualified venture firms to make qualified investments in qualified businesses through an Evergreen special purpose vehicle, in accordance with section 30 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-298) and N.J.A.C. 19:31-25.8 and to pay the administrative, legal, and auditing expenses of the Authority incurred in the administration of the program. In addition, the Authority shall use 75 basis points of the total amounts deposited in the Fund, calculated on an annual basis, for programs administered by the Authority that create an innovation ecosystem that supports and promotes high-growth businesses in the State.

**(d)** The Authority shall deposit into the Fund dividends and returns on investments paid to the Authority by, or on behalf of, a qualified business. Upon the Fund receiving total deposits from such Fund dividends and returns from qualified investments of \$ 500,000,000, the Authority shall pay 50 percent of any return on investment in excess of twice the original and follow-on investment to the General Fund of the State.

**(e)** The Authority shall account for, and calculate reserves for, follow-on investments and qualified venture firm management fees and direct expenses as set forth at N.J.A.C. 19:31-25.8(k); programs that support the State's innovation ecosystem pursuant to (c) above; and administrative, legal, and auditing expenses of the Authority in administering the program, plus such other amounts as shall be determined by the Authority. The Authority may also reserve such amounts as it considers necessary to achieve the goal set forth at N.J.A.C. 19:31-25.8(b) and any goals that may be developed pursuant to the disparity study completed and performed, in accordance with N.J.A.C. 19:31-25.8(c). The Authority shall not include these reserves when calculating the amount in the Fund available for new qualified investments.

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End of Document

## **N.J.A.C. 19:31-25.4**

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### **§ 19:31-25.4 Sale of tax credits**

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**(a)** The Authority shall auction up to \$ 300,000,000 in tax credits against State tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) in annual amounts not to exceed the limitations set forth in section 98 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-362). The Authority shall not undertake an auction if, exclusive of all reserves pursuant to N.J.A.C. 19:31-25.3(e), more than \$ 15,000,000 is available to the Authority, from moneys received from any prior auction of tax credits pursuant to the program, to allocate to qualified venture firms.

**(b)** The Authority shall sell the tax credits authorized pursuant to section 22 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-290) and (a) above to tax credit purchasers through a competitive auction process. Except when the amounts in the Fund exceeds the minimum as provided in section 22 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-290) and (a) above, the Authority shall hold one competitive auction per calendar year.

**(c)** The Authority may contract with an independent third party to conduct the competitive bidding process through which State tax credits issued by the Authority may be sold.

**(d)** Prior to a competitive auction, the Authority shall establish the dates for the competitive auction and the weighted criteria the Authority will utilize to evaluate tax credit bids. The Authority shall base the criteria on the price offered to purchase the tax credits and the quality of the commitment to mentorship and networking opportunities and other support of the State's innovation ecosystem. The Authority may also determine whether to request a best and final offer process. The Authority shall provide public notice of the dates and weighted criteria through its website in advance of the competitive auction.

**(e)** To be considered for an award of a tax credit under the program, a potential tax credit purchaser shall submit a tax credit bid application, which shall include the following information in an application format prescribed by the Authority:

1. The name, secondary or doing business as name(s), address, entity form, country and state of formation, date of formation, Federal and state tax identification number, phone number, and website address of the potential tax credit purchaser;
2. The name, title, email, address, and phone number of the primary point of contact authorized by the potential tax credit purchaser to submit the application to the Authority;
3. The name, title, email, address, and phone number of any legal counsel, accountant, and consultant assisting the potential tax credit purchaser with the tax credit bid application;
4. Description of the potential tax credit purchaser and its business;
5. Legal structure of the potential tax credit purchaser;

- 6.** The names of all venture firms managed by potential tax credit purchasers; all venture firms of which the potential tax credit purchaser beneficially owns, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; and all venture firms for which the potential tax credit purchaser controls the direction of investments;
- 7.** The tax credit purchase offer consisting of:
  - i.** The requested amount of tax credits, which shall not be less than \$ 500,000; and
  - ii.** The percentage amount the potential tax credit purchaser will pay in exchange for the requested amount of tax credits, which shall not be less than 75 percent of the requested dollar amount of tax credits;
- 8.** Commitment to serve on the New Jersey Innovation Evergreen Advisory Board, established pursuant to section 32 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-300) and N.J.A.C. 19:31-25.13(a), if appointed, and to comply with the requirements of such appointment as set forth at N.J.A.C. 19:31-25.13(b), along with the name, title, phone number, address, and email of the proposed tax credit purchaser representative to the New Jersey Innovation Evergreen Advisory Board;
- 9.** The strategic commitment, which shall specifically describe each activity and provide the financial cost to the potential tax credit purchaser of each activity;
- 10.** A tax clearance certificate from the New Jersey Division of Taxation pursuant to P.L. 2007, c. 101, which shall also satisfy the requirement for registration to do business in this State;
- 11.** A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- 12.** An agreement by the potential tax credit purchaser that, subject to the terms of the program, its tax credit bid application and terms contained therein, shall be binding on the potential tax credit purchaser for 120 days following submitting its tax credit bid application;
- 13.** A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the potential tax credit purchaser is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The potential tax credit purchaser shall also submit a written certification by an individual with authority to execute and bind the tax credit purchaser to the tax credit purchaser contract, stating that the potential tax credit purchaser satisfies the criteria at N.J.A.C. 19:31-25.7(e) to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the respective department within the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
- 14.** A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the potential tax credit purchaser is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
- 15.** A certification by an individual with authority to execute and bind the tax credit purchaser to the tax credit purchaser contract, of the potential tax credit purchaser that the officer has

reviewed the tax credit bid application information submitted and that the information contained in the application is true and accurate under penalty of perjury; and

**16.** Any other information that the Chief Executive Officer of the Authority determines is necessary to review a tax credit bid application under this program.

**(f)** To be considered a complete tax credit bid application under the program, the potential tax credit purchaser shall remit to the Authority through a wire transfer of immediately available funds, a refundable deposit in an amount equal to the lesser of 10 percent of the tax credit purchase offer or \$ 500,000.

**(g)** A potential tax credit purchaser shall not be eligible absent extenuating circumstances or written consent by the Authority, if:

- 1.** In the prior 12 months, it was previously approved for the purchase of tax credits and failed to timely make the full payment required to receive the tax credits;
- 2.** It previously received tax credits and has not complied with prior strategic commitments, unless it has repaid the amount due pursuant to N.J.A.C. 19:31-25.10(a); or
- 3.** In the prior 12 months it has been appointed to the New Jersey Innovation Evergreen Advisory Board and has not complied with the requirements of such appointment as set forth at N.J.A.C. 19:31-25.13(b).

**(h)** The Authority shall evaluate and score each complete tax credit bid application.

- 1.** If the aggregate amount of tax credits requested for purchase by all potential tax credit purchasers exceeds the total amount available for purchase, the Authority may prorate the amount of tax credits allocated to each tax credit purchaser, rounded down to the nearest dollar amount, based on factors including, but not limited to, the tax credit purchaser's score or percentile rank, provided that in no event shall prorations result in a tax credit bid to purchase less than \$ 500,000 of tax credits. If the proration were to result in any potential tax credit purchaser receiving less than \$ 500,000 of tax credits, the Authority shall award tax credits only to the highest scored potential tax credit purchasers that would result in a proration with at least \$ 500,000 of tax credits to each potential tax credit purchaser.
- 2.** If the aggregate amount of tax credits requested for purchase is less than the total amount available for purchase, the Authority may offer the tax credit purchasers the opportunity to request additional amounts, on the same or better terms as in the tax credit purchaser's tax credit purchase offer, provided that the aggregate request does not exceed the total tax credit available for purchase.
- 3.** A potential tax credit purchaser that submits a bid for tax credits pursuant to this section shall receive a written notice from the Authority indicating whether the Authority has approved it as a tax credit purchaser and, if so, the amount of tax credits approved.

**(i)** Prior to awarding tax credits to a potential tax credit purchaser, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the potential tax credit purchaser is in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the respective department, as set forth at N.J.A.C. 19:31-25.7(e). The Authority may contract with an independent third party to perform a background check on the potential tax credit purchaser.

**(j)** A tax credit purchaser shall apply a credit awarded pursuant to this section against the State tax liability due pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) of the tax credit purchaser for the current privilege period as of the date of the approval of the award of the tax

credit. A tax credit purchaser may carry forward an unused credit resulting from the limitations at (k) below, if necessary, for use in the seven privilege periods following the privilege period for which the credit is awarded.

**(k)** The Director shall prescribe the order of priority of the application of the credits awarded under this program and any other credits allowed by law. The amount of a credit applied pursuant to this Act and this program against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability of the tax credit purchaser to an amount less than the statutory minimum provided at subsection (e) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

**(l)** Credits awarded to a partnership or a New Jersey S corporation shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director, accompanied by any additional information as the Director may prescribe, consistent with any rule, guidance, or other publication issued by the Division of Taxation.

**(m)** The Authority shall publish, on its Internet website, the following information concerning each tax credit award approved by the Authority pursuant to this section:

1. The name of the tax credit purchaser;
2. The face value of the tax credit purchase;
3. That the tax credit may be applied against State tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and
4. The price paid by the tax credit purchaser.

## History

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### HISTORY:

Amended by R.2023 d.052, effective May 1, 2023.

See: 54 N.J.R. 1185(a), 55 N.J.R. 961(b).

In (e)13 and (e)15, substituted "an individual with authority to execute and bind the tax credit purchaser to the tax credit purchaser contract" for "the chief executive officer, or equivalent officer for North American operations".



## **N.J.A.C. 19:31-25.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.5 Tax credit purchaser contract**

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**(a)** A tax credit purchaser that submits a successful bid for the purchase of tax credits pursuant to section 24 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-292) and N.J.A.C. 19:31-25.4 shall enter into a contract with the Authority that includes payment information and the strategic commitment. The tax credit purchaser contract shall include, but shall not be limited to, the following:

1. The face value of the purchased tax credits and the price paid by the tax credit purchaser in exchange for such awarded tax credits;
2. The privilege period in which the tax credit purchaser may apply the awarded tax credit;
3. A detailed description of the tax credit purchaser's strategic commitment approved by the Authority in awarding any tax credits under the program;
4. A requirement that the tax credit purchaser comply with the strategic commitments made in its auction bid and a provision requiring the tax credit purchaser to repay all, or part, of the value of the strategic commitment as set forth at N.J.A.C. 19:31-25.10(a);
5. A requirement for the tax credit purchaser to report, annually, on the status of each component of the strategic commitments made in its auction bid until the component is completed and to provide, within 30 days of completion of the component, verification that the tax credit purchaser completed the activities for that component;
6. An ongoing requirement to provide the Authority with information that will enable the Authority to administer the program;
7. An agreement that the refundable deposit provided pursuant to N.J.A.C. 19:31-25.4(f) shall become non-refundable on the effective date of the tax credit purchaser contract;
8. An agreement to remit, within 30 business days of the effective date of the tax credit purchaser contract, to the Authority through a wire transfer of immediately available funds, the balance of its tax credit purchase offer;
9. An agreement to provide a representative to serve on the New Jersey Innovation Evergreen Advisory Board, established pursuant to section 32 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-300) and N.J.A.C. 19:31-25.13(a), and to provide the name, title, phone number, address, and email of the proposed tax credit purchaser representative to the New Jersey Innovation Evergreen Advisory Board;
10. A covenant by the tax credit purchaser that during the 12-month period after the approval of the award of tax credits, the tax credit purchaser shall not cause a qualified venture firm that the tax credit purchaser manages; beneficially owns, through rights, options, convertible

interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; or controls the direction of investments to apply for a qualified investment, and an acknowledgement that, pursuant to (d) below, the Authority shall not approve such a qualified investment or follow-up investment for any such qualified venture firm;

11. A provision permitting an audit of the records of the tax credit purchaser supporting the strategic commitment activities, from time to time, as the Authority deems necessary;
12. A provision permitting the Authority to amend the agreement;
13. A provision establishing the conditions under which the Authority, the tax credit purchaser, or both, may terminate the agreement;
14. Indemnification and insurance requirements;
15. Default and remedies, including, but not limited to, a default if a tax credit purchaser made a material misrepresentation on its application or if the Authority debar or disqualifies the tax credit purchaser pursuant to N.J.A.C. 19:30-2; and
16. Such other provisions as shall be required by the Authority.

**(b)** A potential tax credit purchaser that submits a successful tax credit bid for the purchase of tax credits pursuant to section 24 at P.L. 2020, c.156 (N.J.S.A. 34:1B-292) and N.J.A.C. 19:31-25.4 shall pay by wire transfer of immediately available funds, within 30 business days of the tax credit purchaser contract being fully executed, the balance of the tax credit purchase offer. The balance of the tax credit bid due to the Authority shall be an amount equal to the amount specified in its tax credit purchase offer to the Authority less the deposit remitted by the tax credit purchaser upon submitting its tax credit bid application. Upon receipt thereof, the Chief Executive Officer of the Authority shall notify the Director to issue tax credits in the amount approved. If the tax credit purchaser fails to timely pay the balance, the Authority may offer the tax credits for purchase to other approved tax credit purchasers in the order of score on the same or better terms as in that tax credit purchaser's tax credit purchase offer.

**(c)** The Authority shall credit to the Fund any money paid to the Authority by a tax credit purchaser for an allocation of tax credits under the program. The deposit shall be credited to the Fund on the effective date of the tax credit purchaser contract in accordance with (a)7 above.

**(d)** No undue financial advantage shall inure to a tax credit purchaser due to its participation in this program. During the 12-month period after the approval of the award of tax credits to a tax credit purchaser, the Authority shall not approve a qualified investment or follow-on investment to a venture firm that is managed; beneficially owned, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; or whose direction of investments are controlled by a tax credit purchaser. The Chief Executive Officer of the Authority shall certify that the Authority is monitoring the activities of such tax credit purchasers and has taken appropriate steps to ensure no undue financial advantage inures to the tax credit purchasers.

## **N.J.A.C. 19:31-25.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.6 Tax credit transfer certificate**

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**(a)** A tax credit purchaser may apply to the Authority and the Director for a tax credit transfer certificate, in the privilege period during which the Director allows the tax credit purchaser a tax credit pursuant to N.J.A.C. 19:31-25.5(b), in lieu of the tax credit purchaser being allowed to apply any amount of the tax credit against the tax credit purchaser's State tax liability. A tax credit may be sold or assigned, in full or in part, to another person that may have a tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), in an amount not less than \$ 100,000. The tax credit transfer certificate provided to the tax credit purchaser shall include a statement waiving the tax credit purchaser's right to claim the credit that the tax credit purchaser has elected to sell or assign. If all or part of a tax credit sold or assigned is subject to recapture, then the Authority shall pursue recapture from the initial tax credit purchaser and not from the subsequent purchaser or assignee of the tax credit transfer certificate.

**(b)** The tax credit purchaser shall not sell or assign a tax credit transfer certificate allowed pursuant to this section for consideration received by the tax credit purchaser of less than 85 percent of the transferred credit amount before considering any further discounting to present value that shall be permitted. The tax credit transfer certificate issued to a tax credit purchaser by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to section 26 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-294), this subchapter, and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

**(c)** A buyer or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.

**(d)** Ten percent of the consideration received by a tax credit purchaser from the sale or assignment of a tax credit transfer certificate pursuant to this section shall be remitted to the Director prior to the issuance of the tax credit transfer certificate. The Director shall deposit the funds in the General Fund of the State.

**(e)** The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferor;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. That the tax credit may be applied against State tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and

5. The consideration paid by the transferee, identified as the consideration received by the transferor and the amount paid to the State pursuant to (d) above.

## **N.J.A.C. 19:31-25.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.7 Qualified venture firm application, certification, and agreement**

**(a)** The Authority shall establish an application process and determine the form and manner through which a venture firm may make and file an application for certification as a qualified venture firm. The Authority may accept applications on a rolling basis or on a date set by the Authority.

**(b)** Each applicant venture firm shall first submit an application for certification as a qualified venture firm, including the following information and supporting documentation in an application format prescribed by the Authority:

1. The name of the venture firm, address, entity form, country and state of formation, date of formation, Federal and state tax identification number, phone number, and website address of the venture firm;
2. The name, title, email, address, and phone number of the primary point of contact of the venture firm;
3. The name, title, email, phone number and address of the consultant assisting with the application, if applicable, and of the legal counsel and the accountant for the venture firm;
4. The name of any company managing the venture firm; the list of all companies beneficially owning, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests of the venture firm; and all companies controlling the direction of investments of the venture firm;
5. The limited partnership or limited liability company agreement for the venture firm active fund(s) that the qualified venture firm anticipates will co-invest alongside the Fund;
6. The most recent annual audited financial statement, a list of all funds managed or controlled by the venture firm, the most recent quarterly financial statement for all such funds, the assets under management of the venture firm, and any other documentation demonstrating that the venture firm is not excluded from eligibility pursuant to (d)1 below, all of which must be current as of the date of its application. The venture firm shall agree to submit to the Authority any valuations of the equity capitalization and net assets completed subsequent to the valuation included in its most recent financial statements and through the date the determination for certification is made and as may be required by the Authority;
7. Any current and past organizational charts of the venture firm, which shall list of all principals, managers, and any other employees of the venture firm that will direct qualified investments; if the firm does not have any current or past organizational charts, current and past lists of such principals, managers, and employees; a description of the professional

experience, including, but not limited to, the number of years of investment experience in the venture capital or private equity sectors, detailed work history, and employment references, of the senior management team of the venture firm and of the principals, managers, and employees that will direct qualified investments; and any other documentation demonstrating that the venture firm is not excluded from eligibility pursuant to (d)2 below, all of which must be current as of the date of its application. The venture firm shall agree to report any change to the organizational chart and list of principals, managers, and employees through the date the determination for certification is made and as may be required by the Authority;

- 8.** Any current and past policies or plans for diversity, equity, and inclusion for the venture firm's internal operations, including, but not limited to, hiring, and for the venture firm's investments, and information and documentation evidencing the venture firm's compliance with such policies;
- 9.** A tax clearance certificate from the New Jersey Division of Taxation pursuant to P.L. 2007, c.101, which shall also satisfy the requirement for registration to do business in this State;
- 10.** A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the venture firm is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The venture firm shall also submit a written certification by the qualified venture firm's managing individual stating that the venture firm satisfies the criteria at (e) below to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
- 11.** A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- 12.** Agreement and consent for the Authority to publicize the venture firm's participation in the program, once qualified, and to publicize the qualified venture firm's approved qualified investments into qualified businesses;
- 13.** A list of all office locations, and associated lease agreements, the qualified venture firm has in the State, if applicable;
- 14.** The name of any businesses with a place of business in the State in which the venture firm has invested during the five calendar years prior to the date of application, and the dates of investment(s), location of business headquarters, and documents as shall be required by the Authority to evidence such investments;
- 15.** A description of any regional investment policy of the venture firm that includes the State;
- 16.** An investor pitch deck for the intended qualified venture firm active fund or, if not yet available, the most recent investor pitch deck prepared by the venture firm;
- 17.** If a venture firm proposes to agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas as set forth at (c)4 below, the list of all investments in the past five years in businesses located within incentive areas;
- 18.** A certification by the qualified venture firm manager that the information contained in the application is true and accurate under the penalty of perjury; and
- 19.** Any other relevant information as determined by the Authority for a specific application.

**(c)** The Authority shall certify, or refuse to certify, a venture firm as a qualified venture firm based on the criteria for certification set forth in section 28 and subsections b. and c. of section 29 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-296), (d) and (e) below, and the weighted criteria by which the Authority will evaluate all venture firms applying in the same calendar year. The Authority shall establish, and provide public notice through its website, of the weighted criteria and a minimum acceptable score. The weighted criteria shall include, but not be limited to:

1. The management structure of the venture firm, including, but not limited to:
  - i. The quality of the leadership of the venture firm in the innovation ecosystem in the State, including, but not limited to, the venture firm's willingness to work with the Authority to support targeted industries and the innovation ecosystem in the State and to locate in the State;
  - ii. The investment experience of the principals and the venture firm with qualified businesses;
  - iii. The knowledge, experience, and capabilities of the venture firm in subject areas of its investment focus relevant to high-growth businesses in the State;
  - iv. The tenure and turnover history of principals and senior investment professionals of the venture firm;
  - v. Whether the State's approved maximum aggregate qualified investments with the venture firm under this program, if the State were to approve up to two such qualified investments, would exceed 15 percent of the total invested with the venture firm by all of its investors, including investments in any Evergreen special purpose vehicles;
  - vi. The venture firm's stage of fundraising for their proposed qualified venture firm active fund; and
  - vii. Whether management fees, carried interest, expenses, and the remuneration of the general partner or manager for their proposed qualified venture firm active fund is similar to those of peer venture firm investors;
2. The venture firm's investment strategy, including, but not limited to:
  - i. The venture firm's track record of investing in high-growth businesses;
  - ii. Whether the investment strategy of the venture firm's proposed qualified venture firm active fund is focused on high-growth businesses, including the percentage of the investment identified to be invested in New Jersey or surrounding geographic areas; and
  - iii. The performance history of the general partner or fund manager and the venture firm based on a review of investment returns on individual funds on an absolute basis and relative to peers;
3. The venture firm's business location(s), with preference given to venture firms that are located in incentive areas; and
4. The venture firm's proposed structure and policy of investments in qualified businesses, with preference given to venture firms that agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas compared to past investments made by the venture firm.

**(d)** The Authority shall not certify a venture firm as a qualified venture firm if the venture firm:

1. Has less than \$ 10 million in any combination of one or more of the following: equity capitalization of funds managed by the qualified venture firm or an affiliate of the qualified venture firm, net assets of funds managed by the qualified venture firm or an affiliate of the qualified venture firm, or written commitments of cash or cash equivalents. The evaluation of such equity capitalization and net assets shall be included in the most recent financial statement reported by the venture firm, which must be dated within 150 days prior to the date the determination for certification is made. The value of equity capitalization and net assets shall be the lesser of the value included in the most recent financial statement or subsequent valuation prior to the date the determination for certification is made. The written commitments must be executed and in effect on the date the determination for certification is made;
2. Has fewer than two principals or persons employed to direct the qualified investment with at least five years of money management experience, which shall be either professional money management experience or significant angel investment experience. Professional money management experience shall include, but is not limited to, operational and investment oversight, in the venture capital or private equity sectors, including, but not limited to, investment firms, investment banks, asset management or similar investment management institutions, or family office funds. To be significant, angel investment experience shall consist of \$ 100,000 of aggregate investments and two investments per year. The experience shall be met as of the date the determination for certification is made; or
3. Is not in compliance with the requirements of any agreement, whether related to the program or otherwise, with the Authority.

**(e)** Prior to certifying a venture firm as a qualified venture firm, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the venture firm is in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the venture firm has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

1. Substantial good standing shall be determined by each department and mean, at a minimum, that the venture firm:
  - i. As to the Department of Labor and Workforce Development and the Department of Environmental Protection:
    - (1) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the venture firm; and
    - (2) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and
  - ii. As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.
2. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates, or issues, its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a venture firm is in substantial good standing.
3. The Authority may contract with an independent third party to perform a background check on the venture firm.



**(f)** The Authority shall provide written notification to each venture firm that is certified as a qualified venture firm by the Authority and shall provide written notification to each venture firm that the Authority refuses to certify as a qualified venture firm, communicating in detail the grounds for the Authority's refusal.

**(g)** The Authority shall provide the qualified venture firm with a qualified venture firm agreement. Absent extenuating circumstances or prior written consent by the Authority, the Authority's approval of certification shall expire if the qualified venture firm does not execute and return the qualified venture firm agreement within the time prescribed by the Authority. The qualified venture firm agreement shall include, but not be limited to, the following:

- 1.** The amount of capital allocated to the qualified venture firm from the Fund to make a qualified investment in the qualified business, which shall be subject to the availability of funds in the Fund and the requirements at N.J.A.C. 19:31-25.8. An allocation of funds shall not reserve funds;
- 2.** A requirement for the qualified venture firm to make investments in qualified businesses that equal or exceed the amount of capital that the qualified venture firm receives from the Fund under the program;
- 3.** A requirement that the qualified venture firm cause an audit of the qualified venture firm's books and accounts of any Evergreen special purpose vehicle holding qualified investments, which a certified public accountant, licensed in accordance with the Accountancy Act of 1997, P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, shall conduct at least once each year in which the qualified venture firm is in receipt of Fund money or in which the qualified venture firm is responsible for the management of Fund money allocated to the qualified venture firm by the Authority;
- 4.** A requirement that the qualified venture firm enter into a qualified business side agreement, either directly or as the Evergreen special purpose vehicle member, with each qualified business that receives a qualified investment, which agreement shall, at a minimum, require the qualified business to:
  - i.** Use the qualified investment to support its business operations in this State by maintaining a place of business in the State and by:
    - (1)** Maintaining its principal business operations in this State;
    - (2)** Having at least 50 percent of its full-time employees filling a position in New Jersey; or
    - (3)** Having at least 50 percent of wages paid to employees filling a full-time position in New Jersey;
  - ii.** Provide the information pertaining to the qualified business necessary for the qualified venture firm to submit the annual report required under section 31 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-299) and N.J.A.C. 19:31-25.9(a);
  - iii.** Permit the Authority to exercise the remedies as set forth at N.J.A.C. 19:31-25.10(h), (i), and (j) for the events set forth in those subsections;
  - iv.** Adhere to an ongoing requirement to provide the qualified venture firm and the Authority with information that will enable the Authority to administer the program;
  - v.** Accept indemnification and insurance requirements;

- vi.** Comply with a provision permitting an audit of the records of the qualified business related to the qualified business's requirements under the program, including, but not limited to, use of the qualified investments and employee information, from time to time, as the Authority deems necessary; and
- vii.** Agree with default and remedies, including, but not limited, to a default if the qualified business made a material misrepresentation to the Authority or if the Authority debars or disqualifies the qualified business pursuant to N.J.A.C. 19:30-2;
- 5.** A requirement that the qualified venture firm, upon the identification of a qualified investment and approval by the Authority of the qualified investment, create an Evergreen special purpose vehicle, utilizing such forms of agreement as shall be approved by the Authority, for the qualified investment of the Fund. The Evergreen special purpose vehicle shall be managed by the qualified venture firm or the same affiliate of the qualified venture firm that manages the qualified venture firm active fund. The Authority, at its own discretion, may determine that the qualified investment shall be made through the same Evergreen special purpose vehicle as other qualified investments with the same qualified venture firm active fund;
- 6.** A requirement that the qualified venture firm, upon the identification of a qualified investment and approval by the Authority of the qualified investment, indicate the amount of follow-on investment the qualified venture firm shall reserve, and periodically, but no less frequently than annually through the annual report required pursuant to N.J.A.C. 19:31-25.9(a), provide updates concerning this amount;
- 7.** Agreement by the qualified venture firm that it shall charge an Evergreen special purpose vehicle only management fees, carried interest, and direct expenses necessary solely to comply with this program; that the Authority shall transfer funds to an Evergreen special purpose vehicle for payment of management fees and direct expenses only upon a capital call; and that the management fees, carried interest, and direct expenses that the qualified venture firm may charge shall be no greater than the maximum established by the Authority from time to time, and published on the Authority's website, based on management fees and carried interest charged by peer venture firms and on reasonable costs of direct expenses;
- 8.** A requirement that the qualified venture firm notify the Authority of any follow-on investment by the qualified venture firm active fund as set forth at N.J.A.C. 19:31-25.8(j) and agree to fund follow-on investments from the Evergreen special purpose vehicle;
- 9.** Agreement and consent by the qualified venture firm that the Authority may publicly disclose the qualified venture firm on the list of qualified venture firms participating in the program and publicize any qualified investment and follow-on investment by the qualified venture firm from the Fund;
- 10.** Agreement to provide to the Authority, and consent that the Authority may publicly disclose, any tax expenditure information as described at paragraph (8) of subsection b. of section 1 at P.L. 2009, c. 189 (N.J.S.A. 52:27B-20a) and any information necessary for the report required pursuant to N.J.S.A. 34:1B-301 and N.J.A.C. 19:31-25.15;
- 11.** Agreement by the qualified venture firm that once funds are allocated and received for a qualified investment, such qualified investment must be made within 90 days of the approval of the qualified investment unless the Authority gives prior written consent to an extension;

- 12.** A requirement to provide all fully executed agreements evidencing all qualified venture firm active fund investments in the qualified business, including any follow-on investments by the qualified venture firm active fund;
- 13.** A requirement to provide all fully executed agreements evidencing the qualified investment and any follow-on investment in the qualified business;
- 14.** An ongoing requirement to provide the Authority with information that will enable the Authority to administer the program;
- 15.** A provision authorizing the Authority to withhold or cease paying management fees and direct expenses as set forth at N.J.A.C. 19:31-25.9(d), forfeiting the carried interest as set forth at N.J.A.C. 19:31-25.9(e), and permitting the Authority to exercise the remedies as set forth at N.J.A.C. 19:31-25.10(c), (d), (e), (f), and (g) for the events set forth in those subsections;
- 16.** Representations that the qualified venture firm is in substantial good standing or meets the agreements requirements set forth at (e) above;
- 17.** A provision permitting an audit of the records of the qualified venture firm related to the qualified venture firm's participation in the program, including, but not limited to, the management of all Evergreen special purpose vehicles and any qualified investment into a qualified business, from time to time, as the Authority deems necessary;
- 18.** A provision permitting the Authority to amend the agreement;
- 19.** A provision establishing the conditions under which the Authority, the qualified venture firm, or both, may terminate the agreement;
- 20.** Indemnification and insurance requirements;
- 21.** Default and remedies, including, but not limited, to a default if the qualified venture firm made a material misrepresentation on its application or if the Authority debar or disqualifies the qualified venture firm pursuant to N.J.A.C. 19:30-2; and
- 22.** Such other provisions as shall be required by the Authority.

## **N.J.A.C. 19:31-25.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.8 Qualified businesses and qualified investments**

- (a) The Authority shall allocate and transfer money credited to the Fund to one or more qualified venture firms for qualified investments as set forth in this section; provided that no more than two qualified investments shall be made with each qualified venture firm in a calendar year.
- (b) The Authority shall have a goal for 25 percent of the Fund money that is allocated to qualified venture firms to be reserved for investment in qualified businesses located in opportunity zones. A qualified business shall be considered as located in an opportunity zone if the qualified business has its primary business location in an opportunity zone. For the purposes of this subsection, a primary business location is the location of a qualified business that has the most full-time employees, provided that if two business locations have the same number of full-time employees and each such location has more full-time employees than all other locations, then either of such locations shall qualify as a primary business location.
- (c) The Authority shall undertake a disparity study of investment by venture firms in women- and minority-owned business enterprises in this State. Based on the finding of the disparity study, the Authority, following Authority Board approval, may institute a set-aside plan to ensure that Fund money allocated to qualified venture firms is reserved for investment in women- and minority-owned business enterprises in this State.
- (d) Any venture firm that has been decertified pursuant to N.J.A.C. 19:31-25.10(c) shall not be approved for a qualified investment unless and until the venture firm reapplies and is approved for certification pursuant to N.J.A.C. 19:31-25.7.
- (e) The Authority shall establish an application process and determine the form and manner through which a qualified venture firm may make and file an application for a qualified investment. The Authority may accept applications on a rolling basis or on a date set by the Authority, provided that the Authority shall not accept an application based on a qualified venture firm initial investment made more than 90 days prior to the submission of the completed application. The Authority shall provide public notice of the dates for the submission of applications on its website in advance of the initial date for applications. The qualified venture firm shall provide the following information in an application format prescribed by the Authority:
1. With regard to the qualified venture firm and the proposed qualified investment:
    - i. Information requested pursuant to N.J.A.C. 19:31-25.7(b);
    - ii. Size of proposed qualified investment requested by the qualified venture firm in the proposed business and the amount invested or proposed to be invested by the qualified venture firm;

**iii.** Executed stock purchase agreement for the co-investment from the qualified venture firm active fund, or most recent draft term sheet if the co-investment has not yet been made; the limited partnership agreement or equivalent agreement for the qualified venture firm active fund; and the executed subscription documents for the qualified venture firm active fund;

**iv.** The amount of the reserve set aside by the qualified venture firm for future investments in the proposed business and any related reserve policy applicable to such reserve;

**v.** The name of any company managing the venture firm; the list of all companies beneficially owning, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests of the venture firm; and all companies controlling the direction of investments of the venture firm;

**vi.** Investment analysis for the qualified venture firm's investment in the qualified business and supporting documentation, and a certification from the qualified venture firm's managing individual that any projections or forecasts provided to the Authority are prepared in good faith and are based upon assumptions that the qualified venture firm's managing individual concludes, in light of the circumstances in which they are made, are reasonable. If the proposed business has not yet recorded 12 months of revenues or customers and has not raised third-party capital, the investment analysis shall include qualified venture firm's prepared base case future projections with projected revenues, customers, or fundraising for the next three to five years;

**vii.** Names of individuals or entities with ownership, through rights, options, convertible interests, or otherwise, of the venture firm; that manage the venture firm; or that have rights to control the direction of investments of the venture firm; and

**viii.** A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

**2.** With regard to the proposed business:

**i.** The name, address, entity form, country and state of formation, date of formation, copy of formation documents and New Jersey registration, Federal and state tax identification number, phone number, and website address of the proposed business;

**ii.** The name, title, email, address, and phone number of the primary point of contact for the proposed business;

**iii.** A description of the proposed business, including, but not limited to, how the proposed business is engaged in a targeted industry, the primary existing or expected revenue streams, and the primary existing or expected expenses;

**iv.** Capitalization table of the proposed business;

**v.** One or more of the following to substantiate that the proposed business is a high-growth business if the business has recorded 12 months of revenues or customers or has raised third-party capital:

**(1)** Current and past audited, reviewed, or management prepared income statements of the proposed business;

**(2)** Current and past customer lists of the proposed business if the proposed business has customers;

**(3)** Executed term sheet and stock purchase agreement of the prior priced round of equity fundraising of the qualified business;

- vi.** If the qualified venture firm is applying for the proposed business to be a university spin-off business, a copy of the certificate of incorporation or formation for the proposed business and its earliest predecessor entity, documentation evidencing the proposed business's intellectual property, and an explanation of how the proposed business is a university spin-off business;
- vii.** If the qualified venture firm is applying for the proposed business pursuant to (g)5i below, documentation evidencing the proposed business's intellectual property, how the intellectual property is core to the proposed business, and how the intellectual property was developed at a New Jersey-based college or university;
- viii.** If the qualified venture firm is applying for the proposed business as a "minority-owned business" or "women-owned business" pursuant to (g)5iii below, the certification from the State of the proposed business as such a business;
- ix.** Tax clearance certificate from the New Jersey Division of Taxation for the proposed business pursuant to P.L. 2007, c. 101, which shall also satisfy the requirement for registration to do business in this State;
- x.** A completed legal questionnaire completed by the proposed business disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- xi.** A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the proposed business is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The proposed business shall also submit a written certification by the chief executive officer, or equivalent officer for North American operations, stating that the proposed business satisfies the criteria at N.J.A.C. 19:31-25.7(e) to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
- xii.** All locations of the proposed business in New Jersey, the number of full-time employees in each such location, and a copy of the deed, lease agreement, or other agreement evidencing each location;
- xiii.** A list of all full-time employees, including, but not limited to, employee residency, payroll records, a copy of New Jersey WR-30 and Federal Form 941 for the most recent quarter, and offer letters for all full-time employees hired after the filing of such forms;
- xiv.** If the qualified venture firm has made its initial investment in the proposed business, certification from each of the qualified venture firms and proposed businesses that there has been no material adverse change in the business, finances, or operations of the proposed business since the date of such investment;
- xv.** Acknowledgement and consent by the proposed business that the Authority will publicly disclose the qualified investment into the proposed business once a qualified investment is approved and any information necessary for the report required pursuant to N.J.S.A. 34:1B-301 and N.J.A.C. 19:31-25.15; and

**xvi.** Certification by the chief executive officer of the proposed business, or equivalent officer for North America, that all information provided by the proposed business to allow the Authority to evaluate the proposed business is true and accurate under the penalty of perjury;

**3.** Certification by the qualified venture firm's managing individual that all information provided pertaining to the qualified venture firm is true and accurate under the penalty of perjury; and

**4.** Any other information relevant to the evaluation of the qualified investment and the qualified business, as determined by the Authority.

**(f)** The Authority shall evaluate the proposed business to determine if such business is a qualified business as defined in the program and satisfies the requirement that such business meets the definition of a high-growth business.

**(g)** The Authority shall approve a qualified investment into the qualified business if, absent extenuating circumstances or the Authority's prior written consent, the qualified venture firm is in compliance with the requirements of the qualified venture firm agreement and this program, including, but not limited to, the annual report pursuant to N.J.A.C. 19:31-25.9, and the proposed business is a qualified business, based on the following:

**1.** The Authority shall not make a qualified investment in an amount exceeding the funds available and not reserved in the Fund;

**2.** The Authority shall not make a qualified investment that exceeds the maximum amounts of investment established from time to time by the Authority based upon the aggregate amount of qualified investments into a single qualified business, into a single targeted industry, or as determined by other categories or factors based on diversification of funds or the investment policies and goals of the State. The Authority shall publish these maximum amounts on its website;

**3.** The Authority shall not make a qualified investment if the Authority determines that a qualified investment would create an undue financial advantage pursuant to N.J.A.C. 19:31-25.5(d);

**4.** The Authority shall invest the amount of funds requested for a qualified investment by a qualified venture firm in an amount equal to the qualified venture firm's initial investment, subject to all other restrictions in the Act and this subchapter;

**5.** The maximum amount of a qualified investment in a qualified business and any affiliates of the qualified business shall not exceed \$ 5,000,000, except that such \$ 5,000,000 limit shall be increased to \$ 6,250,000 if the qualified business:

**i.** Utilizes intellectual property that is core to its business model and was developed at a New Jersey-based college or university;

**ii.** Is considered a university spin-off business, as determined by the Authority; or

**iii.** Is certified by the State as a "minority-owned business" or a "women-owned business" pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.);

**6.** If a qualified venture firm requests to make a qualified investment in the qualified business in the same round of equity fundraising for which the Authority has previously approved a qualified investment by a different qualified venture firm, the Authority shall approve the later request provided that the aggregate qualified investments in the qualified business does not exceed the maximum amount at (g)5 above;

**7.** In no event shall the Authority make a qualified investment of less than \$ 100,000 per qualified investment; and

**8.** The Authority shall not make a qualified investment if the Authority determines that the qualified venture firm or the proposed business is not in substantial good standing or if a compliance issue exists, has entered into an agreement, as set forth at N.J.A.C. 19:31-25.7(e).

**(h)** The Authority shall provide written notification to the qualified venture firm of the approval or declination of the application for a qualified investment and, if approved, the amount allocated for the qualified investment.

**(i)** A qualified venture firm that has made and entered into a qualified venture firm agreement is authorized to make qualified investments in one or more qualified businesses approved by the Authority from Fund money allocated to the qualified venture firm by the Authority at the times, in the amounts, and subject to the terms and conditions that the qualified venture firm determines to be necessary and appropriate, subject to the terms and conditions of the qualified venture firm agreement, the Evergreen special purpose vehicle governing agreement, the qualified business side agreement, this subchapter, and the Act.

**(j)** A qualified venture firm shall provide written notice to the Authority within 30 days after the date the qualified venture firm decides to make a follow-on investment from a qualified venture firm active fund in a qualified business. A qualified venture firm will be considered to have decided if there is an agreed upon or executed term sheet with the qualified business. The Authority shall determine whether to make a follow-on investment based on the following:

- 1.** The Authority shall not make a follow-on investment if the Authority determines that the qualified venture firm or the qualified business is not in substantial good standing, or if a compliance issue exists, has not entered into an agreement, as set forth at N.J.A.C. 19:31-25.7(e). The Authority may require updated information from the qualified venture firm or the qualified business to make this determination;
- 2.** A completed legal questionnaire completed by the qualified venture firm and qualified business disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- 3.** The Authority shall not make a follow-on investment in an amount exceeding the funds available in the Fund that are not reserved or are reserved for a follow-on investment with the qualified venture firm into the qualified business;
- 4.** The Authority shall have the right to make a follow-on investment from the Fund through the corresponding Evergreen special purpose vehicle into the qualified business in the same ratio to the qualified venture firm's follow-on investment as the ratio of the qualified investment to the qualified venture firm's initial investment;
- 5.** At its discretion, the Authority may decline to make a follow-on investment if the qualified venture firm is decertified or is not in compliance with the requirements of the qualified venture firm agreement, the Evergreen special purpose vehicle governing agreement, and this program, including, but not limited to, the annual report pursuant to N.J.A.C. 19:31-25.9, or if the qualified business is not in compliance with the requirements of the qualified business side agreement or any requirement of the program;
- 6.** Notwithstanding any provision in this subchapter to the contrary, the maximum follow-on investment from the Fund into a qualified business shall not exceed the lesser of:



- i. The amount remaining after reducing the maximum amount allowed for the qualified investment by the aggregate of all follow-on investments in the qualified business through any Evergreen special purpose vehicle in the previous 12 months;
- ii. The amount that would cause the aggregate amount invested from the Fund in the qualified business and any affiliates of the qualified business to exceed a percentage of the total amount in the Fund, plus all capital currently invested, as established by the Authority from time to time, but in no event greater than 15 percent; and
- iii. The amount that would cause the aggregate amount invested from the Fund through any Evergreen special purpose vehicle managed by the qualified venture firm, or an affiliate of the qualified venture firm, in any qualified business to exceed 15 percent of the total invested in such qualified business by all funds managed by the qualified venture firm and any affiliates of the qualified venture firm, including investments through any Evergreen special purpose vehicles.

**(k)** The Authority shall reserve the following amounts for each qualified venture firm in relation to a qualified business, as follows:

1. For follow-on investments, an amount in the same ratio to the reserve to which the qualified venture firm has certified in its annual report pursuant to N.J.A.C. 19:31-25.9(a)6 as the ratio of the qualified investment to the qualified venture firm's initial investment;
2. The Authority shall reserve the amount equal to the lesser of the projected management fees payable to the Evergreen special purpose vehicle manager or the maximum management fees allowed by the Authority pursuant to N.J.A.C. 19:31-25.7(g)7; and
3. The Authority shall reserve the amount equal to the lesser of the expenses projected by the qualified venture firm or the maximum direct expenses allowed by the Authority pursuant to N.J.A.C. 19:31-25.7(g)7.

**(l)** Unless the Authority otherwise gives prior written consent, within 30 days of receipt of dividends or proceeds from the sale, redemption, or other disposition of the shares of stock or other security comprising a qualified investment or any follow-on investments, the Evergreen special purpose vehicle manager shall cause such funds to be transferred to the Authority. The Evergreen special purpose vehicle manager may not reinvest such funds without the approval of the Authority. Not later than 60 days after the sale, redemption, or other disposition of the shares of stock or other security comprising a qualified investment or any follow-on investments, the qualified venture firm shall provide to the Authority a report on the amount of the stock or other security sold, redeemed, or disposed of, and the consideration received for the sale, redemption, or disposition. The report shall detail the cumulative effect of sequentially introduced positive or negative values and include the gross income and details of any offsetting fees, including, but not limited to, carried interest, that reduce the net distribution. Any dividend or proceeds received by the Authority for the sale, redemption, or other disposition of the shares of stock or other security shall be deposited into the Fund and used in accordance with section 23 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-291) and this subchapter.

## **N.J.A.C. 19:31-25.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 25. EVERGREEN***

### **§ 19:31-25.9 Qualified venture firm annual report**

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**(a)** A qualified venture firm shall submit an annual report to the Authority with respect to a qualified investment within 120 days following the conclusion of the qualified venture firm's tax privilege period. The annual report shall include, but not be limited to, the following:

1. The amount of the qualified investment, if any, uninvested at the end of the preceding calendar year;
2. All qualified investments made during the preceding calendar year;
3. For each qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm or an affiliate of the qualified venture firm, a list of all full-time employees as of the end of the preceding calendar year, including, but not limited to, employee residency, payroll records, a copy of New Jersey WR-30 and Federal Form 941 for all quarters, and offer letters for any new full-time employee hired after the filing of such forms. For any qualified investment in which the qualified venture firm no longer has a position as of the end of the calendar year, the information must be provided as of the date the investment was terminated;
4. Certification by the chief executive officer, or equivalent officer for North America, of any qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm or an affiliate of the qualified venture firm, that all factual information provided by the qualified business is true and accurate under the penalty of perjury;
5. Financial statements, audited by a certified public accountant, who is licensed in accordance with the Accountancy Act of 1997, P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, of each qualified venture firm active fund, if any, and each Evergreen special purpose vehicle, if any. For the Evergreen special purpose vehicle, the financial statement shall include a consolidated summary of the performance, specifying the total value to paid-in capital ratio, and distribution to paid-in capital ratio. Any information about the performance of an individual business, including the qualified business, shall be considered confidential and not subject to the requirements at P.L. 1963, c. 73 (N.J.S.A. 47:1A-1 et seq.);
6. Certification by the qualified venture firm managing individual as to the qualified venture firm's reserve policy as it relates to each qualified investment, if any;
7. If applicable, evidence that the qualified venture firm has made best efforts to comply with its commitment to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas;

- 8.** Any updates to the policies or plans submitted pursuant to N.J.A.C. 19:31-25.7(b)8 and evidence that the qualified venture firm has made best efforts to comply with its current policies or plans;
- 9.** Any update to the information provided as part of the venture firm's application for certification pursuant to N.J.A.C. 19:31-25.7(b) pertaining to the criteria at N.J.A.C. 19:31-25.7(d), and a certification by the qualified venture firm managing individual that all other information pertaining to that criteria remains true and accurate under the penalty of perjury;
- 10.** Certification by the qualified venture firm managing individual that all factual information provided to the Authority pertaining to the qualified venture firm is true and accurate under the penalty of perjury, including, but not limited to, information contained in the application for certification, the qualified venture firm agreement, any amendment to that agreement, and any other information submitted by the qualified venture firm to the Authority pursuant to the Act, this subchapter, and the qualified venture firm agreement;
- 11.** Any other information the Authority requires to evaluate compliance with the program by the qualified venture firm and by any qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm; and
- 12.** Any other information the Authority requires to ascertain the impact of the program on the economy of the State.

**(b)** With respect to the information required pursuant to (a)1 through 11 above, the report shall include a statement prepared by an independent certified public accountant, who is licensed in accordance with the Accountancy Act of 1997, P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, certifying that the accountant has reviewed the report and that the information and representations contained in the report are accurate.

- 1.** The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority.
- 2.** The Authority may qualify certified public accountants for certification at (a)3 above. If the Authority qualifies any certified public accountants, the Authority shall provide, to the qualified venture firm, the list of qualified certified public accountants and the information provided pursuant to (a)3 above shall be certified by a qualified certified public accountant. Notwithstanding this paragraph, the qualified venture firm may select an independent certified public accountant that is not on the Authority's list of qualified certified public accountants if the qualified venture firm demonstrates an extenuating circumstance prohibiting the qualified venture firm from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or that none of the qualified certified public accountants are independent to the qualified venture firm.

**(c)** A qualified venture firm shall, as required at the discretion of the Authority, submit to the Authority satisfactory evidence supporting the information detailed in the annual report.

**(d)** Absent extenuating circumstances or prior written consent by the Authority, if a qualified venture firm fails to comply with the reporting requirements of this section, the Authority shall withhold the management fees and direct expenses due to such qualified venture firm or an affiliate of the qualified venture firm for any Evergreen special purpose vehicle managed by the qualified venture firm or affiliate. If the qualified venture firm submits the complete annual report within 120 days from the date the annual report was due, the Authority shall pay the management fees and direct expenses withheld and resume payment of management fees and direct

expenses. If the qualified venture firm fails to comply with the reporting requirements after the additional 120 days, the qualified venture firm shall forfeit all management fees and direct expenses due for a period of a year.

**(e)** If a qualified venture firm is not in compliance with the reporting requirements of this section at the time that any distribution is made by a qualified business to the Evergreen special purpose vehicle holding a qualified investment, whether as a result of a sale or public registration of securities of the qualified business or for any other reason, no distribution of cash or equity for carried interest shall be made to the qualified venture firm or affiliate, provided that if the qualified venture firm comes into compliance with such reporting requirements within 120 days of the date of such distribution, the Evergreen special purpose vehicle shall make the distribution for carried interest to the qualified venture firm or affiliate.

## N.J.A.C. 19:31-25.10

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.10 Recapture, decertification, and redemption**

- (a) Absent extenuating circumstances or written consent by the Authority, if a tax credit purchaser fails to fund at least 80 percent of any component of its strategic commitment, the Authority shall require the tax credit purchaser to pay, to the Fund, the amount equal to the difference between the value of such strategic commitment component, as set forth in the tax credit purchaser contract, and the actual amount funded by the tax credit purchaser.
- (b) If, at any time, the Authority determines that a tax credit purchaser made a material misrepresentation on the tax credit purchaser's tax credit bid application or any submissions to the Authority under this program, the Authority may recapture any or all of all tax credits awarded under the program, which shall be in addition to any other remedies in the tax credit purchaser contract and any criminal or civil penalties to which the tax credit purchaser and the respective officer may be subject. Any such recapture amount may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture amount, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.
- (c) The Authority shall review each qualified venture firm's annual report for the disqualifying criteria set forth at N.J.A.C. 19:31-25.7(d), or other reasonable industry-accepted standards, as determined by the Authority. The Authority shall publish any such standards on its website. Upon such review, if the qualified venture firm does not satisfy the criteria or standards, the Authority shall decertify a qualified venture firm. If the annual report does not demonstrate best efforts to comply with the diversity policies or plans submitted pursuant to N.J.A.C. 19:31-25.7(b)8 or, for a qualified venture firm that proposed to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas, best efforts to achieve such greater portion of qualified investments compared to the investment information provided pursuant to N.J.A.C. 19:31-25.7(b)17, then the Authority shall reduce the qualified venture firm's evaluation score by the weight for such criteria. If the reduced evaluation score is below the minimum, the Authority shall decertify the qualified venture firm. Decertification shall not affect any previously made qualified investment or the Fund's commitment to make a follow-on investment in a qualified business.
- (d) If a qualified venture firm fails to timely submit the completed annual report pursuant to N.J.A.C. 19:31-25.9 for two consecutive years, the Authority shall decertify the qualified venture firm and may remove the qualified venture firm from the Evergreen special purpose vehicle or require the qualified venture firm to terminate the Evergreen special purpose vehicle.

**(e)** If a qualified venture firm fails to comply with the requirements of the qualified venture firm agreement or Evergreen special purpose vehicle governing agreement other than the failure to submit a complete annual report, or if the qualified venture firm or affiliate of the qualified venture firm is removed from the qualified venture firm active fund, the Authority may withhold or cease paying management fees and direct expenses, decertify the qualified venture firm, remove the qualified venture firm from the Evergreen special purpose vehicle, or require the qualified venture firm to terminate the Evergreen special purpose vehicle.

**(f)** If, at any time, the Authority determines that a qualified venture firm made a material misrepresentation on the qualified venture firm's application for certification, application for a qualified investment, annual report, or any submissions to the Authority under this program, the Authority shall cease paying management fees and direct expenses. The Authority shall decertify the qualified venture firm and may demand repayment of all management fees and direct expenses previously paid, remove the qualified venture firm from the Evergreen special purpose vehicle, or require the qualified venture firm to terminate the Evergreen special purpose vehicle. The actions by the Authority pursuant to this subsection shall be in addition to any other remedies in the qualified venture firm agreement or the Evergreen special purpose vehicle governing agreement and any criminal or civil penalties to which the qualified venture firm and the respective officer may be subject.

**(g)** If an Evergreen special purpose vehicle is terminated pursuant to (d), (e), or (f) above, the qualified venture firm shall transfer the shares of stock to the Authority. The Authority may, at its discretion, accept payment of an amount equal to the greater of the qualified investment and all follow-on investments or the fair market value of the qualified investment at the time of the demand. Upon such termination, the Authority may require the qualified venture firm to forfeit any carried interest.

**(h)** If a qualified business fails to support its business operations in this State as set forth at N.J.A.C. 19:31-25.7(g)4i, or fails to provide the necessary documentation to demonstrate its compliance, during two consecutive years during the qualified business compliance period, the Authority may require the qualified business to redeem the shares of stock purchased with the qualified investment and any follow-on investment for an amount equal to the greater of the aggregate amount of the qualified investment and follow-on investments or the fair market value of the shares of stock at the time of the redemption demand. The Authority may, at its discretion, accept the offer to purchase the shares of stock by the qualified venture firm or any other investor in lieu of redemption.

**(i)** If a qualified business fails to comply with any requirement under this program other than the failure set forth at (h) above, the Authority may determine not to make any follow-on investments or may demand a redemption as set forth at (h) above.

**(j)** If, at any time, the Authority determines that a qualified business made a material misrepresentation on the qualified venture firm's application for certification, application for a qualified investment, annual report, or any submissions to the Authority under this program, the Authority may determine not to make any follow-on investments or may demand a redemption as set forth at (h) above. The actions by the Authority pursuant to this subsection shall be in addition to any other remedies in the qualified business side agreement and any criminal or civil penalties to which the qualified business and the respective officer may be subject.

**(k)** In determining whether to require the termination of an Evergreen special purpose vehicle or the redemption of the shares of stock of a qualified business, the Authority may consider if retaining the Evergreen special purpose vehicle or the shares of stock of the qualified business

furtheres the purposes of the program, including, but not limited to, the likelihood of an increase in value of the shares of stock and the continued employment of full-time employees filling a position in New Jersey.

## History

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### **HISTORY:**

Amended by R.2023 d.052, effective May 1, 2023.

See: 54 N.J.R. 1185(a), 55 N.J.R. 961(b).

In (b), substituted "tax credit purchaser contract" for "incentive award agreement"; and in (j), substituted "qualified business side" for "incentive award".

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End of Document

## **N.J.A.C. 19:31-25.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 25. EVERGREEN***

### **§ 19:31-25.11 Affirmative action and prevailing wage**

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The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and the prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply only to the management fees and direct expenses received by the qualified venture firm.

### **History**

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#### **HISTORY:**

Amended by R.2023 d.052, effective May 1, 2023.

See: 54 N.J.R. 1185(a), 55 N.J.R. 961(b).

Updated the second N.J.A.C. reference.



## **N.J.A.C. 19:31-25.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 25. EVERGREEN***

### **§ 19:31-25.12 Program fees**

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**(a)** A tax credit purchaser, venture firm, or business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

**(b)** No fees shall be charged from tax credit purchasers, venture firms, or businesses.

### **History**

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#### **HISTORY:**

Amended by R.2023 d.052, effective May 1, 2023.

See: 54 N.J.R. 1185(a), 55 N.J.R. 961(b).

Section was "Fees".

## **N.J.A.C. 19:31-25.13**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 25. EVERGREEN***

### **§ 19:31-25.13 New Jersey Innovation Evergreen Advisory Board**

**(a)** The New Jersey Innovation Evergreen Advisory Board is established in, but not of, the Authority for the purposes of providing guidance and networking opportunities to qualified businesses. The members of the New Jersey Innovation Evergreen Advisory Board shall serve in a voluntary capacity, to be appointed through a process to be determined by the Chief Executive Officer of the Authority from among tax credit purchasers and other strategic partners identified by the Chief Executive Officer, to support the State's innovation ecosystem. The terms of the voluntary members so appointed, after the initial appointments, shall be one year, and each member may be reappointed thereafter if the tax credit purchaser purchases tax credits in the following year's tax credit auction or if the tax credit purchaser consents.

**(b)** The members of the New Jersey Innovation Evergreen Advisory Board shall also be required to attend at least the majority of meetings and events that the Authority schedules each year for participation by the members.

## **N.J.A.C. 19:31-25.14**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.14 Appeal process**

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- (a)** The Authority Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b)** An applicant may appeal the Authority Board's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Authority Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., or the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c)** Appeals that are timely submitted shall be handled by the Authority as follows:
  - 1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Authority Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria, provided that if the Authority decision was based on a competitive process, the Authority cannot consider any new evidence or information about the application other than evidence or information that would demonstrate that the applicant met all of the application criteria by the application deadline.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Authority Board containing the hearing officer's finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  - 3.** The Authority Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Authority Board shall issue a final decision on the appeal.
  - 4.** Final decisions rendered by the Authority Board shall be appealable to the Superior Court of New Jersey, Appellate Division, in accordance with the New Jersey Rules of Court.

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End of Document

## **N.J.A.C. 19:31-25.15**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.15 Reports on implementation of the program**

Beginning in 2022, and every two years thereafter, the Authority shall prepare a report on the implementation of the program, and submit the report to the Governor, and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required pursuant to this section shall include the names and locations of qualified businesses receiving capital, including whether they are located in an opportunity zone; the amount of each qualified investment; a report by a certified public accountant, who is licensed in accordance with the Accountancy Act of 1997, P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, of the consolidated performance of the Fund; the cumulative amount of capital committed by tax credit purchasers; the rate and amount of management fees and carried interest charged by each qualified venture firm, including performance-based earnings and carried interest; the classification of each qualified business, according to the targeted industry and the size of the qualified business; the State's return on investment; the total number of jobs created in the State by the qualified business after the qualified investment; the average wages paid for the jobs; and any other metrics the Authority determines are relevant based upon national best practices.

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End of Document

## **N.J.A.C. 19:31-25.16**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-25.16 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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End of Document

## **N.J.A.C. 19:31-26.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-26.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement the provisions of the New Jersey Economic Recovery Act 2020, establishing the Historic Property Reinvestment Act (Act), sections 2 through 8 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276).

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End of Document

## **N.J.A.C. 19:31-26.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-26.2 Definitions**

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The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means sections 2 through 8 at P.L. 2020, c. 156, as amended (N.J.S.A. 34:1B-270 through 34:1B-276).

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the business entity. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414).

"Archeology and historic preservation standards" means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 Fed. Reg. 44716, as updated and revised by the National Park Service.

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 at P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority, established pursuant to section 4 at P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. "Building services" shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the "prevailing wage" as defined in section 2 at P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

"Business entity," "developer," or "applicant" means a person who enters or proposes to enter into a rehabilitation agreement pursuant to the provisions of section 4 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-272) and that has, or will have, site control over the qualified property or transformative property, including, but not limited to, a lender that completes a rehabilitation project, operates a rehabilitation project, or completes and operates a rehabilitation project.

"Co-applicant" means an entity that is non-profit for taxation purposes pursuant to the provisions at Section 501(c)3 of the Internal Revenue Code; contributes capital, real property, or services related to the project that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and enters into a



participation agreement with the business entity that specifies the co-applicant's participation in the redevelopment project.

"Compliance period" means a period of five years starting immediately after the conclusion of the selected rehabilitation period.

"Cost of rehabilitation" or "eligible costs" means the consideration given, valued in money, whether given in money or otherwise, for the materials and services that constitute the rehabilitation. Eligible costs shall be all costs associated with the structural components, as defined at 26 CFR 1.48-1(e)(2), within the qualified property or transformative property, and any soft costs associated with the rehabilitation project. Eligible costs shall not include any costs associated with an increase in total building volume.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Equity" means business entity-contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property or site value less any mortgages when the business entity owns the project site, and any other investment by the business entity in the project deemed acceptable by the Authority. Property or site value shall be valued at the lesser of: the purchase price, provided the property or site was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, Low-Income Housing Tax Credit, 26 U.S.C. § 42, and New Market Tax Credit, 26 U.S.C. § 45D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. For a residential project utilizing Low-Income Housing Tax Credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity includes the portion of the developer's fee that is deferred for a minimum of five years.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Income producing property" means a property that is used in a trade or business or to produce rental income. A property is used in a trade or business if the property generates income.

"New Jersey S corporation" means the same as the term is defined in section 12 at P.L. 1993, c. 173 (N.J.S.A. 54A:5-10).

"Officer" means the State Historic Preservation Officer or the official within the State designated by the Governor or by statute in accordance with the provisions of Chapter 3023 of Title 54, United States Code (54 U.S.C. §§ 302301 et seq.), to act as liaison for the purpose of administering historic preservation programs in the State.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Program" means the Historic Property Reinvestment Program established by sections 2 through 8 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 276).

"Project financing gap" means the part of the total cost of rehabilitation, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for. Sources of capital include, but are not limited to, equity, which shall not be less than 20 percent of the total cost of rehabilitation, and investor or financial entity capital or loans. The business entity, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources. For a redevelopment project located in a government-restricted municipality, the equity shall not be less than 10 percent of the total cost of rehabilitation.

"Property" means a structure, including its site improvements and landscape features, assessed as real property, and used for a commercial purpose, or residential rental of at least four dwelling units, or a combination of both. Property shall not include multiple separate rowhouses included in a single application.

"Qualified incentive tract" means a population census tract having a poverty rate of 20 percent or more, or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

"Qualified property" means a property located in the State of New Jersey that is an income producing property, and that is:

1. Individually listed, or located in a district listed on the National Register of Historic Places in accordance with the provisions at Chapter 3021 of Title 54, United States Code (54 U.S.C. §§ 302101 et seq.), and if located within a district, certified by the Officer as contributing to the historic significance of the district;
2. Individually listed, or located in a district listed on the New Jersey Register of Historic Places pursuant to P.L. 1970, c. 268 (N.J.S.A. 13:1B-15.128 et seq.), and if located within a district, certified by the Officer as contributing to the historic significance of the district;
3. Individually designated, or located in a district designated by the Pinelands Commission as a historic resource of significance to the Pinelands in accordance with the Pinelands comprehensive management plan adopted pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.), and if located within a district, certified by the Pinelands Commission as contributing to the historic significance of the district; or
4. Individually identified or registered, or located in a district composed of properties or structures and such district is identified or registered, for protection as significant historic resources in accordance with criteria established by a municipality in which the property, structure, or district is located if the criteria for identification or registration has been approved by the Officer as suitable for substantially achieving the purpose of preserving and rehabilitating buildings of historic significance within the jurisdiction of the municipality, and if located within a district, certified by the Officer as contributing to the historic significance of the district.

"Reasonable and appropriate return on investment" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any Federal, State, or local tax credits. For a residential project utilizing Federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency, the reasonable and appropriate return on investment shall be based upon the approval of deferred developer fees pursuant to

N.J.A.C. 5:80-33. The Authority may establish a deferred developer fee analysis for rehabilitation projects utilizing other tax credits, including, but not limited to, the Federal Historic Rehabilitation Tax Credit, as equity if the reasonable and appropriate return on investment analysis is not applicable, including, but not limited to, when such tax credits are the sole or primary equity for the rehabilitation project.

"Rehabilitation" means the repair or reconstruction of the exterior or interior of a qualified property or transformative property necessary to make an efficient contemporary use possible while preserving the portions or features of the property that have significant historical, architectural, and cultural values.

"Rehabilitation agreement" means the contract executed between a business entity, any co-applicant, if applicable, and the Authority pursuant to section 4 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-272), which sets forth the terms and conditions under which the business entity and any co-applicant may receive the tax credit authorized pursuant to the provisions of sections 2 through 8 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276).

"Rehabilitation of the exterior of the qualified property or transformative project" or "repair or reconstruction of the exterior of the qualified property or transformative property" means the repair or reconstruction of the building envelope, exterior historic finishes, and exterior fixtures and structural or substrate components of the exterior of a qualified property or transformative property.

"Rehabilitation of the interior of the qualified property or transformative property" or "repair or reconstruction of the interior of the qualified property or transformative property" means the repair or reconstruction of the structural or substrate components and electrical, plumbing, and heating components within the interior of a qualified property or transformative property.

"Rehabilitation project" means a specific construction project or improvement, or phase of a project or improvement, undertaken by a business entity that includes the rehabilitation of a qualified property or transformative property.

"Selected rehabilitation period" means the period starting on the date the rehabilitation agreement is executed during which, or parts of which, a rehabilitation is occurring. The selected rehabilitation period shall be 24 months, but a business entity may choose a selected rehabilitation period of 60 months if a rehabilitation is reasonably expected to be completed in distinct phases set forth in written architectural plans and specifications completed before or during the physical work on the rehabilitation. For purposes of this definition, a phase may be an early site package, demolition, or abatement, or a portion of a project that results in a separate certificate of occupancy or certificate of acceptance. The selected rehabilitation period shall end at the earlier of either 24 or 60 months, respectively, or the issuance of the final temporary certificate of occupancy or equivalent.

"Soft costs" means costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, and all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery. The term does not include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer, project management, or other similar costs.

"Total cost of rehabilitation" means any and all costs incurred for, and in connection with, the rehabilitation project by the business entity and any affiliate of the business entity until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the rehabilitation agreement, which shall include, but is not limited to, project costs, soft costs, and cost of acquisition of land and buildings.

"Transformative project" means a specific construction project or improvement or phase of a project or improvement undertaken by a business entity that includes the rehabilitation of a transformative property.

"Transformative property" means a property that is:

- 1.** An income-producing property, not including a residential property, whose rehabilitation the Authority determines will generate substantial increases in State revenues through the creation of increased business activity within the surrounding area;
- 2.** Individually listed on the New Jersey Register of Historic Places pursuant to P.L. 1970, c. 268 (N.J.S.A. 13:1B-15.128 et seq.) and which, before the enactment of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), received a determination of eligibility from the Keeper of the National Register of Historic Places in accordance with the provisions of Part 60 of Title 36 of the Code of Federal Regulations; and
- 3.** Located within a one-half mile radius of the center point of a transit village, as designated by the New Jersey Department of Transportation, and located within a city of the first class, as classified pursuant to N.J.S.A. 40A:6-4, or located within a government-restricted municipality.

## **N.J.A.C. 19:31-26.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-26.3 Eligibility criteria**

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- (a)** A business entity shall be eligible to receive a tax credit award for a rehabilitation project only if the business entity demonstrates to the Authority at the time of application that:
1. Without the tax credit award, the rehabilitation project is not economically feasible;
  2. A project financing gap exists, and the tax credit award being considered for the project is equal to or less than the project financing gap;
  3. The proposed project is a rehabilitation project;
  4. The business entity has not commenced any construction or rehabilitation activity at the site of the rehabilitation project prior to submitting an application, and will not commence any construction or rehabilitation activity until the execution of the rehabilitation agreement except as follows:
    - i. In the event that the business entity has been ordered by a building code or other official with jurisdiction over the site or the rehabilitation project to correct a health, safety, or other hazard if:
      - (1) The business entity provides a copy of the order to the Authority;
      - (2) The business entity documents to the Authority's satisfaction that the proposed construction or rehabilitation activity is limited to resolve the hazard; and
      - (3) The proposed construction or rehabilitation activity complies with the Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67.7; and
    - ii. Any construction or rehabilitation activity at the site of the rehabilitation project was conducted by an entity that is not the current owner or business entity, or an affiliate of the current owner or business entity, and was not done at the direction of or under contract with the owner, business entity, or an affiliate of the owner or business entity; and
  5. The business entity has complied with all the requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39).
- (b)** The following are the only costs incurred prior to application that may be eligible project costs:
1. For applications submitted on or after January 1, 2023, soft costs incurred within 12 months prior to the date of application; and

2. For applications submitted prior to January 1, 2023, soft costs incurred within 24 months prior to the date of application.

**(c)** The Authority shall review the proposed total cost of rehabilitation and evaluate and validate the project financing gap estimated by each business entity applying for a tax credit award as follows:

1. The business entity shall demonstrate that the rehabilitation project has equity of at least 20 percent of the total cost of rehabilitation, except that if a rehabilitation project is located in a government-restricted municipality, the equity shall be at least 10 percent of the total cost of rehabilitation;
2. The Authority shall evaluate the proposed total cost of rehabilitation against reasonable costs;
3. The Authority shall determine if the business entity's submitted financial information for the rehabilitation project and, if applicable, all phases, is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap, including the reasonable and appropriate return on investment; and
4. The project financing gap analysis shall include, but not be limited to, an evaluation of the total cost of rehabilitation, amount of capital sufficient to complete the rehabilitation project, proposed rental rates, vacancy rates, reasonable and appropriate return on investment, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable project available to the developer or its tenants.

**(d)** The cost of rehabilitation during a business entity's selected rehabilitation period shall not be less than the greater of the adjusted basis of the structure of the qualified property or transformative property used for Federal income tax purposes as of the beginning of the business entity's selected rehabilitation period, or \$ 5,000.

**(e)** In addition to the requirements set forth at (a), (b), (c), or (d) above, for a residential project or a redevelopment project consisting of newly-constructed residential units to qualify for a tax credit award, the developer shall reserve at least 20 percent of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required pursuant to the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

**(f)** The rehabilitation project shall be completed, and the business entity shall be issued a temporary certificate of occupancy for the rehabilitation project facilities by the applicable enforcing agency within the selected rehabilitation period.

**(g)** To the extent that a rehabilitation project is within more than one geographic area with different eligibility criteria and tax credit calculations, the more favorable shall apply to the rehabilitation project.

## **N.J.A.C. 19:31-26.4**

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### **§ 19:31-26.4 Application submission requirements**

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**(a)** Each application to the Authority made by a business entity shall include the following information in an application format prescribed by the Authority:

1. The name of the business entity;
2. Historic name(s) of property as used in all applicable historic designations and the address of the property;
3. The contact information of the person identified as the primary contact for the business entity;
4. The address of the business entity and prospective future address of the business entity (if different);
5. Organizational structure of the business entity;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. Name of historic architect or architectural historian consultant for the rehabilitation project. The historic architect or architectural historian shall meet professional qualifications for historic architecture or architectural history in the archeology and historic preservation standards;
9. The total projected number of construction employees and permanent employees at the rehabilitation project;
10. A narrative description of the rehabilitation project, including a breakdown of uses and related square footage;
11. A narrative explaining the level of experience and qualifications of the business entity and/or project team demonstrating sufficient expertise to complete the rehabilitation project, including, but not limited to, examples of successful completion of projects of similar size and scope;
12. A narrative description of the rehabilitation project approach, including, but not limited to, information regarding proposed methods for protecting historic features and fabric and for addressing unforeseen issues that may be discovered during construction. For rehabilitation projects that will include ground disturbance, the project approach shall also include information explaining the project approach to archeology within the site of the rehabilitation project, which must address known archaeological resources and any potential archeology discovered during the course of the rehabilitation project. A proposed approach to archeology

shall be prepared by, or in consultation with, a professional meeting the professional qualifications for archeology in the archeology and historic preservation standards;

**13.** Construction cost estimate for the rehabilitation project, including, but not limited to, all construction costs associated with the rehabilitation project. The estimate shall include the final estimate of the total cost of rehabilitation and the cost of rehabilitation;

**14.** Information regarding the historic significance and current condition of the qualified property or transformative property, including but not limited to:

i. Information of any historic designations (with designation dates);

ii. A narrative description highlighting the specific historic significance of the qualified property or transformative property (including eligibility criteria for any historic designations received); and

iii. Photographs showing all exterior building facades, significant and representative interior spaces, and examples of significant historic fabric being proposed for repair and/or removal as part of the rehabilitation project;

**15.** A narrative description of the historic connection/significance of the property within the local community and information on how the proposed rehabilitation project will have a positive impact on the surrounding neighborhood;

**16.** A narrative description of any existing or potential threats to the property due to physical condition, encroachment, or other factors, including, but not limited to, supporting documentation;

**17.** Full set of construction documents, including drawings and specifications. Documents shall include details showing treatment of exterior and interior historic fabric throughout the building. All plans and specifications shall be prepared by, or in consultation with, a professional meeting the professional qualifications for architectural history or historic architecture in the archeology and historic preservation standards;

**18.** A narrative explaining how the rehabilitation project will address requirements and compliance with the Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67.7. Information shall include, but not be limited to, detailed specific proposed treatment for interior and exterior historic fabric, materials, and spaces throughout the property;

**19.** A copy of a market and/or feasibility study for the proposed use of the property by an independent third party, which shall include their position regarding the marketability and underwriting of the revenue and expense components of the property for the duration of the commitment period;

**20.** Selected rehabilitation period and anticipated construction schedule showing rehabilitation project milestones and proposed phases;

**21.** Financial information of the rehabilitation project, which shall include all phases, including, but not limited to, any State or local financial assistance for the project, proposed terms of financing, projected reasonable and appropriate return on investment based on the business entity's equity, net margin, and cash-on-cash yield, and a certification from the chief executive officer, or equivalent officer of the business entity, that additional capital cannot be raised from other sources on a non-recourse basis after making all good faith efforts to raise additional capital, and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-26.3(a);



- 22.** A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the business entity is associated, or in which the business entity has an interest. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The business entity shall also submit a written certification by the chief executive officer, or equivalent officer of the business entity, stating that the business entity applying for the program satisfies the criteria at N.J.A.C. 19:31-26.6(d) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
- 23.** A certification by the chief executive officer, or equivalent officer of the business entity, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
- 24.** A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- 25.** Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39);
- 26.** A list of all the development subsidies, as defined at P.L. 2007, c. 200 (N.J.S.A. 52:39-1), that the business entity is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
- 27.** The status of control of the site of the qualified property or transformative property, shown for each block and lot of the site, as indicated on the local tax map. If the business entity has not secured control of the site at time of application, the business entity must demonstrate an agreement with the current owner of the site, including, but not limited to, a right of entry or a letter of intent to purchase the site;
- 28.** A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the redevelopment project, or will be required to be issued, pending resolution of financing;
- 29.** The adjusted basis of the structure of the qualified property or transformative property used for Federal income tax purposes as of the date of application and as of the anticipated beginning of the business entity's selected rehabilitation period;
- 30.** In addition to the information at (a)1 through 29 above, the business entity must demonstrate the following for a transformative project:

  - i.** That the transformative project will generate substantial increases in State revenues through the creation of increased business activity within the surrounding area;
  - ii.** Historic name of the property and date of historic designations required in the definition of "transformative property"; and
  - iii.** That the transformative property is located within a city of the first class and within a half mile of the center of a transit village, or government-restricted municipality by providing a map showing project site location; and

**31.** Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and business entity capacity.

**(b)** If the business entity is applying with a co-applicant, the application shall also include the following co-applicant information:

1. The name of the co-applicant;
2. The contact information of the person identified as the primary contact for the co-applicant;
3. The address of the co-applicant and prospective future address of the co-applicant (if different);
4. The organizational structure of the co-applicant;
5. The New Jersey tax identification number;
6. The Federal tax identification number;
7. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant is associated or in which the co-applicant has an interest. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The co-applicant shall also submit a written certification by the chief executive officer, or equivalent officer of the eligible co-applicant, stating that the co-applicant applying for the program satisfies the criteria at N.J.A.C. 19:31-26.6(d) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
8. A certification by the chief executive officer or equivalent officer of the co-applicant that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
9. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
10. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39);
11. A list of all the development subsidies, as defined at P.L. 2007, c. 200 (N.J.S.A. 52:39-1), that the co-applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
12. The organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality;
13. A description of the long-term participation agreement between the co-applicant and the business entity illustrating how the co-applicant will take an active role in the rehabilitation project, including a description of the capital, real property, or services related to the rehabilitation project that the co-applicant will provide that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the rehabilitation project;
14. An explanation for the need of a co-applicant to receive the tax credits; and

**15.** Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and co-applicant eligibility.

**(c)** The Authority may, in its sole discretion, consider two or more applications as one application for one rehabilitation project based on factors including, but not limited to, the location of the redevelopment project(s), the types of uses proposed, and the business entity's financing and operational plans.

**(d)** If circumstances require a business entity to amend its application to the Authority, then the business entity, or chief executive officer or equivalent officer of the business entity, shall certify to the Authority that the information provided in its amended application is true under the penalty of perjury.

## **N.J.A.C. 19:31-26.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.5 Fees**

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- (a)** A business entity applying for tax credits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:
1. For rehabilitation projects with cost of rehabilitation of \$ 10 million or less, the fee shall be \$ 2,000;
  2. For rehabilitation projects with cost of rehabilitation greater than \$ 10 million, the fee shall be \$ 7,000; and
  3. For transformative projects, the fee shall be \$ 18,000.
- (b)** A business entity shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.
- (c)** The business entity shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:
1. For rehabilitation projects with cost of rehabilitation of \$ 10 million or less, the fee shall be \$ 5,000;
  2. For rehabilitation projects with cost of rehabilitation greater than \$ 10 million, the fee shall be \$ 14,000; and
  3. For transformative projects, the fee shall be \$ 125,000.
- (d)** The business entity shall pay to the Authority a non-refundable fee prior to the execution of the rehabilitation agreement as follows:
1. If the business entity is applying for a Federal Historic Preservation Tax Credit and has received prior approval of applications from the Officer pursuant to Parts 1 and 2 of the Historic Preservation Certification Application pursuant to 36 CFR 67.3, and if the rehabilitation project's cost of rehabilitation is \$ 10 million or less, the fee shall be \$ 5,000.
  2. For all other rehabilitation projects with a cost of rehabilitation of \$ 10 million or less that have not received prior approval of applications from the Officer as specified at (d)1 above, the fee shall be \$ 10,000.
  3. If the business entity is applying for a Federal Historic Preservation Tax Credit and has received prior approval of applications from the Officer pursuant to Parts 1 and 2 of the Historic Preservation Certification Application pursuant to 36 CFR 67.3, and if the

rehabilitation project's cost of rehabilitation is greater than \$ 10 million, the fee shall be \$ 14,000.

**4.** For all other rehabilitation projects with cost of rehabilitation greater than \$ 10 million that have not received prior approval of applications from the Officer as specified at (d)3 above, the fee shall be \$ 28,000.

**5.** If a business entity with a transformative project is applying for a Federal Historic Preservation Tax Credit and has received prior approval of applications from the Officer pursuant to Parts 1 and 2 of the Historic Preservation Certification Application pursuant to 36 CFR 67.3, the fee shall be \$ 125,000.

**6.** For all other transformative projects that have not received prior approval of applications from the Officer as specified at (d)5 above, the fee shall be \$ 250,000.

**(e)** For all rehabilitation projects, including transformative projects, a business entity shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate. For a rehabilitation project with a selected rehabilitation period of 60 months, the business entity shall pay an additional non-refundable fee prior to the approval of the project cost certification for the second phase and each subsequent phase. The fee shall be as follows:

**1.** For rehabilitation projects with cost of rehabilitation of \$ 10 million or less, the fee shall be \$ 5,000;

**2.** For rehabilitation projects with cost of rehabilitation greater than \$ 10 million, the fee shall be \$ 14,000; and

**3.** For transformative projects, the fee shall be \$ 125,000.

**(f)** A business entity applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-26.11, or permission to pledge a tax credit transfer certificate purchase contract as collateral, shall pay to the Authority a fee, as follows:

**1.** For rehabilitation projects with cost of rehabilitation of \$ 10 million or less, the fee shall be \$ 5,000;

**2.** For rehabilitation projects with cost of rehabilitation greater than \$ 10 million, the fee shall be \$ 7,500; and

**3.** For transformative projects, the fee shall be \$ 25,000.

**(g)** Upon application to pledge, assign, transfer, or sell any or all of its rights, title, and interest in and to a rehabilitation agreement and in the tax credits payable thereunder, a developer shall pay to the Authority a fee, as follows:

**1.** For rehabilitation projects with cost of rehabilitation of \$ 10 million or less, the fee shall be \$ 2,500;

**2.** For rehabilitation projects with cost of rehabilitation greater than \$ 10 million, the fee shall be \$ 5,000; and

**3.** For transformative projects, the fee shall be \$ 50,000.

**(h)** A business entity shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For rehabilitation projects with cost of rehabilitation of \$ 10 million or less, a non-refundable fee of \$ 2,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 5,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval;
  2. For rehabilitation projects with cost of rehabilitation greater than \$ 10 million, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 10,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval; and
  3. For transformative projects, a non-refundable fee of \$ 50,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 125,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.
- (i) A non-refundable fee shall be paid for the first six-month extension to the date by which the business entity shall provide project financing and planning documentation required in the approval letter pursuant to N.J.A.C. 19:31-26.8(a), and a non-refundable fee shall be paid for each subsequent extension, as follows:
1. For rehabilitation projects with cost of rehabilitation of \$ 10 million or less, the fee shall be \$ 2,500;
  2. For rehabilitation projects with cost of rehabilitation greater than \$ 10 million, the fee shall be \$ 5,000; and
  3. For transformative projects, the fee shall be \$ 10,000.
- (j) A non-refundable fee shall be paid for the first six-month extension to the date by which the business entity shall submit the satisfactory evidence with respect to the eligibility requirements of the program pursuant to N.J.A.C. 19:31-26.8(d) for the respective redevelopment project, or the respective phase of a rehabilitation project with a selected rehabilitation period of 60 months; and a non-refundable fee shall be paid for each subsequent extension, as follows:
1. For rehabilitation projects with cost of rehabilitation of \$ 10 million or less, the fee shall be \$ 2,500;
  2. For rehabilitation projects with cost of rehabilitation greater than \$ 10 million, the fee shall be \$ 5,000; and
  3. For transformative projects, the fee shall be \$ 10,000.

## **N.J.A.C. 19:31-26.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.6 Review and approval of completed application; tax credit amounts**

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**(a)** In each State fiscal year for which there are tax credits available for this program, the Authority shall establish the date for the availability of the application and the date by when applications must be submitted. The Authority may establish separate dates for transformative projects and for all other rehabilitation projects, provided that the dates for the transformative projects shall be before, or the same as, the dates for all other rehabilitation projects. The Authority shall provide prior public notice of these dates through its website.

**(b)** For rehabilitation projects eligible pursuant to section 4 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-272), the Authority shall review applications submitted by the corresponding application deadline for eligibility. The review shall determine if the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

**(c)** The Authority shall allocate tax credits to eligible rehabilitation projects, first to transformative projects, and then to other rehabilitation projects in the order determined based on the factors at (c)1 through 5 below. To receive a tax credit award, a business entity's application shall meet a minimum score. The Authority shall establish weights for the factors and the minimum score before applications are submitted for the State fiscal year and shall provide public notice of the weights through its website.

1. Historic significance of the qualified property or transformative property;
2. Existing or potential threat to the qualified property or transformative property due to physical condition, encroachment, or other factors;
3. Project concept and team, including prior and future stewardship of the building during the business entity's control of the qualifying property or transformative property;
4. Existence of site control by the business entity or certainty of obtaining site control as demonstrated by an agreement that will provide site control; and
5. Positive impact of the rehabilitation project on the surrounding neighborhood.

**(d)** Before the Board may consider for approval a business entity's application for tax credits:

1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the

Treasury that the business entity and any co-applicant is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the business entity and any co-applicant, as applicable, has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the business entity and any co-applicant:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the business entity and any co-applicant; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates, or issues, its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the business entity and any co-applicant.

(e) The business entity shall certify that any contractors or subcontractors that will perform work at the qualified property or transformative property are registered, as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in, or bidding on, public works contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

(f) A business entity shall be allowed a tax credit for an approved rehabilitation project that shall not exceed the following limits:

1. For the rehabilitation of a qualified property not located in a qualified incentive tract or government-restricted municipality, 40 percent of the cost of rehabilitation paid by the business entity, or an affiliate, for the rehabilitation of the qualified property, or \$ 4 million, whichever is less;

2. For the rehabilitation of a qualified property located in a qualified incentive tract or government-restricted municipality, 45 percent of the cost of rehabilitation paid by the business entity, or an affiliate, for the rehabilitation of the qualified property, or \$ 8 million, whichever is less; and

3. For the rehabilitation of a transformative property, 45 percent of the cost of rehabilitation paid by the business entity, or an affiliate, for the rehabilitation of the transformative property, or \$ 50 million, whichever is less.



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End of Document

## **N.J.A.C. 19:31-26.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.7 Modifications**

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**(a)** Once a rehabilitation project has been approved by the Board, changes in the work as detailed within the rehabilitation agreement, including, but not limited to, demolition or removal of historic fabric, any change in the treatment of historic finishes, any change in the layout or proposed uses of the property, a reduction in the amount of the total cost of rehabilitation or cost of the rehabilitation, or any change in the financing, shall require prior review and written approval by the Authority. In considering whether to approve the modification request, the Authority shall:

- 1.** Determine that the revised rehabilitation project continues to meet the requirements for the rehabilitation of a qualified property or transformative property, as defined under the program.
- 2.** Confirm that any proposed change to the rehabilitation project will not undermine the basis for the tax credit award approved.
- 3.** Determine that the revised rehabilitation project continues to meet the minimum score and would have been eligible based on the order of applications pursuant to N.J.A.C. 19:31-26.6(c), unless the business entity demonstrates to the Authority that:
  - i.** The modification is due to unforeseeable conditions related to the rehabilitation project beyond the business entity's control and without its fault or negligence;
  - ii.** The business entity is using best efforts, with all due diligence, to proceed with the completion of the rehabilitation project; and
  - iii.** The business entity has made all reasonable efforts to prevent, avoid, mitigate, and overcome the modification.

**(b)** If the business entity discovers an unforeseeable condition for which additional work will be required, and such work would constitute a phase as defined under "selected rehabilitation period," the business entity may request a modification in the selected rehabilitation period from 24 months to 60 months. Notwithstanding the change in selected rehabilitation period, the amount of the tax credit award shall not be increased from the amount approved by the Board.

## **N.J.A.C. 19:31-26.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.8 Approval letter; rehabilitation agreement**

(a) Upon receipt of a recommendation from the Authority staff on the rehabilitation project, the Board shall determine whether or not to approve the application, the maximum amount of the tax credit award and the maximum percentage amount of allowed tax credits for its cost of rehabilitation in a rehabilitation project, and promptly notify the applicant and the Director of the Division of Taxation of the determination.

1. The Board's award of the tax credits will be subject to conditions subsequent that must be met in order to retain the tax credit award. An approval letter setting forth the conditions subsequent will be sent to the applicant and any co-applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), and that the rehabilitation project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The approval letter shall also provide the requirements necessary for the Authority to execute the rehabilitation agreement, which shall include satisfaction of all conditions of approval.
2. The approval letter shall require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the business entity or an affiliate of the business entity, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals and permits. If the Authority approval included a co-applicant, the required documents shall also include the executed participation agreement between the co-applicant and the business entity with a term that extends for the duration of the compliance period. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's approval of the tax credit award shall expire if the business entity or co-applicant, as applicable, does not submit the documentation required in this paragraph within a year after approval of the application.
3. The Authority shall review, and may require clarifying information regarding, the construction documents to determine if the proposed rehabilitation project is in substantial compliance with the Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67.7. The Authority's review of substantial compliance shall be a condition of approval.
4. If the terms of the financial commitment contained in the evidence required by the approval letter are materially different from the projected terms in the application, the Authority may reevaluate the project financing gap and reduce the size of the tax credit award accordingly.

**5.** The approval letter shall provide an estimated date of completion of the rehabilitation project and include a requirement for periodic progress reports.

**6.** For a rehabilitation project with a selected rehabilitation period of 60 months, as defined under "selected rehabilitation period," the approval letter shall identify the phases for which the business entity shall be allowed tax credits and shall state the maximum cost of rehabilitation for each such phase.

**(b)** Following satisfaction of the requirements for the execution of a rehabilitation agreement, the Authority shall enter into a rehabilitation agreement with the business entity and any co-applicant. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the rehabilitation agreement on behalf of the State. The awarding of tax credits shall be conditioned on the business entity's, and any co-applicant's, compliance with the requirements of the agreement.

**(c)** The rehabilitation agreement shall specify and include:

**1.** A detailed description of the proposed rehabilitation project. For a rehabilitation project with a selected rehabilitation period of 60 months, the rehabilitation agreement may include a rehabilitation phase agreement for each phase, which shall contain a description of the phase, the expected total rehabilitation cost and cost of rehabilitation, and the commencement and completion for the respective phase;

**2.** The maximum amount of the cost of rehabilitation and the maximum percentage of the cost of rehabilitation that will be used to calculate the amount of the tax credit award. If the actual cost of rehabilitation is less than the cost of rehabilitation set forth in the application, the tax credit shall be calculated based on the actual cost of rehabilitation;

**3.** A description of the occupancy permit or other event evidencing project completion;

**4.** An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the program;

**5.** A requirement that the business entity shall not cease to operate the rehabilitation project during the compliance period without prior written consent of the Authority;

**6.** A method for the business entity to certify that it has met the minimum cost of rehabilitation and other eligibility requirements of the program;

**7.** Representations that the business entity and any co-applicants are in substantial good standing and that the rehabilitation project will comply with all applicable laws, including, but not limited to, prevailing wage requirements pursuant to N.J.A.C. 19:31-26.12(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31-26.12(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

**8.** A provision permitting an audit of evidence and documentation, of the business entity and any co-applicant, supporting the certifications pursuant to (f) below, and the annual reports pursuant to N.J.A.C. 19:31-26.9, as the Authority deems necessary;

**9.** Reporting requirements pursuant to N.J.A.C. 19:31-26.9;

**10.** A provision permitting the Authority to amend the agreement;

**11.** A provision establishing the conditions under which the Authority, the business entity and any co-applicant, or all parties, may terminate the agreement;

**12.** A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the

Department of the Treasury, as set forth at N.J.A.C. 19:31-26.6(d)1, that the business entity and any co-applicant are in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;

**13.** A provision providing that if the business entity or any co-applicant is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-26.6(d)1, and has been given written notice thereof and an opportunity to be heard or to contest the determination, by the respective department, then the business entity and any co-applicant shall forfeit the tax credits in any year in which the business entity or any co-applicant is neither in substantial good standing with each department nor has entered into a practical corrective action;

**14.** A requirement that the business entity shall confirm that each contractor or subcontractor performing work at the rehabilitation project: is registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

**15.** The right of the Authority to conduct site inspections of the site of the rehabilitation project at any time during the course of the rehabilitation project, during the compliance period, and while the business entity and any co-applicant retains an obligation under this program;

**16.** Indemnification and insurance requirements from the business entity and any co-applicant;

**17.** Events that would trigger forfeiture, reduction, or recapture of the tax credits, including, but not limited to, provisions in this subchapter; and

**18.** Default and remedies, including, but not limited to, a default if a business entity or any co-applicant made a material misrepresentation on its application.

**(d)** For a rehabilitation project with a selected rehabilitation period of 24 months, a business entity shall submit no later than 12 months following project completion, satisfactory evidence of the completion of the rehabilitation project and satisfaction of the program eligibility requirements, which shall include, but not be limited to, the documents below. For a rehabilitation project with a selected rehabilitation period of 60 months, a business entity shall submit by no later than 12 months following completion of each phase identified in the rehabilitation agreement, satisfactory evidence of the completion of that phase and satisfaction of the program eligibility requirements relevant to that phase, which shall include, but not be limited to, the following:

**1.** Evidence of a temporary certificate of occupancy or other event evidencing project or phase completion indicated in the rehabilitation agreement;

**2.** A certification by a qualified independent certified public accountant of the cost of rehabilitation. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority. If the cost of rehabilitation is reduced below the minimum total cost of rehabilitation for eligibility, the rehabilitation project shall no longer be eligible. The Authority shall qualify certified public accountants and provide to the business entity the list of qualified certified public accountants, provided, however, the business entity may select a certified public accountant that is independent to the business entity and any co-applicant and not on the Authority's list of qualified certified public accountants for purposes of the project

cost certification if the business entity demonstrates an extenuating circumstance prohibiting the business entity from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or a lack of independence of the qualified certified public accountants from the business entity;

**3.** A certification indicating whether the business entity is aware of any condition, event, or act that would cause the business entity or any co-applicant not to be in compliance with the approval, the rehabilitation agreement, the Act, or this subchapter;

**4.** For rehabilitation projects with a selected rehabilitation period of 24 months or for any phase of a rehabilitation project with a selected rehabilitation period of 60 months, documentary evidence that a deed restriction reserving units pursuant to N.J.A.C. 19:31-26.3(e) has been recorded against each residential component, if any, of the rehabilitation project or the corresponding phase;

**5.** For rehabilitation projects with a selected rehabilitation period of 24 months or for any phase of a rehabilitation project with a selected rehabilitation period of 60 months, documentary evidence that a deed restriction has been recorded prohibiting modifications to the qualified property or transformative property, or the corresponding phase, during the compliance period, so that it ceases to meet the requirements for the rehabilitation of a qualified property or transformative property, or corresponding phase, as defined under the program, or ceases to meet the requirements of the rehabilitation agreement;

**6.** Documentary evidence that a deed restriction has been recorded requiring construction and building services' prevailing wage at the qualified property or transformative property pursuant to N.J.A.C. 19:31-26.12(b) and (c);

**7.** A certification by the chief executive officer or equivalent officer of the business entity that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a developer to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws;

**8.** If the Authority approval included a co-applicant, a certification that the participation agreement between the business entity and the co-applicant remains in effect and is not in default;

**9.** Certification by the architect or design consultant of record for the rehabilitation project confirming that all work was completed in accordance with the construction documents in the rehabilitation agreement;

**10.** Photographs showing all exterior building facades, significant and representative interior spaces, and examples of significant historic fabric repaired and restored as part of the rehabilitation project; and

**11.** Updated and actual capital financing information.

**(e)** If the Authority determines upon receipt of documentation required at (d) above that the actual capital financing approach utilized by the rehabilitation project has resulted in a project financing gap that is smaller than the project financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit award. If there is no project financing gap due to the actual capital financing approach utilized by the project, then the developer shall forfeit the tax credit award.

**(f)** Once the Authority accepts the documentation required at (d) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the business entity and the Director, and the business entity or co-applicant shall receive its tax credit certificate and shall be allowed the use of the tax credit certificate against the tax otherwise due pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-26 5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), and section 1 at P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5, as follows:

1. For a rehabilitation project with a selected rehabilitation period of 24 months, the business entity or co-applicant shall be issued a tax credit certification and certificate of compliance for the accounting or privilege period in which the business entity or affiliate makes the final payment for the cost of the rehabilitation and receives a temporary certificate of occupancy for the rehabilitation project, or upon any other event evidencing project completion as set forth in the rehabilitation agreement. The tax credit allowed shall be based on the information submitted in the certification pursuant to (d) above, provided it shall not exceed the maximum amount determined by the Board pursuant to (a) above.

2. For the first phase of a rehabilitation project with a selected rehabilitation period of 60 months, the business entity or co-applicant shall be issued a tax credit certification based on the information for the first phase submitted in the certification pursuant to (d) above and the amount approved by the Board for the subsequent phases, provided the total tax credit amount shall not exceed the maximum amount determined by the Board for the rehabilitation project pursuant to (a) above. No tax credit certificate will be valid without the certificate of compliance issued for the corresponding phase pursuant to (f)3 below.

3. For all phases of a rehabilitation project with a selected rehabilitation period of 60 months, the Authority shall issue a certificate of compliance allowing the business entity or co-applicant the use of a portion of the tax credit during the accounting or privilege period in which the phase approved by the Board for the tax credit is completed and for which the business entity receives a temporary certificate of occupancy for the phase, or upon any other event evidencing phase completion as set forth in the rehabilitation agreement, provided the amount allowed in the certificate of compliance shall not exceed the maximum amount determined by the Board for the phase pursuant to (a) above.

**(g)** Credits granted to a partnership or a New Jersey S corporation shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director, accompanied by any additional information as the Director may prescribe, consistent with any rule, guidance, or other publication issued by the Division of Taxation.

## **N.J.A.C. 19:31-26.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.9 Reporting requirements and annual report**

**(a)** A business entity approved for a tax credit award and that enters into a rehabilitation agreement shall submit annually, commencing in the year in which the tax credit award is issued and for the remainder of the compliance period, a report indicating whether the business entity is aware of any condition, event, or act that would cause the business entity or any co-applicant not to be in compliance with the rehabilitation agreement or the provisions of this subchapter and the Act and any additional reporting requirements contained in the rehabilitation agreement or tax credit certificate. The business entity, or an authorized agent of the business entity, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. The Authority may provide any information contained in the annual report to the Officer for any rehabilitation project.

**(b)** The annual report shall consist of:

1. A certification indicating whether or not the business entity is aware of any condition, event, or act, which would cause the business entity or any co-applicant not to be in compliance with the approval, the Act, the rehabilitation agreement, or this subchapter;
2. A certification indicating that the rehabilitation project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
3. For the two years after the first certificate of compliance is issued, evidence that the rehabilitation project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31-26.12(a);
4. Evidence that the rehabilitation project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-26.12(b) and (c);
5. A tax clearance certificate as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the business entity and any co-applicant;
6. A certification from the business entity that it has not modified the qualified property or transformative property, so that it ceases to meet the requirements for the rehabilitation of a qualified property or transformative property as set forth at N.J.A.C. 19:31-26.3, or ceases to meet the requirements of the rehabilitation agreement;
7. A certification from the business entity that adequate climate control and building envelope have been maintained and that the building is secure. The business entity shall also provide a description of the climate control, and the measures to preserve and secure the building;



- 8.** For a rehabilitation project with residential units, documentary evidence that the deed restriction required pursuant to N.J.A.C. 19:31-26.8(d)4 remains recorded, and documentation from the administrative agent that the rehabilitation project remains in compliance with the affordability controls pursuant to the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.);
  - 9.** For the first annual report, the permanent certificate of occupancy covering the entire rehabilitation project;
  - 10.** If the Authority approval included a co-applicant, a certification that the participation agreement between the business entity and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required under the participation agreement; and
  - 11.** In conducting its annual review, the Authority may require a business entity to submit any information determined by the Authority to be necessary and relevant to its review.
- (c)** The annual report required at (a) above is due 120 days after the end of the business entity's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, may result in recapture of some or all of the tax credit award. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.
- (d)** Upon receipt, review, and acceptance of each annual report submitted, the Authority shall provide to the business entity and any co-applicant a letter indicating acceptance.

## **N.J.A.C. 19:31-26.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.10 Application for tax credit transfer certification**

**(a)** A business entity or co-applicant holding an unused, otherwise allowable tax credit issued pursuant to sections 2 through 8 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276), may apply to the Director and the Authority for a tax credit transfer certificate pursuant to this section. Upon receipt thereof, the business entity or co-applicant may sell or assign, in full or in part, the tax credit transfer certificate to another taxpayer in exchange for private financial assistance to be provided by the purchaser or assignee of the tax credit transfer certificate to the seller thereof. The business entity or co-applicant shall not sell a tax credit transfer certificate allowed pursuant to this section for consideration received by the business entity or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value, which shall be permitted, except a developer of a residential project consisting of newly constructed residential units that has received Federal low income housing tax credits pursuant to 26 U.S.C. § 42(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 75 percent subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project. The purchaser or assignee of the tax credit transfer certificate may apply the face value of the tax credit transfer certificate acquired against the purchaser's or assignee's applicable tax liability by claiming the tax credit on the purchaser's or assignee's corporation business tax or insurance premiums tax return with the corresponding tax credit transfer certificate accompanying the tax return.

**(b)** A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a rehabilitation project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

**(c)** A tax credit transfer certificate issued by the Director and the Authority shall include a statement waiving the rights of the business entity or co-applicant to which the tax credit has been granted to claim any amount of remaining tax credit against any tax liability.

**(d)** The tax credit transfer certificate issued to a business entity or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 2 through 8 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276), and any other terms and conditions that the Director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

**(e)** The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. Name of the transferor;
2. Name of the transferee;
3. Value of the tax credit transfer certificate;
4. State tax against which the transferee may apply the tax credit; and
5. Consideration received by the transferor.

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End of Document

## **N.J.A.C. 19:31-26.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.11 Assignment of rights of rehabilitation agreement**

**(a)** A business entity who has entered into a rehabilitation agreement pursuant to N.J.A.C. 19:31-26.8(b) may, upon notice to and written consent of the Authority, pledge, assign, transfer, or sell any, or all, of its rights, title, and interest in and to the rehabilitation agreement and in the tax credit awards payable under the rehabilitation agreement, and the right to receive the tax credit awards, along with the rights and remedies provided to the business entity under the rehabilitation agreement. To decide whether to consent, the Authority will consider the purchaser's proposed use and treatment of the qualified property or transformative property. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. If the Authority approval included a co-applicant, prior to requesting the consent of the Authority, the business entity shall obtain in writing the co-applicant's consent, and the business entity shall provide the co-applicant's written consent to the Authority with the business entity's notice.

**(b)** A co-applicant who has entered into a rehabilitation agreement pursuant to N.J.A.C. 19:31-26.8(b) may, upon notice to and written consent of the Authority, assign, transfer, or sell any or all of its rights, title, and interest in and to the rehabilitation agreement and in the tax credit awards payable under the rehabilitation agreement, and the right to receive the tax credit awards, along with the rights and remedies provided to the co-applicant under the rehabilitation agreement, provided that the purchaser shall be a non-profit under section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority will consider the contributions of the co-applicant and the proposed contributions by the purchaser. The new purchaser shall be the co-applicant and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation agreement with the business entity. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Prior to requesting the consent of the Authority, the co-applicant shall obtain in writing the business entity's consent, and the co-applicant shall provide the business entity's written consent to the Authority with the co-applicant's notice.

**(c)** Any pledge of a tax credit award made by the business entity shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The tax credit award pledged, and thereafter received, by the business entity shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the business entity irrespective of whether the parties have notice thereof. As a condition of any tax credit award, the grantee, assignee, pledgee, or subsequent holder of the tax credit award shall immediately file notice of the same with the clerk of the county in which the project is located.

**(d)** The Authority shall publish on its Internet website the following information concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in a rehabilitation agreement;
2. The name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the rehabilitation agreement;
3. The value of a right, title, or interest in the rehabilitation agreement; and
4. The consideration received by the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in the rehabilitation agreement.

## **N.J.A.C. 19:31-26.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.12 Affirmative action and prevailing wage**

- (a)** The Authority's affirmative action requirements at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), and N.J.A.C. 19:30-3 shall apply to the rehabilitation project. The affirmative action requirements shall apply until the later of the completion of the rehabilitation project or two years after the first tax credit is issued.
- (b)** The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and N.J.A.C. 19:30-44 shall apply to construction contracts for work performed for the rehabilitation project during the selected rehabilitation period. This prevailing wage requirement shall apply until the later of the end of the selected rehabilitation period or two years after the first tax credit is issued. Prevailing wages shall apply to all work done by tenants at the redevelopment project.
- (c)** Prevailing wages shall apply to building services at the qualified property or transformative property starting with the completion of the first phase of a rehabilitation project with a selected rehabilitation period of 60 months or the end of the selected rehabilitation period for a rehabilitation project with a selected rehabilitation project of 24 months. For all rehabilitation projects, this prevailing wage requirement shall continue for 10 years following the end of the selected rehabilitation period. In the event a portion of a rehabilitation project is undertaken by a tenant and the tenant has a leasehold of more than 35 percent of space in the building owned or controlled by the business entity, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire rehabilitation project and all tenants therein.

## **N.J.A.C. 19:31-26.13**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.13 Reduction and recapture of tax credits**

**(a)** If during the compliance period, a business entity that has received a tax credit modifies the qualified property or transformative property so that it ceases to meet the requirements for the rehabilitation of a qualified property or transformative property as defined under the program or ceases to meet the requirements of the rehabilitation agreement, then the Authority may recapture some or all of the tax credit allowed under the program. The requirements include, but are not limited to: substantial compliance with the Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67.7; remaining an income producing property; minimum number of residential units, if applicable; maintaining the rehabilitation project so that it meets the minimum score pursuant to N.J.A.C. 19:31-26.6(c); and for a transformative project, continuing to meet the definition of transformative property.

**(b)** If, during the compliance period, the business entity ceases to maintain adequate climate control or fails to preserve the building envelope, then the Authority may recapture some or all of the tax credit allowed under the program.

**(c)** If any worker employed to perform building services work at the rehabilitation project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31-26.12(b) and (c) during the relevant tax period, then the Authority shall recapture a proportional amount of the tax credit.

**(d)** In the case of a business entity that has chosen a selected rehabilitation period of 60 months, if the architectural plans change in the course of the phased rehabilitation project, so that the rehabilitation of the qualified property or transformative property would, upon the rehabilitation's completion, no longer qualify for a tax credit pursuant to the requirements of this program, then the business entity's tax liability for the accounting or privilege period in which the business entity was issued the certificate of compliance shall be increased by the full amount of the tax credit that the Authority had previously allowed by that certificate of compliance upon the completion of a distinct's prior project phase that the business entity has applied against its tax liability in the prior accounting or privilege period. The Authority shall notify the business entity and the Director. The Director may take adverse action against the business entity, consistent with the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., including, but not limited to, determining a deficiency with respect to payment due to the increased liability and assessing penalties and interest from the date of the accounting or privilege period. Any portion of the tax credit that the business entity has not yet used or transferred at the time of the disallowance by the Officer shall be deemed void.

- (e)** If, based on new information, the Authority determines that recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits as if the Authority had been timely informed.
- (f)** If, at any time, the Authority determines that the business entity or co-applicant made a material misrepresentation on the business entity's application, project completion certification, annual report, or any related submissions, the Authority shall recapture some or all of the tax credits of the business entity and any co-applicant, which shall be in addition to any other remedies in the rehabilitation agreement and any criminal or civil penalties to which the business entity, co-applicant, and the respective officer of the business entity or co-applicant may be subject.
- (g)** Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury, in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.
- (h)** The Authority shall notify the Officer of any reduction or recapture of tax credit awarded under this program.
- (i)** If all, or part of a tax credit sold or assigned pursuant to section 5 at P.L. 2020, c. 156, and N.J.A.C. 19:31-26.11 is subject to recapture, then the Authority shall pursue recapture from the business entity and, to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.
- (j)** The Authority shall notify the Director of any funds recaptured pursuant to this section. Any recaptured funds, including penalties and interest, shall be deposited into the General Fund of the State.



## **N.J.A.C. 19:31-26.14**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.14 Appeals**

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- (a)** The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b)** An applicant may appeal the Board's action by submitting in writing to the Authority, within 21 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c)** Appeals that are timely submitted shall be handled by the Authority as follows:
  - 1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority cannot consider any new evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the application deadline.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  - 3.** The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  - 4.** Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

## **N.J.A.C. 19:31-26.15**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 26. HISTORIC PROPERTY REINVESTMENT PROGRAM***

### **§ 19:31-26.15 Reports on implementation of program**

On or before December 31, 2025, the Authority, in consultation with the Officer and the Director, shall prepare and submit a written report regarding the number and total monetary amount of tax credits granted for the rehabilitation of qualified properties or transformative properties pursuant to section 4 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-272), the geographical distribution of the credits granted, a summary of the tax credit transfer program established pursuant to section 5 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-273), an evaluation of the effectiveness of the tax credits provided pursuant to sections 2 through 8 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-270 through 34:1B-276), in promoting the rehabilitation of historic properties, recommendations for administrative or legislative changes to increase the effectiveness of the program, and any other information that the Authority, the Officer, or the Director may deem useful or appropriate. This report shall be submitted to the Governor and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

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End of Document

## **N.J.A.C. 19:31-26.16**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-26.16 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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End of Document

## **N.J.A.C. 19:31-27.1**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the Brownfields Redevelopment Incentive Program Act (Act), sections 9 through 19 at P.L. 2020, c. 156, as amended by sections 5 through 10 at P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287). The Act creates the Brownfields Redevelopment Incentive Program (Program) pursuant to the jurisdiction of the New Jersey Economic Development Authority. The purpose of the Program is to provide tax credits to developers of redevelopment projects located on brownfield sites for a percentage of remediation costs. The total value of tax credits approved by the Authority shall not exceed the limitations set forth in section 98 at P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287).

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End of Document

## **N.J.A.C. 19:31-27.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.2 Definitions**

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The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the "New Jersey Brownfields Redevelopment Incentive Program Act" sections 9 through 19 at P.L. 2020, c. 156, as amended by sections 9 through 19 at P.L. 2021, c. 160 (N.J.S.A. 34:1B-277 through 287).

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the developer. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to the Internal Revenue Code of 1986 (26 U.S.C. § 414(c)).

"Authority" means the New Jersey Economic Development Authority established by N.J.S.A. 34:1B-4.

"Authorized agent of the developer" means the chief executive officer, or equivalent officer, for the North American operations of the developer.

"Board" means the Board of the New Jersey Economic Development Authority, established pursuant to N.J.S.A. 34:1B-4.

"Brownfield site" means any former or current commercial or industrial site that is currently vacant or under-utilized and on which there has been, or there is suspected to have been, a discharge of a contaminant, or on which there is contaminated building material.

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. "Building services" shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the "prevailing wage," as defined in section 2 at P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

"Contaminated building material" means components of a structure where abatement or removal of asbestos, or remediation of materials containing hazardous substances defined pursuant to section 3 at P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11b), is required by applicable Federal, State, or local rules or regulations.

"Contamination" or "contaminant" means any discharged hazardous substances, as defined pursuant to section 3 at P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11b), hazardous waste as defined pursuant to section 1 at P.L. 1976, c. 99 (N.J.S.A. 13:1E-38), pollutant as defined

pursuant to section 3 at P.L. 1977, c. 74 (N.J.S.A. 58:10A-3), or contaminated building materials.

"Department" means the New Jersey Department of Environmental Protection.

"Developer" or "applicant" means any person that enters or proposes to enter into a redevelopment agreement with the Authority pursuant to the provisions at N.J.A.C. 19:31-27.9 and section 13 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-281), including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

"Director" means the Director of the Division of Taxation in the New Jersey Department of the Treasury.

"Discharge" means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation rules, at N.J.A.C. 7:26E-1.8.

"Diverse" means being a historically under-served or under-represented identity within the following categories: race, ethnicity, gender, sexual orientation, disability status, educational attainment, veteran status, nation of origin, and language use.

"Equity" means developer-contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the site of the redevelopment project, and any other investment by the developer in the project, as deemed acceptable by the Authority. Property value shall be the lesser of either: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application, or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and tax credits. Equity shall not include State grants or tax credits.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that on January 7, 2021, the effective date of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality, or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires for the duration of the agreement that: any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the

labor organization to be their representative by signing authorization cards indicating their preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and which the Commissioner of the Department of Labor and Workforce Development has determined represents substantial numbers of retail or distribution center employees in the State.

"Licensed or certified professional" means an individual who is licensed or certified in remediation or other activities that are not subject to the jurisdiction of the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), including, but not limited to: contaminated building material abatement or removal; hazardous materials or waste disposal; building and structural remedial activities; or other infrastructure remedial activities. Such individuals may include, but are not limited to: a New Jersey licensed professional engineer, an Asbestos Hazard Emergency Response Act (AHERA) inspector, a New Jersey certified lead inspector, an industrial hygienist, or other appropriately qualified and licensed or certified professional.

"Licensed site remediation professional" or "LSRP" means an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to section 7 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-7) or the Department pursuant to section 12 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-12).

"Minimum environmental and sustainability standards" means standards established by the Authority in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 at P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

"Program" means the Brownfields Redevelopment Incentive Program established by section 11 at P.L. 2020, c. 156, as amended by sections 5 through 10 at P.L. 2021, c. 160 (N.J.S.A. 34:1B-277).

"Project financing gap" means the part of the total cost of remediation, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total cost of remediation, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer-contributed capital shall not be less than 10 percent of the total cost of remediation.

"Qualified incentive tract" means either a population census tract having a poverty rate of 20 percent or more, or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

"Reasonable and appropriate return on investment" means the discount rate at which the present value of the future cash flows of an investment is equal to the cost of the investment. For the purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any Federal, State, or local tax credits.

"Redevelopment agreement" means an agreement between the Authority and a developer in accordance with N.J.A.C. 19:31-27.9 pursuant to which the developer agrees to perform any work or undertaking necessary for a redevelopment project, comprising of the remediation of

a brownfield site, which is the site of the redevelopment project, and may involve the clearance, development or redevelopment, construction, reconstruction, or rehabilitation of any structure or improvement of commercial, industrial, or public structures or improvements within an area of land whereon a brownfield site is located.

"Redevelopment project" means a specific construction project or improvement undertaken, pursuant to the terms of a redevelopment agreement, by a developer within an area of land whereon a brownfield site is located. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved. Redevelopment projects shall include improvements that are solely or primarily remediation related to the remediation of the site of the redevelopment project.

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, or any portion thereof, as those terms are defined in section 23 at P.L. 1993, c. 139 (N.J.S.A. 58:10B-1); hazardous materials abatement; hazardous materials or waste disposal; building and structural remedial activities, including, but not limited to, demolition, asbestos abatement, polychlorinated biphenyl removal, contaminated wood or paint removal, or other infrastructure remedial activities. However, "remediation" or "remediate" shall not include the payment of compensation for damage to or loss of natural resources.

"Remediation costs" means all reasonable costs by the developer and any affiliate that are associated with the remediation of a contaminated site or other brownfield site, except: the cost of acquisition of the site at which the redevelopment project will be conducted; any costs incurred in financing the remediation, legal fees, incentive consultant fees; and Authority fees. Remediation costs may include required Department site remediation program fees and other Department permit fees. Remediation costs shall not include payment for penalties or violations. Remediation costs shall not include costs prior to application, except that remediation costs shall include costs for studies and surveys including, but not limited to, preliminary environmental assessments, environmental site investigations, and workplans incurred within the 24 months prior to date of application.

"Representative of the community" means being a heterogenous group that includes individuals sharing diverse identities with those found within the diverse population of a defined community no larger than the municipality(s) in which the redevelopment project is located.

"Response Action Outcome" or "RAO" has the meaning as defined by the Department in the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1.3.

"Site of the redevelopment project" means the brownfield site at which the redevelopment project is located.

"Total cost of remediation" means any and all costs incurred for, and in connection with, the redevelopment project by the developer and any affiliate, until submission of the documents necessary for the issuance of certification of completion of remediation by the Department or upon such other event evidencing project completion as set forth in the redevelopment agreement. These costs may also include fees incurred for financing, penalties, and violations of the redevelopment project.



## **N.J.A.C. 19:31-27.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.3 Eligibility criteria**

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**(a)** The developer of a redevelopment project shall be eligible to receive a tax credit award only if the developer demonstrates to the Authority at the time of application that:

1. The redevelopment project is located on a brownfield site;
2. Without the tax credit award, the redevelopment project is not economically feasible;
3. A project financing gap exists and the tax credit award being considered for the project is equal to or less than the project financing gap;
4. The developer, including all affiliates:
  - i. Has not commenced any remediation activity at the site of the redevelopment project prior to submitting an application and will not commence any such remediation activity prior to execution of the redevelopment agreement, other than preliminary environmental assessments and environmental site investigations. The developer shall demonstrate and certify, under penalty of perjury, to the Authority that: it intends to remediate and redevelop the site immediately upon approval of the tax credit, satisfy all of the conditions in the approval letter, and execute a redevelopment agreement pursuant to N.J.A.C. 19:31-27.9; or
  - ii. Could not have reasonably known the full extent of the site contamination prior to commencing the remediation, if the developer or an affiliate has commenced remediation or clean up at the site for which the developer is applying for a tax credit. The developer shall demonstrate and certify, under penalty of perjury, to the Authority that the developer, including all affiliates, cannot reasonably finish the remediation and commence a construction project absent the tax credit;
5. The developer has obtained and submitted to the Authority a letter evidencing support for the redevelopment project from the governing body of the municipality or municipalities in which the redevelopment project is located; and
6. The developer and all affiliates shall comply with the prevailing wage requirements at N.J.A.C. 19:31-27.14.

**(b)** The Authority shall review the proposed total cost of remediation, evaluate, and validate the project financing gap estimated by each developer applying for a tax credit award, as follows:

1. The developer shall demonstrate that the redevelopment project has equity of at least 20 percent of the total cost of remediation, except that if a redevelopment project is located in a

government-restricted municipality or a qualified incentive tract, the equity shall be at least 10 percent of the total cost of remediation;

**2.** The project financing gap analysis shall include, but not be limited to: an evaluation of the total cost of the remediation, the amount of capital sufficient to complete the remediation, and reasonable and appropriate return on investment; and

**3.** As determined by the Department, the remediation costs are reasonable and appropriate.

**(c)** The Authority shall not approve a developer or enter into a redevelopment agreement with a developer, unless the developer demonstrates, to the satisfaction of the Department, that the developer, including all affiliates: did not discharge a hazardous substance at the brownfield site proposed to be in the redevelopment agreement; is not in any way responsible for the hazardous substance; and is not a corporate successor to the discharger, or to any person in any way responsible for the hazardous substance, or to anyone liable for cleanup and removal costs pursuant to section 8 at P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11g).

**(d)** A redevelopment project that received a reimbursement pursuant to sections 34 through 39 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-26 through 31) shall not be eligible to apply for a tax credit pursuant to the Program.

## **N.J.A.C. 19:31-27.4**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.4 Program application requirements**

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**(a)** In each State fiscal year for which there are tax credits available for the Program, the Authority shall establish the date for the availability of the application and the date by when applications must be submitted. The Authority shall provide prior public notice of these dates through its website.

**(b)** Each application to the Authority, made by a developer, shall include the following information:

1. The name of the developer and the names of any affiliates;
2. The name of the redevelopment project, as used in all applicable documents, and the address of the brownfield site, including multiple addresses, if applicable;
3. The contact information of the person identified as the primary contact for the developer;
4. The address of the developer and prospective future address of the developer, if different;
5. Organizational structure of the developer, including all affiliates;
6. The developer's New Jersey tax identification number;
7. The developer's Federal tax identification number;
8. The name and organizational structure of the owner of the site of the redevelopment project;
9. The name and contact information of the Licensed Site Remediation Professional for the redevelopment project;
10. If applicable, the name and contact information of the appropriately licensed or certified professional(s) for the redevelopment project, the basis for qualification of the licensed or certified professional(s) for the relevant remediation activities, and a copy of the corresponding license(s) or certification(s);
11. The total projected number of construction employees and permanent employees at the redevelopment project;
12. The location and description of the brownfield site, including, but not limited to: a narrative description of the brownfield site, a map or aerial photograph clearly indicating the boundaries and location of the brownfield site, and the lot and block number, or other description of the property, as required by the Authority;
13. An appraisal of as-is value of the brownfield site, if remediated;

- 14.** A narrative explaining the level of experience and qualifications of the developer and project team, which shall demonstrate sufficient expertise to complete the redevelopment project, including, but not limited to, examples of successful completion of projects of similar size and scope;
- 15.** A narrative description of the redevelopment project, including, but not limited to: the approach to the redevelopment project, proposed remediation methods for addressing known contamination and hazards, and contingency plans for addressing additional contamination or hazards that may be discovered during implementation of the redevelopment project;
- 16.** An estimate and breakdown of the remediation costs, and the total cost of remediation;
- 17.** Remediation plans, including drawings. All plans shall be prepared by a Licensed Site Remediation Professional or, in the case of remediation that is not subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), by an appropriately licensed or certified professional;
- 18.** An anticipated redevelopment project schedule showing project milestones;
- 19.** The financial information of the redevelopment project, including, but not limited to: any Federal, State, or local financial assistance for the redevelopment project; proposed terms of financing; purchase contract agreement for the brownfield site; and projected reasonable and appropriate return on investment;
- 20.** A list of all of the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and Department of the Treasury permits and approvals or obligations and responsibilities with which the developer is associated or in which the developer has an interest. The list shall identify the entity that applied for, or received, such permits and approvals, or has such obligations and responsibilities, by identifying program interest numbers, licensing numbers, or the equivalent. The developer shall also submit a written certification by the chief executive officer, or equivalent officer for North American operations, of the developer stating that the developer applying for the Program satisfies the criteria at N.J.A.C. 19:31-27.6(d) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
- 21.** A certification by the chief executive officer, or equivalent officer for North American operations, of the developer that the officer has reviewed the application information submitted and that the representations contained therein are true, correct, and accurate under the penalty of perjury;
- 22.** A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority's debarment and disqualification rules at N.J.A.C. 19:30-2;
- 23.** Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39);
- 24.** A list of all the development subsidies, as defined at P.L. 2007, c. 200 (N.J.S.A. 52:39-1), that the developer is requesting or receiving; the name of the granting body; the value of each development subsidy; and the aggregate value of all development subsidies requested or received;
- 25.** The status of control of the brownfield site and any agreements that provide a right of access to the developer or an affiliate to perform and complete the redevelopment project. If the developer has not secured access to the site at the time of application, an agreement with

the current owner of the site evidencing an intent or obligation to provide the necessary right of access to complete the redevelopment project, including, but not limited to, a letter of intent;

**26.** A description of the zoning applicable to the brownfield site and a list and status of all required Federal, State, and local government permits and local planning and zoning board approvals that have been issued for the redevelopment project or will be required to be issued pending resolution of financing;

**27.** A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed redevelopment project, including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

**28.** As applicable, the most recent draft or final Site Investigation Report, and/or the most recent Asbestos Containing Materials Survey, Universal Waste Survey, Lead Based Paint Survey, Pre-Demolition Survey, or other similar report, study, or document describing the documentation required by the Authority or the Department;

**29.** To be scored on the factor at N.J.A.C. 19:31-27.6(b)3, for the entity or entities in the developer's ownership structure that will have direct or indirect control over the actions by the developer to undertake the redevelopment project, information on the diversity of the owners and board of directors (or partners or members if no board of directors exist), which shall include certification as to the membership in a diverse group for all applicable owners and directors (or partners or members, as appropriate); the percentage of ownership held by each diverse owner; and an explanation on how the current board of directors (or partners or members, as appropriate) and owners are diverse and representative of the community in which the redevelopment project is located based on governmental data, including, but not limited to, the most recently available census data; and

**30.** Any other necessary and relevant information as determined by the Authority or the Department for a specific application, including, but not limited to, information needed to: complete project financial review, to assess developer capacity, and to demonstrate that the developer or an affiliate is not responsible for the contamination at the site of the redevelopment project.

**(c)** The Authority may, in its sole discretion, consider two or more applications as one application for one redevelopment project based on factors including, but not limited to: the location of the redevelopment project(s), the types of uses proposed, and the developer's financing and operational plans.

**(d)** If circumstances require a developer to amend its application to the Authority, the developer, or chief executive officer, or equivalent officer for the North American operations of the developer, shall certify to the Authority that the information provided in its amended application is true, correct, and accurate under the penalty of perjury.

## **N.J.A.C. 19:31-27.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.5 Fees**

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- (a)** An applicant for tax credits pursuant to the Program shall submit a one-time non-refundable application fee. The application fee shall be, as follows:
1. For redevelopment projects with total cost of remediation of \$ 5 million or less, the fee shall be \$ 2,000; and
  2. For redevelopment projects with total cost of remediation greater than \$ 5 million, the fee shall be \$ 7,000.
- (b)** A developer shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third-party retained by the Authority, if the Authority deems such retention to be necessary.
- (c)** The developer shall pay to the Authority a fee prior to the approval of the tax credit by the Authority, as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:
1. For redevelopment projects with total cost of remediation of \$ 5 million or less, the fee shall be \$ 5,000; and
  2. For redevelopment projects with total cost of remediation greater than \$ 5 million, the fee shall be \$ 15,000.
- (d)** For all redevelopment projects, a developer shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate. The fee shall be, as follows:
1. For redevelopment projects with total cost of remediation of \$ 5 million or less, the fee shall be \$ 5,000; and
  2. For redevelopment projects with total cost of remediation greater than \$ 5 million, the fee shall be \$ 15,000.
- (e)** A developer applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-27.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral, shall pay to the Authority a fee, as follows:
1. For redevelopment projects with total cost of remediation of \$ 5 million or less, the fee shall be \$ 5,000, and \$ 2,500 for each additional request; and
  2. For redevelopment projects with total cost of remediation greater than \$ 5 million, the fee shall be \$ 7,500, and \$ 2,500 for each additional request.

**(f)** Upon application to pledge or assign any or all of its right, title, and interest in, and to, a redevelopment agreement and in the tax credits payable thereunder, a developer shall pay to the Authority a fee, as follows:

1. For redevelopment projects with total cost of remediation of \$ 5 million or less, the fee shall be \$ 5,000, and \$ 2,500 for each additional request; and
2. For redevelopment projects with total cost of remediation greater than \$ 5 million, the fee shall be \$ 7,500, and \$ 2,500 for each additional request.

**(g)** A developer shall pay to the Authority a non-refundable fee for each request for a change, addition, or modification to the award, as follows:

1. For redevelopment projects with total cost of remediation of \$ 5 million or less, a non-refundable fee of \$ 2,500 shall be paid for each minor change, addition, or modification; and a non-refundable fee of \$ 5,000 shall be paid for each major change, addition, or modification to the award, such as those requiring extensive staff time and Board approval; and
2. For redevelopment projects with total cost of remediation greater than \$ 5 million, a non-refundable fee of \$ 5,000 shall be paid for each minor change, addition, or modification; and a non-refundable fee of \$ 10,000 shall be paid for each major change, addition, or modification to the award, such as those requiring extensive staff time and Board approval.

**(h)** A non-refundable fee shall be paid for the first six-month extension to the date by when: the redevelopment project must be completed as set forth at N.J.A.C. 19:31-27.9(e), the annual report and the progress report must be submitted as required at N.J.A.C. 19:31-27.11, and documentation required at N.J.A.C. 19:31-27.12 shall be submitted, a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For redevelopment projects with total cost of remediation of \$ 5 million or less, the fee shall be \$ 2,500, except that for any extension that requires Board approval, the fee shall be \$ 7,500; and
2. For redevelopment projects with total cost of remediation greater than \$ 5 million, the fee shall be \$ 5,000, except that for any extension that requires Board approval, the fee shall be \$ 15,000.

## **N.J.A.C. 19:31-27.6**

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### **§ 19:31-27.6 Approval of completed application**

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**(a)** For redevelopment projects eligible pursuant to section 12 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-280) and N.J.A.C. 19:31-27.3, the Authority shall review applications submitted by the corresponding application deadline. The review shall determine if the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information to make an eligibility determination for the subject application.

**(b)** The Authority shall allocate tax credits to eligible redevelopment projects in ranked order based on the factors set forth below. To receive a tax credit award, a developer's application shall meet a minimum score. The Authority shall establish weights for the factors and the minimum score before applications are submitted for the State fiscal year and shall provide public notice of the weights through its website. These factors may include:

1. The environmental history of the brownfield site and the impact of the contamination, hazard, or other environmental concern on the surrounding community;
2. The degree to which the redevelopment project enhances and promotes job creation and economic development, such as the land use and other designations of the site of the redevelopment project related to uses and purposes of the site, including, but not limited to, if it is an area in need of redevelopment;
3. Positive impact of the redevelopment project on the surrounding community. For the entity or entities in the applicant's ownership structure that will have direct or indirect control over the actions by the applicant to undertake the redevelopment project, the extent to which such entity or entities have owners or board of directors (or members or partners if no board of directors) who are diverse and representative of the community in which the redevelopment project is located;
4. Economic feasibility of the redevelopment project and project viability, including level of experience and qualifications of the applicant's key personnel and strategic partners; and
5. The extent to which the remediation will reduce environmental or public health stressors in an overburdened community, as those terms are defined by section 2 at P.L. 2020, c. 92 (N.J.S.A. 13:1D-158), and how the remediation will address climate resiliency.

**(c)** Before the Board may consider for approval a developer's application for tax credits:



1. The Authority will confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the developer has entered into a corrective action plan or other agreement with the respective department in order to regain good standing with the above mentioned departments, as applicable.
  2. Substantial good standing shall be determined by each department and mean, at a minimum, that the developer:
    - i. As to the Department of Labor and Workforce Development, Department of Environmental Protection, and Department of the Treasury:
      - (1) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective departments that apply to the developer; and
      - (2) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto;
    - ii. As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department; and
    - iii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgate or issue, their own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.
  3. The Authority may contract with an independent third party to perform a background check on the developer.
  4. The Authority will confirm with the Department of Environmental Protection that the developer has:
    - i. Entered into a memorandum of agreement or other oversight document with the Commissioner of the Department of Environmental Protection in accordance with the provisions of section 37 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-29); or
    - ii. Complied with the requirements set forth in subsection b. of section 30 at P.L. 2009, c. 60 (N.J.S.A. 58:10B-1.3) for the remediation of the site of the redevelopment project.
- (d)** The developer shall certify that any contractors or subcontractors that will perform work at the site of the redevelopment project are registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on public works contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

## **N.J.A.C. 19:31-27.7**

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### **§ 19:31-27.7 Tax credit award amounts**

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**(a)** A developer who is eligible pursuant to, and complies with, the Act and this subchapter, shall be allowed a tax credit for an approved redevelopment project that shall not exceed the following limits:

- 1.** For a redevelopment project located in a qualified incentive tract or government-restricted municipality, 60 percent of the actual remediation costs, 60 percent of the projected remediation costs as set forth in the redevelopment agreement, or \$ 8 million, whichever is lower.
- 2.** For all other redevelopment projects, 50 percent of the actual remediation costs, 50 percent of the projected remediation costs as set forth in the redevelopment agreement, or \$ 4 million, whichever is lower.

**(b)** The total value of tax credits approved by the Authority shall not exceed the limitations set forth at N.J.S.A. 34:1B-277 through 287. For the purpose of determining the aggregate value of tax credits approved in a fiscal year, a tax credit shall be deemed to have been approved at the time the Authority approves an application for an award of a tax credit. If the Authority approves less than the total amount of tax credits authorized pursuant to this section in a fiscal year, the remaining amount plus any amounts remaining from previous fiscal years shall be added to the limit of subsequent fiscal years until that amount of tax credits are claimed or allowed. Any unapproved, uncertified, or recaptured portion of tax credits during any fiscal year may be carried over and reallocated in succeeding years.

**(c)** The Authority shall award tax credits to redevelopment projects until either the available tax credits are exhausted or all redevelopment projects that are eligible for a tax credit pursuant to the provisions of the Act and this subchapter receive a tax credit, whichever occurs first. If insufficient funding exists to allow a tax credit to a developer in accordance with the provisions of subsection a. of section 16 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and (a) above, the Authority may offer the developer a value of the tax credit below the amount provided for in subsection a. of section 16 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and (a) above, provided that the developer's application is eligible for a tax credit award with the lower amount.

## **N.J.A.C. 19:31-27.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.8 Approval letter**

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- (a)** Upon receipt of a recommendation from the Authority staff on the redevelopment project, the Board shall determine whether or not to approve the application. If approved, the Board shall determine the maximum amount of the tax credit award and the maximum percentage of remediation costs that will be used to calculate the tax credit award. The Board shall promptly notify the applicant and the Director of the Division of Taxation in the Department of the Treasury of the determination.
- (b)** The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the tax credit award. An approval letter setting forth the conditions subsequent will be sent to the developer. Such conditions shall include, but not be limited to: the requirement that the redevelopment project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4); and that the redevelopment project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The approval letter shall also provide the requirements necessary for the Authority to execute the redevelopment agreement, which shall include satisfaction of all conditions of approval.
- (c)** The approval letter shall require documentation evidencing project financing, including the submittal of executed financing commitments; documents that evidence site control or access by the developer or an affiliate; and a copy of the site plan approval, if applicable.
- (d)** Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the developer does not satisfy the conditions in the approval letter within one year after approval of the application.
- (e)** The approval letter shall provide an estimated date of completion of the redevelopment project and include a requirement for submitting project status reports every six months, beginning at approval of the application and ending upon execution of the redevelopment agreement. If the Authority does not receive a project status report when required or the project status report demonstrates unsatisfactory progress, the Authority may rescind the incentive award.

## **N.J.A.C. 19:31-27.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.9 Redevelopment agreement**

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**(a)** Following satisfaction of the requirements for the execution of a redevelopment agreement in the approval letter, the Authority shall enter into a redevelopment agreement with the developer. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the redevelopment agreement on behalf of the State. The awarding of tax credits shall be conditioned on the developer's compliance with the Act, this subchapter, and the requirements of the redevelopment agreement.

**(b)** The developer, including all affiliates, shall not start any remediation or clean up at the site other than the activities disclosed and approved at the time of approval, except for work required due to an order or other written requirement from an official with jurisdiction over the site or the redevelopment project to correct an immediate environmental concern or a health, safety, or other hazard that requires the developer or an affiliate to undertake remediation activities, if:

1. The developer provides a copy of the order or written requirement to the Authority; and
2. The developer documents to the Authority's satisfaction that the proposed remediation activity is limited to resolve the hazard.

**(c)** The redevelopment agreement shall specify and include:

1. A detailed description of the proposed redevelopment project, including details, quantities, and extent of all redevelopment activities, remediation costs, total cost of remediation, and a schedule for the redevelopment project by redevelopment work items;
2. The maximum amount of the tax credit award, the maximum amount of total cost of remediation, and the maximum percentage of the remediation costs that will be used to calculate the amount of the tax credit award;
3. A description of the evidence that will be submitted as proof of completion of remediation as required for the redevelopment project:
  - i. Where the remediation is subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated in accordance with the statute by a Response Action Outcome issued by a Licensed Site Remediation Professional; and
  - ii. For any portion of the remediation that is not subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by a certification from a Licensed Site Remediation Professional and an appropriate licensed or certified professional, as applicable;

- 4.** A requirement that the developer will certify that all information provided by the developer or any affiliate to the Authority and the Department, including information contained in the application, the redevelopment agreement, and any amendment to the redevelopment agreement, is true, correct, and accurate under the penalty of perjury;
- 5.** An ongoing requirement to provide the Authority and the Department with current personnel information that will enable the Authority and the Department to administer the program;
- 6.** Representations that the developer and any affiliate will comply with the minimum environmental and sustainability standards pursuant to N.J.S.A. 34:1B-281c(1);
- 7.** Representations that the developer is in substantial good standing and that the redevelopment project will comply with all applicable laws, including, but not limited to: prevailing wage requirements pursuant to P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:31-27.14(b) and (c); affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:31-27.14(a); and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, to the extent that it is applicable;
- 8.** A provision permitting an audit of the developer's and any affiliate's evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-27.4 and 27.11 and this section, and the reports pursuant to N.J.A.C. 19:31-27.11, as the Authority deems necessary;
- 9.** Reporting requirements pursuant to N.J.A.C. 19:31-27.11;
- 10.** A provision permitting the Authority to amend the agreement;
- 11.** A provision establishing the conditions pursuant to which the Authority, the developer, or both parties may terminate the agreement;
- 12.** A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth at N.J.A.C. 19:31-27.6(d), that the developer is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;
- 13.** A provision providing that if the developer is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, or the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-27.6(d), and has been given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the developer shall be subject to N.J.A.C. 19:31-27.15(b);
- 14.** A requirement that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: is registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;
- 15.** A requirement for the developer to engage in on-site consultations with the Division of Workplace Safety and Health in the Department of Health;
- 16.** The right of the Authority and the Department to conduct site inspections at the site of the redevelopment project at any time during the course of the redevelopment project;

- 17.** Indemnification and insurance requirements from the developer;
  - 18.** A description of events that would trigger forfeiture, reduction, or recapture of the tax credits;
  - 19.** Conditions of default and remedies, including, but not limited to, a default if a developer made a material misrepresentation on its application or supporting documentation;
  - 20.** A provision stating that if the developer or any affiliate sells, leases, or subleases the site of the redevelopment project, or any portion thereof, within four years of completion of the redevelopment project, the Authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. The developer shall provide to the Authority any information that the Authority determines is necessary to re-evaluate the developer's rate of return, including, but not limited to, the purchase price. If the developer's final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval by more than 15 percent, the developer shall pay 20 percent of the amount of the excess to the Authority, and the Authority shall deposit such funds in the State General Fund;
  - 21.** A provision that the issuance of a tax credit pursuant to the Program shall be conditioned upon the subrogation to the Department of all rights of the developer or any affiliate to recover remediation costs from any other person who discharges a hazardous substance or is in any way responsible, pursuant to section 8 at P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11g), for a hazardous substance that was discharged at the brownfield site;
  - 22.** A provision requiring that the developer obtain consent from the Authority prior to any ownership change of the developer; and
  - 23.** A provision that the developer must either comply with their agreement with the Commissioner of the Department of Environmental Protection in accordance with the provisions of section 37 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-29); or comply with the requirements set forth in subsection b. of section 30 at P.L. 2009, c. 60 (N.J.S.A. 58:10B-1.3) to the satisfaction of both the Authority and the Department for the remediation of the site of the redevelopment project.
- (d)** The Authority shall not enter into a redevelopment agreement for a redevelopment project that includes at least one retail establishment that will have more than 10 employees, or at least one distribution center that will have more than 20 employees, unless the redevelopment agreement includes a precondition that any business that serves as the owner or operator of the retail establishment or distribution center enters into a labor harmony agreement with a labor organization or cooperating labor organizations which represent retail or distribution center employees in the State. A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The Authority may enter into a redevelopment agreement with a developer without the labor harmony agreement only if the Authority determines that the redevelopment project would not be feasible if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.
- (e)** The redevelopment project shall be completed and the evidence required to obtain a certification of completion of remediation shall be provided to the Authority and the Department within six years from the time of Board approval of the application. The Authority may extend, in its sole discretion, the time of completion, provided that the developer submits evidence

satisfactory to the Authority that the redevelopment project is continuing to progress to completion.

**(f)** The Authority may rescind an award of tax credits pursuant to the Program if a redevelopment project fails to advance in accordance with the redevelopment agreement.

## N.J.A.C. 19:31-27.10

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.10 Redevelopment project modifications and extensions**

(a) On or before the date of completion of the redevelopment project, any modification to the redevelopment project as approved by the Board, including, but not limited to, a change in ownership of the developer, a change in the key personnel responsible for the remediation, an increase or reduction in the amount of the remediation cost, a change in redevelopment project scope, or an extension to the date by when the redevelopment project must be completed, shall require review and approval by the Authority to determine that the redevelopment project, as modified, does not undermine the basis for the tax credit award approved.

(b) In considering whether to approve the modification request, the Authority shall:

1. Determine that the revised redevelopment project continues to meet the requirements for the redevelopment, as defined pursuant to the Program;
2. Confirm that the proposed change to the redevelopment project will not undermine the basis for the tax credit award approved; and
3. Determine that the revised redevelopment project continues to meet the minimum score and would have been eligible based on the order of applications pursuant to N.J.A.C. 19:31-27.6(b), unless the developer demonstrates to the Authority that:
  - i. The modification is due to unforeseeable conditions related to the redevelopment project beyond the developer's or any affiliate's control and without its fault or negligence;
  - ii. The developer and any applicable affiliate is using best efforts, with all due diligence, to proceed with the completion of the redevelopment project; and
  - iii. The developer and any applicable affiliate has made all reasonable efforts to prevent, avoid, mitigate, and overcome the modification.

(c) Modifications and extensions shall not increase the amount of the tax credits awarded.



## **N.J.A.C. 19:31-27.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.11 Reporting requirements: progress reports and annual reports**

**(a)** The developer shall submit progress reports to the Authority and Department every six months starting at six months from Board approval and ending upon issuance of a certification of completion of remediation by the Department and, unless otherwise determined by the Authority and Department, shall consist of:

1. A remediation schedule, including any updates;
2. A summary of remediation completed during the reporting period, remediation in progress, and remediation to be completed for the next reporting period;
3. The status of permits, if applicable;
4. Photos documenting progress of the redevelopment project;
5. Identification of the percentage of the redevelopment project that is completed, including a narrative that speaks to the redevelopment project progress for all aspects of the redevelopment project;
6. Changes to key personnel, developer ownership, and the identity and ownership of any affiliates involved with the redevelopment project;
7. Remediation costs incurred as evidenced by a paid invoice as proof of payment with any change orders; and
8. Additional information, as required by the Authority or the Department.

**(b)** A developer approved for a tax credit award shall submit an annual report, beginning on the date of approval by the Board until the submission of documents evidencing the completion of the redevelopment project. The Authority may provide any information in the annual report to the Department.

1. The annual report shall consist of:
  - i. A certification indicating whether or not the developer is aware of any condition, event, or act, which would cause the developer not to be in compliance with the approval, the redevelopment agreement, this Act, or this subchapter;
  - ii. A certification indicating that the redevelopment project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
  - iii. A tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer;

- iv.** A certification from the developer that it has not modified the redevelopment project, so that it ceases to meet the requirements of the redevelopment agreement;
  - v.** A certification from the developer that any contractors or subcontractors performing work at the redevelopment project: are registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in New Jersey; and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;
  - vi.** If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-27.9(d);
  - vii.** For a redevelopment project that includes redevelopment after completion of the remediation required for the redevelopment project, a narrative of the progress of the construction and other activities of the redevelopment project; and changes to key personnel, developer ownership, and the identity and ownership of any affiliates involved with the redevelopment project; and
  - viii.** Any information determined by the Authority to be necessary and relevant to its review.
- 2.** The Authority's review of the annual reports required from a developer shall include confirmation with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer is in substantial good standing with the respective department or has entered into an agreement with the respective department that includes a practical corrective action plan.
- 3.** Upon receipt, review, and acceptance of each annual report submitted, the Authority shall provide to the developer a letter indicating acceptance.
- (c)** The developer, or an authorized agent of the developer, shall certify that the information in any annual reporting requirement established pursuant to this section is true, correct, and accurate under the penalty of perjury.
- (d)** The Authority and the Department reserve the right to audit any of the representations made and documents submitted in any annual reporting requirement established pursuant to this section.
- (e)** The Authority may extend, in individual cases, the deadline for any annual reporting requirement established pursuant to this section.

## **N.J.A.C. 19:31-27.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-27.12 Certification of completion of remediation; completion of redevelopment project**

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**(a)** No later than 12 months following completion of the remediation required for the redevelopment project, the developer shall seek certification from the Department that:

1. The remediation required for the redevelopment project is complete. Where the remediation is subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by the issuance of a Response Action Outcome for the site of the redevelopment project by a Licensed Site Remediation Professional. For any portion of the remediation that is not subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), evidence of completion of the remediation will be demonstrated by a certification from the Licensed Site Remediation Professional and from an appropriate licensed or certified professional;
2. The developer complied with the requirements of section 15 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-283) and N.J.A.C. 19:31-27.11(a) regarding progress reports to the Department, and section 14 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-282) and this section, including the requirements of any agreement or other oversight document that the developer may have executed with the Commissioner of the Department of Environmental Protection pursuant to P.L. 2020, c. 156, section 14 (N.J.S.A. 34:1B-282); and
3. The remediation costs were actually and reasonably incurred.

**(b)** When filing an application for certification pursuant to (a) above, the developer shall submit the following information to the Authority and the Department as of the date of completion of the remediation required for the redevelopment project:

1. The total remediation costs incurred by the developer or an affiliate for the redevelopment project, as provided in the redevelopment agreement, and certified by a certified public accountant and a Licensed Site Remediation Professional for costs pursuant to the jurisdiction of the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), and, as applicable, other appropriate licensed or certified professional(s) for costs that are not pursuant to the jurisdiction of the Site Remediation Reform Act, and the total costs of remediation. The Authority shall qualify certified public accountants and provide to the developer, the list of qualified certified public accountants; provided, however, the developer may select a certified public accountant that is independent to the developer and any affiliate and not on the Authority's list of qualified certified public accountants for purposes of the remediation cost certification if the developer demonstrates an extenuating

circumstance prohibiting the developer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to: the unavailability of any of the qualified certified public accountants to timely complete the certification or a lack of independence of the qualified certified public accountants from the developer;

2. Evidence of completion of the remediation, as demonstrated by the issuance of a Response Action Outcome for the site of the redevelopment project by a Licensed Site Remediation Professional where the remediation is subject to the Site Remediation Reform Act, sections 1 through 29 at P.L. 2009, c. 60 (N.J.S.A. 58:10C-1 et seq.), and by a certification from the Licensed Site Remediation Professional and appropriate licensed or certified professional for completion of other remedial activities, if applicable;
3. Information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement, if applicable;
4. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer not to be in compliance with the approval, the redevelopment agreement, this Act, or this subchapter;
5. A certification by the Licensed Site Remediation Professional of record for the redevelopment project confirming that all remediation work was completed in accordance with the redevelopment agreement; and
6. Such other information as the Department or Authority deems necessary in order to make the certifications and findings pursuant to (a) above.

**(c)** To demonstrate compliance with the Program, in addition to the submission required pursuant to (b) above, the developer shall submit the following to the Authority, as of the date of completion of the remediation required for the redevelopment project, no later than 12 months following completion of remediation required for the redevelopment project:

1. A certification from a Licensed Site Remediation Professional or licensed professional engineer that the redevelopment project has adhered in all material respects to the plan submitted by the developer describing how the developer or an affiliate would satisfy the minimum environmental and sustainability standards;
2. A tax clearance certificate as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer;
3. Documentary evidence that a deed restriction has been recorded requiring construction and building services' prevailing wage pursuant to N.J.A.C. 19:31-27.14(b) and (c); and
4. Such other information as the Authority deems necessary in order to determine compliance by the developer with the Program.

**(d)** Within 90 days of the Department issuing the certificate of completion of remediation, the Authority accepting as satisfactory the documentation required at (c) above, and the Authority determining that other required conditions of the Act, this subchapter, and the redevelopment agreement have been met, the Authority shall notify the developer and the Director. Thereafter, the developer shall receive its tax credit certificates.

**(e)** A developer shall apply the tax credit awarded against the developer's liability for the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 at P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5 for the privilege period in which the developer provides evidence

required in this section to the satisfaction of the Department and the Authority. A developer shall not carry forward any unused credit.

**(f)** Credits granted to a partnership or a New Jersey S corporation shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director and accompanied by any additional information as the Director may prescribe, consistent with any rule, guidance, or other publication issued by the Division of Taxation.

**(g)** The Director shall prescribe the order of priority of the application of the credit awarded pursuant to this section and any other credits allowed by law against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of the credit applied pursuant to this section against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

**(h)** For a redevelopment project that includes redevelopment after completion of the remediation required for the redevelopment project, a developer shall submit, no later than six months following the completion of the redevelopment project, the following documents to the Authority:

1. Evidence of a temporary certificate of occupancy or other event evidencing completion of the redevelopment project;
2. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer not to be in compliance with the redevelopment agreement, the Act, or this subchapter;
3. A certification from a licensed professional engineer that the redevelopment project undertaken after completion of remediation has adhered in all material respects to the plan submitted by the developer describing how the developer or an affiliate would satisfy the minimum environmental and sustainability standards; and
4. Any information determined by the Authority to be necessary and relevant to its review.

**(i)** An authorized agent of the developer shall certify that the information provided to the Department and the Authority pursuant to this section is true, correct, and accurate under the penalty of perjury.

## History

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### HISTORY:

Amended by R.2023 d.065, effective May 15, 2023.

See: 54 N.J.R. 2228(a), 55 N.J.R. 1027(a).

In (h)2, deleted "or any co-applicant" following the second occurrence of "developer".

## **N.J.A.C. 19:31-27.13**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-27.13 Application for tax credit transfer certificate; assignment**

**(a)** A developer may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, during the privilege period in which the Director issues the developer a tax credit pursuant to section 16 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-284) and N.J.A.C. 19:31-27.12. The tax credit transfer certificate, upon receipt thereof by the developer from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000, in the privilege period during which the developer receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 at P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5.

**(b)** The developer shall not sell a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer or less than 85 percent of the transferred credit amount before considering any further discounting to present value that shall be permitted, except a developer of a residential project consisting of newly constructed residential units that have received Federal low income housing tax credits pursuant to 26 U.S.C. § 42(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 75 percent subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project.

**(c)** A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

**(d)** A tax credit transfer certificate issued by the Director and the Authority shall include a statement waiving the rights of the developer to which the tax credit has been granted to claim any amount of remaining credit against any tax liability.

**(e)** The tax credit transfer certificate issued to a developer by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 9 through 19 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-277 through 287) and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

**(f)** The Authority shall publish on its internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferor;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The state tax against which the transferee may apply the tax credit; and
5. Consideration received by the transferor.

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End of Document

## **N.J.A.C. 19:31-27.14**

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### **§ 19:31-27.14 Affirmative action and prevailing wage**

**(a)** The Authority's affirmative action requirements at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project. The affirmative action requirements shall apply until the later of the completion of the redevelopment project or until two years after the tax credit is issued.

**(b)** The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:30-4 shall apply to construction contracts as defined at N.J.A.C. 19:31-4.1 for work performed for the redevelopment project. The prevailing wage requirements shall apply until the later of the completion of the redevelopment project or two years after the tax credit is issued. Prevailing wage shall apply to all work done by tenants at the redevelopment project.

**(c)** Prevailing wage shall apply to building services at the site of the redevelopment project . This prevailing wage requirement shall continue for 10 years following the completion of the redevelopment project. In the event a redevelopment project, or the aggregate of all redevelopment projects approved for an award pursuant to the Program, constitute a lease of more than 35 percent of a facility, the prevailing wage shall apply to the entire facility.



## **N.J.A.C. 19:31-27.15**

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### **§ 19:31-27.15 Forfeiture and recapture of tax credits**

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- (a)** Failure to timely submit the annual report or progress report, pursuant to N.J.A.C. 19:31-27.11, absent extenuating circumstances or the written approval of the Authority, may result in forfeiture or recapture of a proportional amount of the tax credit award.
- (b)** In any year in which the developer is not in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury pursuant to N.J.A.C. 19:31-27.9(c)13, the developer may forfeit or recapture some or all of the tax credit award.
- (c)** If any worker employed to perform building services work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:31-27.14(c) during the relevant tax period, then the developer shall forfeit or the Authority shall recapture, a proportional amount of the tax credit.
- (d)** If the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-27.9(d) is not satisfied, the developer shall forfeit or recapture some or all of the tax credit award.
- (e)** For a redevelopment project that includes redevelopment activities after completion of the remediation required for the redevelopment project, if the developer does not complete the redevelopment project after the issuance of the tax credits or if the developer does not comply with a requirement of the Program applicable to the redevelopment project after completion of the remediation, including, but not limited to, prevailing wage or affirmative action requirements pursuant to N.J.A.C. 19:31-27.14(a) and (b), the Authority may recapture some or all of the tax credits awarded.
- (f)** If, based on new information, the Authority determines that forfeiture or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits as if the Authority had been timely informed.
- (g)** If, at any time, the Authority determines that the developer made a material misrepresentation on the developer's application, progress report, remediation completion certification, annual report, or any submission to the Authority or the Department, the developer shall forfeit or the Authority shall recapture, some or all of the tax credits of the developer, which shall be in addition to any other remedies in the redevelopment agreement and any criminal or civil penalties to which the developer and the respective officer of the developer may be subject.
- (h)** Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, administrative costs,

counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation in the Department of the Treasury to determine the recapture amount.

**(i)** If all or part of a tax credit sold or assigned pursuant to section 17 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-285) and N.J.A.C. 19:31-27.13 is subject to recapture, the Authority shall pursue recapture from the developer, and not from the purchaser or assignee of the tax credit transfer certificate.

**(j)** The Authority shall notify the Director of any funds recaptured pursuant to this section. Any recaptured funds, including penalties and interest, shall be deposited into the State General Fund.

## **N.J.A.C. 19:31-27.16**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.16 Appeals**

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- (a)** The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor a veto has been issued.
- (b)** An applicant may appeal the Board's action by submitting, in writing, to the Authority, within 21 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c)** Appeals that are timely submitted shall be handled by the Authority, as follows:
  - 1.** The Chief Executive Officer of the Authority shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority cannot consider any new evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the application deadline.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  - 3.** The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
  - 4.** Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules of Court of the State of New Jersey.

## **N.J.A.C. 19:31-27.17**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 27. BROWNFIELDS REDEVELOPMENT INCENTIVE PROGRAM***

### **§ 19:31-27.17 Reports on implementation of Program**

Beginning in 2022 and every two years thereafter, a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the Program, and submit the report to the Authority, the Governor, and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required pursuant to this section shall include a description of each redevelopment project receiving a tax credit under the Program, a detailed analysis of the consideration given in each redevelopment project to the factors set forth in sections 12 and 13 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-277 through 278) and N.J.A.C. 19:31-27.6(b), the return on investment for incentives awarded, the redevelopment project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

## **N.J.A.C. 19:31-27.18**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-27.18 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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End of Document

## **N.J.A.C. 19:31-28**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **Title 19, Chapter 31, Subchapter 28 -- Subchapter Notes**

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## **N.J.A.C. 19:31-28.1**

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***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.1 Applicability and scope**

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The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Food Desert Relief Act (Act) (N.J.S.A. 34:1B-303 et seq.). Pursuant to the Act, the Authority is authorized to administer several programs to increase access to nutritious foods in food desert communities. The rules are promulgated for the administration of a tax credit program to encourage the development and operation of supermarkets and grocery stores through the provision of tax credit awards. The Authority Board may approve the award of a tax credit award to an applicant upon application to the Authority pursuant to N.J.S.A. 34:1B-306. The value of all tax credits approved by the Authority pursuant to the Act shall be subject to the limitations set forth at N.J.S.A. 34:1B-362.

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## **N.J.A.C. 19:31-28.2**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-28.2 Definitions**

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The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Food Desert Relief Act, N.J.S.A. 34:1B-303 through 310.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the applicant. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414).

"Applicant" means a person who enters, or proposes to enter, into an incentive award agreement pursuant to the provisions of the Act pursuant to N.J.S.A. 34:1B-307, including, but not limited to, a lender that completes a project, operates a project, or completes and operates a project.

"Applicant contributed capital" or "equity" means capital contributed by the applicant that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the applicant owns the project site, the cost of infrastructure improvements in the public right-of-way, and any other investment by the applicant in the project deemed acceptable by the Authority. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, and New Market Tax Credit, 26 U.S.C. § 45D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. If the supermarket or grocery store is a component of a facility, the equity contributed by the applicant to the development of the facility shall be considered as equity for the project only to the extent of the supermarket or grocery store's pro-rata share, based on square footage, of the facility.

"Authority" means the New Jersey Economic Development Authority, as established at section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority, as established at section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Cash flow" means the profit or loss that an investment property earns from rent, deposits, and other fees after financial obligations, such as debt, maintenance, government payments, and other expenses, have been paid. For purposes of cash flow, government payments shall not include, among other things, payments that are the result of a violation or a settlement of a



violation or any payment that is not reasonable and customary, as determined by the Authority.

"Commitment period" means a period that commences after the eligibility period. This period together with the eligibility period equals seven years.

"Co-applicant" means an entity that:

1. Is non-profit for taxation purposes pursuant to the provisions of section 501(c)3 of the Internal Revenue Code (26 U.S.C. § 501);
2. Contributes capital, real property, or services related to the project that directly affect and serve the anticipated customers or directly support the project or operations of the supermarket or grocery store; and
3. Enters into a participation agreement with the applicant that specifies the co-applicant's participation in the project.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligibility period" means the period of four years for a financing gap tax credit award and up to three years for an initial operating cost tax credit award during which an applicant or a co-applicant, if applicable, may claim a tax credit pursuant to the Program.

"Financing gap tax credit" means the tax credit awarded pursuant to N.J.A.C. 19:31-28.7 to mitigate a project financing gap.

"First or second new supermarket or grocery store" means the first and second new supermarket or grocery store within each food desert community to be approved for tax credits pursuant to the Program by the Authority, except that a supermarket or grocery store may lose the designation of first or second new supermarket or grocery store if the project does not meet milestones designated by the Authority in a timely manner, as determined by the Authority.

"Food desert community" means a physically contiguous area in the State in which residents have limited access to nutritious foods, such as fresh fruit and vegetables, and that has been designated as a food desert community pursuant to N.J.S.A. 34:1B-306, a list of which is located at <https://www.njeda.gov>.

"Incentive award" means an award of tax credits to an applicant or a co-applicant, if applicable, to reimburse an applicant or a co-applicant, if applicable, for all or a portion of the project financing gap or initial operating shortfall pursuant to the provisions of the Act and this subchapter.

"Incentive award agreement" means the contract executed between an applicant, any co-applicant, if applicable, and the Authority pursuant to N.J.S.A. 34:1B-307, which sets forth the terms and conditions under which the applicant and co-applicant, if applicable, shall receive the incentive award.

"Infrastructure improvements in the public right-of-way" means public structures or improvements, including public electric vehicle charging stations, located in the public right-of-way that are located within a project area, and public utilities such as water, sewer, electric, and gas, either of which are dedicated to or owned by a governmental body or agency upon completion of the improvement, or any required payment in lieu of the structures, improvements, or projects, or any costs of remediation associated with the structures, improvements, or projects, and that are determined by the Authority, in consultation with applicable State agencies, to be consistent with and in furtherance of State public infrastructure objectives and initiatives.

"Initial operating costs" means expenditures by the applicant for the operation of a first or second new supermarket or grocery store within the first three years after the opening of the supermarket or grocery store for business to the public, but within a standard range based upon industry standards, as determined by the Authority. Initial operating costs shall not include inventory, incentive consultant fees, or Authority fees. Initial operating costs may include expenditures for the operation of a first or second new supermarket or grocery store incurred within one month prior to the opening of the supermarket or grocery store for business to the public. Initial operating costs may additionally include expenditures by an affiliate of the applicant for costs incurred at the site of the project.

"Initial operating cost tax credit" means the tax credit awarded pursuant to N.J.A.C. 19:31-28.8 to mitigate the initial operating costs of a new supermarket or grocery store.

"Initial operating shortfall" means, on an annual basis, initial operating costs, including a net operating profit acceptable to the Authority, reduced by the income to the applicant associated with the operation of the new supermarket or grocery store after cost of goods sold, including, but not limited to, sales income and income from the supermarket or grocery store tenants, sub-tenant, and licensees. If the result is negative, the initial operating shortfall shall be \$ 0.00.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a supermarket or grocery store and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at a supermarket or grocery store, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees at a supermarket or grocery store by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of supermarket or grocery store employees in the State.

"Net operating profit" means pre-income tax operating profit.

"New supermarket or grocery store" means a supermarket or grocery store that commenced new construction of the building or commenced rehabilitation of at least 75 percent of its square footage, after January 7, 2021 (the effective date of the Act). For purposes of this definition, rehabilitation of at least 75 percent of the square footage of a supermarket or grocery store means the repair or replacement of two or more major systems, including, but not limited to: roof, plumbing, heating and cooling (including refrigeration), electrical, load bearing structural systems, or weatherization (for example, solar panels, siding, replacement windows, and doors), where the costs of such repair or replacement, exclusive of soft costs that exceed 20 percent of the total costs of repair and replacement, exceeds 60 percent of the fair market value of a rehabilitated supermarket or grocery store after such repair and replacement, and the rehabilitation affects at least 75 percent of square footage of the supermarket or grocery store.

"Opening of the supermarket or grocery store for business to the public" means the date a new supermarket or grocery store has received a temporary certificate of occupancy and all certifications from State and local health departments required to operate; met the requirements of the incentive award; and starts operating the supermarket or grocery store on a full-time basis.

"Operating the supermarket or grocery store on a full-time basis" or "operating on a full-time basis" means operating the new supermarket or grocery store at least 60 hours per week every week of the year, absent unavoidable closures or other circumstances approved by the Authority.

"Program" means the New Jersey Food Desert Relief Tax Credit Program established by the Act and administered pursuant to this subchapter.

"Project" means, pursuant to the approval letter described at N.J.A.C. 19:31-28.8: for a financing gap tax credit, the development and opening of the new supermarket or grocery store for business to the public; or for an initial operating cost tax credit, owning, leasing, or subleasing the first or second new supermarket or grocery store and operating the supermarket or grocery store on a full-time basis.

"Project area" means land or lands on which the new supermarket or grocery store is located and land or lands adjacent and necessary to the operation of the new supermarket or grocery store, including, but not limited to, parking lots and loading docks.

"Project cost" means the costs incurred in connection with the establishment of a new supermarket or grocery store within a food desert community by the applicant until the opening of the supermarket or grocery store for business to the public and the certification of costs pursuant to N.J.A.C. 19:31-28.8, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, and any environmental remediation costs, plus soft costs of an amount not to exceed 20 percent of the project costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. For the purposes of this subchapter, ancillary infrastructure projects may include off-site self-contained temperature-controlled lockers located in a food desert community that is exclusively serviced from the supermarket or grocery store. Project costs shall include otherwise qualifying costs incurred by an affiliate of the applicant. The fees paid by the applicant or a co-applicant, if applicable, to the Authority associated with the application or administration of an incentive award shall not constitute a project cost. Project costs shall not include the cost of acquisition of land. If the supermarket or grocery store is a component of a facility, the otherwise qualifying costs of any shared structures or improvements, including, but not limited to, foundations or parking lots, may be included as project cost only to the extent of the supermarket or grocery store's pro-rata share, based on square footage, of the facility.

"Project financing gap" means the part of the total development costs, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, applicant contributed capital, which shall not be less than 20 percent of the total project cost, which may include the property value of any existing land and improvements in the project area owned or controlled by the applicant, and the cost of infrastructure improvements in the public right-of-way, and investor or financial entity capital or loans for which the applicant, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis.

"Property value" means the lesser of: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority.

"Reasonable and appropriate return on investment" means the discount rate at which the present value of the future cash flows of an investment equals to the cost of the investment. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any Federal, State, or local tax credits and grants.

"Retail space" means the areas of the supermarket or grocery store where customers are allowed to find and purchase items.

"Soft costs" means costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, pre-opening costs, and all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping costs. The term does not include early lease termination costs, airfare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, commissions and fees to the applicant, project management, or other similar costs.

"Square feet" or "square footage" means the sum of all areas on all floors of an enclosed retail outlet included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces.

"Supermarket or grocery store" means a retail outlet with a lease or ownership of at least 16,000 square feet, of which at least 80 percent is occupied by food and related products, which products shall be based on industry standards, as determined by the Authority, except that the food and related products shall not include alcoholic beverages and products related to the consumption of such beverages. The square footage of a supermarket or grocery store shall include any space that the supermarket or grocery store subleases, licenses, or otherwise allows another entity to occupy.

"Tax credit" means credit against a tax liability pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), N.J.S.A. 17B:23-5, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), and sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 3).

"Total development cost" means any and all costs incurred for and in connection with the project by the applicant and any affiliate of the applicant until the opening of the supermarket or grocery store for business to the public, or upon such other event evidencing project completion as set forth in the incentive grant agreement, which shall include, but is not limited to, project costs, soft costs, and cost of acquisition of land and buildings. If the supermarket or grocery store is a component of a facility, the costs of any shared structures or improvements, including, but not limited to, foundations or parking lots, may be included as total development costs only to the extent of the supermarket or grocery store's pro-rata share, based on square footage, of the facility.

"Unavoidable closures" means any closure due to weather, strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty, or other causes similarly beyond the control of the operator of the supermarket or grocery store as determined in the sole discretion of the Authority.

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## **N.J.A.C. 19:31-28.3**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-28.3 Eligibility criteria**

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- (a) An applicant and co-applicant, if applicable, shall be eligible to receive an incentive award for a project only if the applicant demonstrates to the Authority, at the time of application, that:
1. Without the incentive award, the project is not economically feasible;
  2. With the incentive award, the new supermarket or grocery store will operate on a full-time basis during both the eligibility period and commitment period, and will be economically and commercially viable by the last year of the commitment period;
  3. The application is for a project located in a food desert community;
  4. If the applicant is seeking a financing gap tax credit:
    - i. A project financing gap exists; and
    - ii. Except for demolition and site remediation activities, the applicant has not commenced any construction at the site of the project prior to submitting an application, unless the Authority determines that the project would not be completed without the award;
  5. If the applicant is seeking an initial operating cost tax credit, an initial operating shortfall will exist;
  6. The applicant will comply with the prevailing wage and affirmative action requirements at N.J.A.C. 19:31-28.13;
  7. The supermarket or grocery store shall:
    - i. Accept benefits from Federal nutrition assistance programs, including, but not limited to: Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
    - ii. Maintain at least 10 percent of retail space dedicated to fresh and/or frozen fruit and vegetables;
    - iii. Meet the definition of new supermarket or grocery store; and
    - iv. Hold at least one public listening session annually in the food desert community in which the supermarket or grocery store is located about the supermarket or grocery store's product offerings and operations. Notice of the listening session shall be prominently displayed at the entrance of the supermarket or grocery store and provided to the Authority at least seven days in advance of the meeting. The applicant shall keep reasonably comprehensible minutes of all its listening sessions showing the time and

place, the subjects discussed, and any public comment, which minutes shall be promptly made available to the public;

**8.** The opening of the supermarket or grocery store for business to the public shall be within the earlier of six months of the receipt of a temporary certificate of occupancy for the supermarket or grocery store or three years of executing the incentive award agreement corresponding to the project. The Authority may approve six-month extensions if the applicant is using best efforts, with all due diligence, to proceed with the project;

**9.** The applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described at N.J.S.A. 54:50-39; and

**10.** If the application includes a co-applicant, the applicant and co-applicant must demonstrate the following:

- i.** The co-applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described at N.J.S.A. 54:50-39;
- ii.** The co-applicant's organizational purpose encompasses the proposed participation;
- iii.** The co-applicant has the financial and operational capability to provide the proposed contribution or services;
- iv.** The co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated customers or support the project or operation of the supermarket or grocery store; and
- v.** The co-applicant's receipt and sale of the tax credits is necessary to finance the project.

**(b)** The only costs incurred prior to application for a financing gap tax credit that may be included as project costs are demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs incurred within two years prior to the date of application.

**(c)** The incentive award for an initial operating cost tax credit shall not include any initial operating shortfall incurred prior to the date of the application.

**(d)** To determine that the project has a project financing gap, the applicant shall demonstrate that the project has applicant-contributed capital of at least 20 percent of the total development cost.

**(e)** To demonstrate that the project will have an initial operating shortfall, the applicant shall submit a feasibility study(s) acceptable to the Authority that demonstrates that:

- 1.** An initial operating shortfall is projected during the eligibility period;
- 2.** The initial operating cost tax credit will be sufficient to fill the initial operating shortfall; and
- 3.** The supermarket or grocery store is projected to operate on a full-time basis during both the eligibility period and commitment period and will be economically and commercially viable by the last year of the commitment period.

## **N.J.A.C. 19:31-28.4**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

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### **§ 19:31-28.4 Application submission requirements**

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**(a)** Each application to the Authority made by an applicant shall include the following information in an application format prescribed by the Authority:

1. The name of the business;
2. The contact information of the person identified as the primary contact for the business;
3. The prospective future address of the business (if different);
4. The type of the business;
5. The principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. A description of the project, including a breakdown of uses and related square footage and costs, the breakdown of retail space (for example, a planogram), and the applicant's experience with similar project(s);
9. For the financing gap tax credit:
  - i. The total projected number of construction employees and permanent full-time and part-time employees at the project;
  - ii. A copy of a market and/or feasibility study for the proposed use of the project site by an independent third party, which must include the third party's position regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period and commitment period;
  - iii. An anticipated construction schedule;
  - iv. Financial information of the project including, but not limited to, estimated project costs and total development costs, any State or local financial assistance for the project, proposed terms of financing, projected reasonable and appropriate return on investment on the applicant-contributed capital, net margin, cash-on-cash yield, and a certification from the chief executive officer or equivalent officer of the applicant, that additional capital cannot be raised from other sources on a non-recourse basis after making all good faith efforts to raise additional capital, and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-28.3(a)2;



- v. The status of control of the entire project area, shown for each block and lot of the site as indicated on the local tax map;
  - vi. A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the project, or will be required to be issued to construct the project and to open the supermarket or grocery store to the public, pending resolution of financing issues; and
  - vii. A binding agreement between the applicant and the operator of the new supermarket or grocery store regarding the operation of the new supermarket or grocery store;
- 10.** For the initial operating cost tax credit:
- i. The total projected number of permanent part-time and full-time employees at the project;
  - ii. A copy of a market and/or feasibility study for the proposed operation of the project by an independent third party, which must include the third party's position regarding the marketability, and underwriting of the project and satisfy the criteria set forth at N.J.A.C. 19:31-28.3(c);
  - iii. Financial information for the project, including, but not limited to, projected income statement, any Federal, State, or local financial assistance for the project, proposed terms of financing, projected net operating profit, and any other documentation demonstrating economic and commercial viability;
  - iv. A binding agreement between the prospective landlord and the applicant for the new supermarket or grocery store at the site of the project and an acknowledgment by the prospective landlord that the applicant is applying for an incentive award for the supermarket or grocery store, that may include, but is not limited to, a letter of intent and a verification by the prospective landlord of proposed rent; and
  - v. A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the project, or will be required to be issued to operate the supermarket or grocery store on a full-time basis;
- 11.** A list of all of the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury permits and approvals or obligations and responsibilities with which the applicant is associated or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The applicant shall also submit a written certification by the chief executive officer or equivalent officer of the applicant, stating that the applicant applying for the program satisfies the criteria at N.J.A.C. 19:31-28.7(b) to be in substantial good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury;
- 12.** A certification that any contractors or subcontractors that will perform work at the project are registered as required by the Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on public works contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the New Jersey Department of the Treasury;

- 13.** A certification by the chief executive officer or equivalent officer of the applicant, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
  - 14.** A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
  - 15.** Submission of a tax clearance certificate, pursuant to N.J.S.A. 54:50-39;
  - 16.** A list of all the development subsidies, as defined at N.J.S.A. 52:39-3, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
  - 17.** Information required by the Authority to evaluate and determine the eligibility of the application pursuant to N.J.A.C. 19:31-28.3(a)7; and
  - 18.** Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and applicant capacity.
- (b)** If the applicant is applying with a co-applicant, the application shall also include the following information of the co-applicant:
- 1.** The name of the business;
  - 2.** The contact information of the person identified as the primary contact for the business;
  - 3.** The prospective future address of the business (if different);
  - 4.** The type of the business;
  - 5.** The principal products and services and three-digit North American Industry Classification System number;
  - 6.** The New Jersey tax identification number;
  - 7.** The Federal tax identification number;
  - 8.** A list of all of the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury permits and approvals or obligations and responsibilities with which the co-applicant is associated, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or has such obligations and responsibilities, such as by program interest numbers or licensing numbers. The co-applicant shall also submit a written certification by the chief executive officer, or equivalent officer of the eligible co-applicant, stating that the co-applicant applying for the program satisfies the criteria at N.J.A.C. 19:31-28.7(b) to be in substantial good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury;
  - 9.** A certification by the chief executive officer or equivalent officer of the co-applicant, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
  - 10.** A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
  - 11.** Submission of a tax clearance certificate, pursuant to N.J.S.A. 54:50-39;

- 12.** A list of all the development subsidies, as defined at N.J.S.A. 52:39-3, that the co-applicant is requesting or receiving for the project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
  - 13.** Organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality;
  - 14.** A description of the long-term participation agreement between the co-applicant and the applicant, including a description of: how the co-applicant will take an active role in the project, the capital, and the real property or services related to the project that the co-applicant will provide that directly affect and serve the anticipated customers or directly support the project or operations of the supermarket or grocery store;
  - 15.** An explanation of the need for a co-applicant to receive and sell the tax credits to finance the project; and
  - 16.** Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete review of the project financial review and applicant capacity.
- (c)** Applications for a financing gap tax credit and an initial operating cost tax credit that relate to the same supermarket or grocery store must include the same financial information to the Authority. The Authority shall consider applications for a financing gap tax credit and an initial operating cost tax credit related to the same supermarket or grocery store at the same time. The Authority shall not approve one type of tax credit to a supermarket or grocery store for which the Authority previously approved the other type of tax credit.
- (d)** The Authority shall not consider an application for a project unless the applicant submits with the application a letter evidencing support for the project from the governing body of the municipality or municipalities in which the project is located.
- (e)** The Authority may, in its sole discretion, consider two or more applications for the same type of tax credits as one application for one project based on factors including, but not limited to, the location of the projects, the types of uses proposed, and the applicants' financing and operational plans.
- (f)** If circumstances require an applicant to amend its application to the Authority, the chief executive officer or equivalent officer of the applicant, shall certify to the Authority that the information provided in its amended application is true and correct pursuant to the penalty of perjury.

## **N.J.A.C. 19:31-28.5**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.5 Fees**

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**(a)** An applicant applying for benefits pursuant to this Program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For a financing gap tax credit with a project cost of less than \$ 10 million, the fee shall be \$ 2,500. For other financing gap tax credit projects, the fee shall be \$ 10,000.
2. For an initial operating cost tax credit with average annual total sales over the eligibility period and the commitment period of less than \$ 20 million, the fee shall be \$ 2,500. For other initial operating cost tax credit projects, the fee shall be \$ 5,000.

**(b)** An applicant shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

**(c)** The applicant shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded, if the Authority does not approve the tax credit:

1. For a financing gap tax credit with a project cost of less than \$ 10 million, the fee shall be \$ 5,000. For other financing gap tax credit projects, the fee shall be \$ 15,000.
2. For an initial operating cost tax credit with average annual total sales over the eligibility period and the commitment period of less than \$ 20 million, the fee shall be \$ 5,000. For other initial operating cost tax credit projects, the fee shall be \$ 10,000.

**(d)** The applicant shall pay, to the Authority, a non-refundable fee prior to the receipt of the tax credit certificate. The fee shall be as follows:

1. For a financing gap tax credit with a project cost of less than \$ 10 million, the fee shall be \$ 5,000. For other financing gap tax credit projects, the fee shall be \$ 15,000.
2. For an initial operating cost tax credit with average annual total sales over the eligibility period and the commitment period of less than \$ 20 million, the fee shall be \$ 2,500. For other initial operating cost tax credit projects, the fee shall be \$ 5,000.

**(e)** An applicant shall pay to the Authority an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the applicant has met the eligibility requirements of the program for the respective project, and for the duration of the eligibility period and the commitment period. The annual servicing fee shall be paid to the Authority by the applicant at the time the applicant submits its annual report, as follows:

1. For a financing gap tax credit with a project cost of less than \$ 10 million, the fee shall be \$ 2,500. For other financing gap tax credit projects, the fee shall be \$ 10,000.

2. For an initial operating cost tax credit with annual total sales in the tax accounting or privilege period of less than \$ 20 million, the fee shall be \$ 2,500. For other initial operating cost tax credit projects, the fee shall be \$ 5,000.

**(f)** An applicant applying for a tax credit transfer certificate, permission to pledge a tax credit transfer certificate purchase contract as collateral, or to pledge, assign, transfer, or sell any or all of its right, title, and interest in, and to, an incentive award agreement and in the incentive awards payable thereunder shall pay to the Authority a fee, as follows:

1. For a financing gap tax credit with a project cost of less than \$ 10 million, the fee shall be \$ 5,000. For other financing gap tax credit projects, the fee shall be \$ 15,000.

2. For an initial operating cost tax credit with average annual total sales over the eligibility period and the commitment period of less than \$ 20 million, the fee shall be \$ 5,000. For other initial operating cost tax credit projects, the fee shall be \$ 10,000.

**(g)** An applicant shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit as follows:

1. For a financing gap tax credit with a project cost of less than \$ 10 million, the fee shall be \$ 2,000 for each request for any minor administrative changes, additions, or modifications to the tax credit, and \$ 5,000 for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other financing gap tax credit projects, the fee shall be \$ 5,000 for each request for any minor administrative changes, additions, or modifications to the tax credit and \$ 15,000 for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

2. For an initial operating cost tax credit with average annual total sales over the eligibility period and the commitment period of less than \$ 20 million, the fee shall be \$ 2,500 for each request for any minor administrative changes, additions, or modifications to the tax credit, and \$ 5,000 for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other initial operating cost tax credit projects, the fee shall be \$ 5,000 for each request for any minor administrative changes, additions, or modifications to the tax credit, and \$ 10,000 for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

**(h)** A non-refundable fee shall be paid for six-month extensions to the date by which the applicant shall complete the project pursuant to N.J.A.C. 19:31-28.3(a)8 and submit the satisfactory evidence with respect to the eligibility requirements of the program pursuant to N.J.A.C. 19:31-28.9(f), as follows:

1. For a financing gap tax credit with a project cost of less than \$ 10 million, the fee shall be \$ 2,000. For other financing gap tax credit projects, the fee shall be \$ 7,500.

2. For an initial operating cost tax credit with average annual total sales over the eligibility period and the commitment period of less than \$ 20 million, the fee shall be \$ 2,000. For other initial operating cost tax credit projects, the fee shall be \$ 4,000.

## **N.J.A.C. 19:31-28.6**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.6 Financing gap and initial operating shortfall**

**(a)** For an application for a financing gap tax credit, the Authority shall review the proposed total development cost and evaluate and validate the project financing gap estimated by each applicant applying for an incentive award, as follows:

1. The Authority shall evaluate the proposed total development costs to develop, and the components of, the project against reasonable market costs and components of comparable projects;
2. The Authority shall determine if the applicant's submitted financial information for the project is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap analysis, including the reasonable and appropriate return on investment; and
3. The project financing gap analysis shall include, but not be limited to, an evaluation of the total development cost, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, reasonable and appropriate return on investment, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable project available to the applicant. If the supermarket or grocery store is a component of a facility, the Authority shall additionally consider the reasonable and appropriate return on investment of the facility and may adjust the reasonable and appropriate return on investment of the supermarket or grocery store so that together the supermarket or grocery store and the facility yield a reasonable and appropriate return on investment.

**(b)** For an application for an initial operating cost tax credit, the Authority shall review the proposed initial operating costs, and evaluate and validate the initial operating shortfall estimated by each applicant applying for an incentive award, as follows:

1. The Authority shall evaluate the proposed initial operating costs against reasonable market costs to operate, and components of, the project against reasonable market costs and components of comparable projects. The applicant shall also provide written verification from the landlord, if applicable, about the proposed rent;
2. The Authority shall determine if the applicant's submitted financial information for the project is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the initial operating shortfall analysis, including the reasonable and appropriate net operating profit; and
3. The initial tax credit shortfall analysis shall include, but not be limited to, an evaluation of the initial operating costs, proposed rental rates paid to the landlord, proposed rental rates or

fees paid by sub-tenants or licensees, and the reasonable and appropriate net operating profit.

## **N.J.A.C. 19:31-28.7**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.7 Approval of completed application; tax credit amounts**

(a) The Authority shall award incentive awards based on the order in which complete, qualifying applications are received by the Authority. If interest in the Program so warrants, at the Authority's discretion and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a certain date will be evaluated as if submitted on that date. The Authority's review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

(b) Before the Board may consider an application for tax credits:

1. The Authority shall confirm with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury that the applicant and any co-applicant, if applicable, is in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the applicant or any co-applicant, has entered into an agreement with the respective department, which may include a corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the applicant and any co-applicant:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the applicant and any co-applicant; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the



respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

**2.** The Authority may contract with an independent third party to perform a background check on the applicant and any co-applicant.

**3.** Any contractors or subcontractors that will perform work at the project shall be registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., shall not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on public works contracts in the State, and shall possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

**(c)** Provided that the requirements at (b) above are satisfied, the Authority shall allocate incentive awards to projects until the available tax credits are exhausted. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

**(d)** For a financing gap tax credit, and in accordance with an incentive award agreement, beginning upon completion of the capital investment, the receipt of the temporary certificate of occupancy or upon any other event evidencing completion of construction as set forth in the incentive award agreement, and the opening of the supermarket or grocery store for business to the public, an applicant shall be allowed a total financing gap tax credit pursuant to this Program to reimburse all or a portion of the project financing gap as follows:

**1.** For a project with a supermarket or grocery store that has a labor harmony agreement, not to exceed 40 percent of project costs for the first new supermarket or grocery store and 20 percent of project costs for the second new supermarket or grocery store. In lieu of a labor harmony agreement, the applicant may provide a collective bargaining agreement for the supermarket or grocery store.

**2.** For a project in which the supermarket or grocery store does not have a labor harmony agreement, not to exceed 30 percent of project costs for the first new supermarket or grocery store and 15 percent of project costs for the second new supermarket or grocery store.

**(e)** For an initial operating cost tax credit, and in accordance with an incentive award agreement, upon receipt of evidence that the applicant is operating the supermarket or grocery store on a full-time basis, an applicant shall be allowed a total initial operating cost tax credit pursuant to the Program to reimburse all or a portion of the initial operating shortfall for the eligibility period that shall not exceed 100 percent of initial operating costs for the first new supermarket or grocery store and 50 percent of initial operating costs for the second new supermarket or grocery store.

**(f)** The maximum amount of financing gap tax credits available to an applicant to apply annually shall be equal to the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

**(g)** The maximum amount of initial operating cost tax credits available to an applicant to apply annually shall be the lesser of the actual annual initial operating shortfall and the amount of tax credit not applied previously during the eligibility period.

## **N.J.A.C. 19:31-28.8**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.8 Approval letter; incentive award agreement**

(a) Upon receipt of a recommendation from the Authority staff on the project, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits, and promptly notify the applicant, any co-applicant, and the Director of the Division of Taxation in the New Jersey Department of the Treasury of the determination.

1. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant and any co-applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, N.J.S.A. 34:1B-5.1, and affirmative action requirements, N.J.S.A. 34:1B-5.4, as set forth at N.J.A.C. 19:31-28.13, and that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The approval letter shall also provide the requirements necessary for the Authority to execute the incentive award agreement.
2. For a financing gap tax credit the approval letter shall:
  - i. Require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the applicant or an affiliate of the applicant, a copy of the site plan approval, a copy of an executed agreement with the operator of the supermarket or grocery store at the site of the project, and a copy of all required permits and planning and zoning approvals and permits; and
  - ii. Provide estimated dates of completion for the opening of the supermarket or grocery store for business to the public and include a requirement for periodic progress reports.
3. For an initial operating cost tax credit the approval letter shall:
  - i. Require documentation evidencing project and financing approvals, including the submittal of executed financing commitments, documents that evidence site control by the applicant or an affiliate of the applicant, a copy of all executed leases, licenses, or other occupancy agreements executed by the applicant for space at the supermarket or grocery store, and a copy of all required permits; and
  - ii. Provide the estimated date of the opening of the supermarket or grocery store for business to the public and include a requirement for periodic progress reports.

4. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the applicant or co-applicant, as applicable, does not submit the documentation required at (a)2 and 3 above within one year after approval of the application.

5. If the Authority does not receive a periodic progress report when required, or if the progress report demonstrates unsatisfactory progress or inadequate information, then the Authority may rescind the commitment of the incentive award. If the Authority rescinds an incentive award or the approval of an award expires, the Authority may designate another new supermarket or grocery store as the first or second new supermarket or grocery store.

6. If the terms of the financing commitment in the evidence required by the approval letter are materially different from the projected terms in the application, the Authority may re-evaluate the project financing gap or the amount of initial operating shortfall and reduce the size of the incentive award accordingly or may rescind the commitment of the incentive award.

**(b)** Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the applicant and any co-applicant. The award of tax credits shall be conditioned on the applicant's and any co-applicant's compliance with the requirements of the agreement.

**(c)** The incentive award agreement shall specify and include:

1. A detailed description of the proposed project;
2. The duration of the eligibility period and the commitment period;
3. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the Program;
4. A requirement that the supermarket or grocery store shall not cease operating on a full-time basis during the eligibility period and the commitment period;
5. A method for the applicant to certify that it has met the project costs or initial operating costs and other eligibility requirements of the Program;
6. A requirement for the applicant to provide annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion reporting the project's financial performance. For the initial operating cost tax credit, the financial statements during the eligibility period shall list initial operating costs on an income statement approved by the Authority;
7. Representations that the applicant and any co-applicants are in substantial good standing and that the project will comply with all applicable laws, including, but not limited to, prevailing wage requirements as set forth at N.J.A.C. 19:31-28.13(b) and (c), affirmative action requirements as set forth at N.J.A.C. 19:31-28.13(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
8. A provision acknowledging the Authority's right to confirm with the New Jersey Department of Environmental Protection, the New Jersey Department of Labor and Workforce Development, and the New Jersey Department of the Treasury, as set forth at N.J.A.C. 19:31-28.7(b)1, that the applicant and any co-applicant is in substantial good standing or has entered into an agreement with the respective department that includes a corrective action plan, as applicable;

- 9.** A provision providing that if the applicant and any co-applicant is not in substantial good standing with the New Jersey Department of Environmental Protection, the New Jersey Department of Labor and Workforce Development, and the New Jersey Department of the Treasury, and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-28.7(b)1, and after being given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the applicant and any co-applicant may forfeit or the Authority may recapture tax credits in any year or in proportion to any year in which the applicant and any co-applicant is neither in substantial good standing with each department nor has entered into a corrective action;
- 10.** A requirement that the applicant shall confirm that each contractor or subcontractor performing work at the project: is registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., has not been debarred by the New Jersey Department of Labor and Workforce Development from engaging in or bidding on public works contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the New Jersey Department of the Treasury. The incentive award agreement shall also include a provision that the Authority may suspend the tax credits, if the applicant and any co-applicant is not in compliance with this requirement, and if the suspension continues for two years, then, at the Authority's sole option, the applicant and any co-applicant may forfeit or the Authority may recapture the tax credits for those years or in proportion to those years;
- 11.** A provision permitting an audit of evidence and documentation of the applicant and any co-applicant supporting the certifications pursuant to (e) below, and the annual reports pursuant to N.J.A.C. 19:31-28.9, as the Authority deems necessary, including, but not limited to, site visits and verification with the United States Department of Agriculture Food and Nutrition Service;
- 12.** Reporting requirements pursuant to N.J.A.C. 19:31-28.9;
- 13.** A provision permitting the Authority to amend the agreement;
- 14.** A provision establishing the conditions pursuant to which the Authority, the applicant and any co-applicant, or all parties, may terminate the agreement;
- 15.** A provision allowing the Authority to extend, in individual cases, the deadline for any annual report, project completion certification, or the opening of the supermarket or grocery store for business to the public;
- 16.** Indemnification and insurance requirements from the applicant and any co-applicant;
- 17.** Events that would trigger forfeiture, reduction, or recapture of the tax credits, including, but not limited to, provisions in this subchapter;
- 18.** Default and remedies, including, but not limited to, a default if an applicant made a material misrepresentation on its application;
- 19.** For a financing gap tax credit, the incentive award shall additionally specify and include:

  - i.** The maximum amount of project cost and the maximum percentage of the project cost that will be used to calculate the amount of tax credits. If the actual project costs are less than the project cost set forth in the application, the tax credit shall be calculated based on the actual project cost;

- ii. A description of the temporary certificate of occupancy permit, or other event evidencing completion of construction, and the opening of the supermarket or grocery store for business to the public, that begins the eligibility period;
- iii. Milestones for the project, that shall include the estimated dates of commencement and completion of the project, and the opening of the supermarket or grocery store for business to the public, and a provision that the Authority may rescind the commitment of the award of tax credits if a project fails to advance in accordance with milestones in the incentive award agreement and may designate another new supermarket or grocery store as the first or second new supermarket or grocery store;
- iv. A provision to verify the project financing gap at the time the applicant provides executed permanent financing commitments to the Authority and a verification of the applicant's projected cash flow at the time the applicant submits the evidence of the completion of the project pursuant to (f) below. To ensure the protection of taxpayer money, if the Authority determines at project certification that the actual capital financing approach utilized by the project has resulted in a project financing gap that is smaller than the project financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit or accept payment from the applicant on a pro-rata basis. If there is no project financing gap due to the actual capital financing approach utilized by the project, then the applicant shall forfeit the incentive award;
- v. A provision requiring that at the conclusion of the third year of the eligibility period, the Authority shall evaluate the applicant's reasonable and appropriate return on investment and compare that reasonable and appropriate return on investment to the reasonable and appropriate return at the time of Board approval. If the actual return on investment exceeds the reasonable and appropriate return on investment at the time of Board approval by more than 15 percent, the Authority shall reduce the amount of tax credits allowed in the certificate of compliance for the fourth year by 20 percent of the amount in excess of the reasonable and appropriate return on investment to the Authority; and
- vi. A provision stating that if the applicant sells, leases, or subleases the supermarket or grocery store during the eligibility period or the commitment period, the Authority shall determine if the applicant's return on investment exceeded the reasonable and appropriate return on investment determined at Board approval. The applicant shall provide to the Authority any information that the Authority determines is necessary to re-evaluate the applicant's return on investment, including, but not limited to, the purchase price. If the applicant's final return on investment exceeds the reasonable and appropriate return on investment determined at Board approval by more than 15 percent, the applicant shall pay 20 percent of the amount of the excess to the Authority, and the Authority shall deposit such funds in the State General Fund; and

**20.** For an initial operating cost tax credit, the incentive award agreement shall additionally specify and include:

- i. A detailed description of the operating years for which the tax credit is applicable;
- ii. The maximum amount of initial operating shortfall and the maximum percentage of initial operating costs that will be used to calculate the amount of tax credits. If the actual initial operating costs are less than the initial operating costs set forth in the application, the tax credit shall be calculated based on the actual initial operating costs and the annual operating costs shortfall;

**iii.** The opening of the supermarket or grocery store for business to the public that begins the eligibility period; and

**iv.** Milestones for the project, that shall include the estimated date of commencement of construction, if applicable, the estimated date of commencement and completion of any tenant improvements undertaken by the applicant, the estimated date of the opening of the supermarket or grocery store to the public, and a provision that the Authority may rescind the commitment of the award of tax credits if a project fails to advance in accordance with milestones in the incentive award agreement and may designate another new supermarket or grocery store as the first or second new supermarket or grocery store.

**(d)** A labor harmony agreement shall be required if the State has a proprietary interest in a supermarket or grocery store and the agreement shall remain in effect for as long as the State acts as a market participant in the project. The provisions of this subsection shall apply to a supermarket or grocery store that will have more than 10 full-time employees. A labor harmony agreement shall not be required if the Authority determines that the supermarket or grocery store would not be feasible if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.

**(e)** An applicant shall submit, prior to the issuance of tax credits pursuant to the incentive award agreement, satisfactory evidence of the opening of the supermarket or grocery store for business to the public and the Program eligibility requirements, that shall include, but not be limited to, the documents in this subsection:

- 1.** Evidence that the supermarket or grocery store meets the definition of a new supermarket or grocery store and the supermarket or grocery store is operating on a full-time basis, which may include, but not be limited to, access to reports from an independent scanning data company and, if applicable, a certification from a licensed engineer that the major systems, as approved by the Authority, have been repaired or replaced for the supermarket to satisfy the definition of a new supermarket or grocery store;
- 2.** A floor plan identifying the actual uses of the supermarket or grocery store, including square footage for any alcoholic beverages and products related to the consumption of such beverages, all retail space (for example, planogram), and the retail space dedicated to fresh and/or frozen fruit and vegetables;
- 3.** A copy of a permit from the Supplemental Nutrition Assistance Program (SNAP) and an executed vendor agreement from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) within 90 days of the opening of the supermarket or grocery store for business to the public or evidence of applications for SNAP and WIC retailer authorization made prior to the opening of the supermarket or grocery store for business to the public;
- 4.** A certification indicating whether or not the applicant is aware of any condition, event, or act that would cause the applicant or any co-applicant not to be in compliance with the approval, the Act, or this subchapter;
- 5.** A certification by the chief executive officer or equivalent officer of the applicant that the information provided pursuant to this subsection is true and correct pursuant to the penalty of perjury;
- 6.** If the Authority approval included a co-applicant, a certification that the participation agreement between the applicant and the co-applicant remains in effect and is not in default;

7. Copies of all government permits and approvals required to open the supermarket or grocery store for business to the public and for operating the supermarket or grocery store on a full-time basis;
  8. If applicable, satisfactory evidence that the applicant complies with the labor harmony agreement requirement pursuant to (d) above or as required for the tax credit pursuant to N.J.A.C. 19:31-28.7(d)1. For a financing gap tax credit award calculated as set forth at N.J.A.C. 19:31-28.7(d)1, if the applicant does not provide satisfactory evidence of the executed agreement, the incentive award shall be reduced to the amount set forth at N.J.A.C. 19:31-28.7(d)2;
  9. For a financing gap tax credit, the documents shall additionally include:
    - i. Evidence of a temporary certificate of occupancy or other event evidencing completion of construction, and the opening of the supermarket or grocery store for business to the public that begins the eligibility period indicated in the incentive award agreement;
    - ii. A certification by a qualified independent certified public accountant of the actual project costs. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority. If applicable, the certification shall include the costs of the repair or replacement of the major systems, as approved by the Authority, for the supermarket or grocery store to satisfy the definition of a new supermarket or grocery store. If the project cost in the certification is less than the project cost in the approval of the application, the Authority may reduce the size of the tax credits accordingly. The Authority shall qualify certified public accountants and provide to the applicant the list of qualified certified public accountants; provided, however, the applicant may select a certified public accountant that is independent to the applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification if the applicant demonstrates an extenuating circumstance prohibiting the applicant from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the applicant; and
    - iii. Verification of the applicant's projected cash flow at the time of the submission of the documents; and
  10. For an initial operating cost tax credit, evidence of continued financing approvals, including the submittal of executed financing commitments.
- (f) The documents required at (e) above shall be submitted by the following dates:
1. For a financing gap tax credit, no later than six months following the opening of the supermarket or grocery store for business to the public.
  2. For an initial operating cost tax credit, no later than six months after the later of the opening of the supermarket or grocery store for business to the public or the date of approval of the application.
- (g) Once the Authority accepts the documentation required at (e) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the applicant, any co-applicant, and the Director of the Division of Taxation in the Department of the Treasury, and the applicant shall receive its tax credit certificate that will be based on the information submitted in the documents, provided it shall not exceed the maximum

amount determined by the Board pursuant to N.J.A.C. 19:31-23.7(d) and (e). The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority. Notwithstanding this subsection, if the applicant submitted a copy of the application for Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) retailer authorization, the Authority shall only review all other documents and shall not finalize its acceptance of the documentation until the applications for SNAP and WIC retailer authorization have been approved. If an application for SNAP or WIC retailer authorization is denied by the administrative agency, the Authority shall not accept the documentation, shall rescind the commitment of the incentive award, and may designate another supermarket or grocery store as the first or second new supermarket or grocery store.

**(h)** For a financing gap tax credit, the eligibility period shall start with the privilege period in which the applicant establishes and opens the supermarket or grocery store for business to the public.

**(i)** For an initial operating cost tax credit award, the eligibility period shall start with the later of the privilege period in which the applicant opens the supermarket or grocery store for business to the public or in which the applicant submits a completed application to the Authority. Notwithstanding the date when the eligibility period starts, the eligibility period shall terminate at the end of the third year after the opening of the supermarket or grocery store for business to the public.

**(j)** Any modification to the project as approved by the Board, including, but not limited to, a reduction in the amount of the project cost, square feet, or initial operating costs, shall require review and approval by the Authority to determine that the project as modified does not undermine the basis for the tax credit award approved. The Authority may re-evaluate the project financing gap or the amount of initial operating shortfall and reduce the size of the incentive award accordingly.



## **N.J.A.C. 19:31-28.9**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.9 Reporting requirements and annual report**

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**(a)** An applicant that is approved for an incentive award and that enters an incentive award agreement shall submit annually, commencing in the privilege period for which the incentive award is issued and for the remainder of the commitment period, a report indicating whether the applicant is aware of any condition, event, or act that would cause the applicant or any co-applicant not to be in compliance with the incentive award agreement or the provisions of this subchapter, the Act, and any additional reporting requirements in the incentive award agreement or tax credit certificate. The applicant, or an authorized agent of the applicant, shall certify that the information provided pursuant to this subsection is true and correct pursuant to the penalty of perjury.

**(b)** The annual report shall consist of:

1. A certification indicating whether the applicant is aware of any condition, event, or act that would cause the applicant or any co-applicant not to be in compliance with the approval, the Act, and the incentive award agreement, including, but not limited to, covenants that relate to the operation of the project and the use of space;
2. A certification indicating that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
3. If applicable, for the two years after the first certificate of compliance is issued, evidence that the project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31-28.13;
4. If applicable, for the two years after the first certificate of compliance is issued, evidence that the project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-28.13;
5. A tax clearance certificate as described at section 1 at N.J.S.A. 54:50-39 for the applicant and any co-applicant;
6. A certification from the applicant that the supermarket or grocery store is operating on a full-time basis, which may include, but not be limited to, access to reports from an independent scanning data company;
7. A list of all tenants, sub-tenants, or licensees of the supermarket or grocery store, the gross leasable area leased by each tenant or sub-tenant or occupied by a licensee, and whether the tenant or sub-tenant is operating its business at the premises;

- 8.** Annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;
  - 9.** If applicable, satisfactory evidence that the applicant complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-28.8(d) or as required for the tax credit pursuant to N.J.A.C. 19:31-28.7(d)1. For a financing gap tax credit award calculated as set forth at N.J.A.C. 19:31-28.7(d)1, if the applicant does not provide satisfactory evidence of the executed agreement in effect for the relevant privilege period, the amount of the tax credit specified in the certificate of compliance shall be reduced to an annual amount corresponding to an award pursuant to N.J.A.C. 19:31-28.7(d)2;
  - 10.** For a tax credit that has been awarded before the completion of construction of the supermarket or grocery store, the first annual report shall include the permanent certificate of occupancy covering the entire project;
  - 11.** A floor plan identifying the actual uses of the supermarket or grocery store for each quarter of the relevant privilege period, including square footage for any alcoholic beverages and products related to the consumption of such beverages, all retail space (for example, planogram), and the retail space dedicated to fresh and/or frozen fruit and vegetables. The calculation of the square footage of uses shall be determined as the average of the quarterly floor plans for the period;
  - 12.** A copy of a permit from the Supplemental Nutrition Assistance Program (SNAP) and an executed vendor agreement from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), unless an application for SNAP or WIC retailer authorization is pending pursuant to N.J.A.C. 19:31-28.8(g);
  - 13.** If the Authority approval included a co-applicant, a certification that the participation agreement between the applicant and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required pursuant to the participation agreement;
  - 14.** Evidence satisfactory to the Authority of the listening session required pursuant to N.J.A.C. 19:31-28.3(a)7iv, including, but not limited to, providing a copy of the notice of the listening session and the minutes of such listening session;
  - 15.** For a financing gap tax credit, the annual report shall additionally include, for the third year of the eligibility period, verification of the applicant's projected cash flow;
  - 16.** For an initial operating cost tax credit:
    - i.** The annual financial statement shall include initial operating costs for the relevant privilege period and an income statement in a form satisfactory to the Authority that indicates the initial operating shortfall; and
    - ii.** Evidence of continued financing approvals, including the submittal of executed financing commitments; and
  - 17.** In conducting its annual review, the Authority may require an applicant to submit any information determined by the Authority to be necessary and relevant to its review.
- (c)** The annual reports required at (a) above are due 120 days after the end of the applicant's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

- (d)** Upon receipt, review, and acceptance of each annual report submitted during the eligibility period, the Authority shall provide to the applicant and the Director of the Division of Taxation in the Department of the Treasury a certificate of compliance indicating the amount of tax credits that the applicant or any co-applicant may apply against the applicant's tax liability. If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the applicant. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period.
- (e)** Upon receipt by the Director of the certificate of compliance, the Director shall allow the applicant or any co-applicant a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5, 54:18A-2 and 3, 17:32-15, or 17B:23-5. An applicant or any co-applicant shall apply the credit awarded against the applicant's liability for the tax period in which the supermarket or grocery store opens for business to the public.
- (f)** Credits granted to a partnership or a New Jersey S corporation shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director and accompanied by any additional information as the Director may prescribe, consistent with any rule, guidance, or other publication issued by the Division of Taxation.
- (g)** The Director shall prescribe the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law against the tax imposed pursuant to N.J.S.A. 54:10A-5. The amount of the credit applied pursuant to this section against the tax imposed pursuant to N.J.S.A. 54:10A-5, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at N.J.S.A. 54:10A-5.e. Any credit shall be valid in the privilege period in which the certification is approved, and any unused portion thereof may be carried forward into the next 10 privilege periods or until exhausted, whichever is earlier.

## **N.J.A.C. 19:31-28.10**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.10 Reduction, forfeiture, and recapture of tax credits**

- (a)** If, during the eligibility period, the applicant ceases to operate the project as a supermarket or grocery store, the supermarket or grocery store ceases to operate on a full-time basis, or the project ceases to meet the criteria at N.J.A.C. 19:31-28.3(a)7, the applicant and any co-applicant may forfeit or be subject to recapture for all or some of the incentive award.
- (b)** During the commitment period, the Authority may recapture a proportionate amount of the tax credit if the project ceases to be a supermarket or grocery store, the supermarket or grocery store ceases to operate on a full-time basis, or the project ceases to meet the criteria at N.J.A.C. 19:31-28.3(a)7.
- (c)** If the supermarket or grocery store is disqualified from the Supplemental Nutrition Assistance Program (SNAP) or is subject to a Federal sanction leading to disqualification from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), then the applicant and any co-applicant shall forfeit all credits for the relevant tax period and each subsequent tax period and the Authority shall recapture a proportionate amount of the tax credit.
- (d)** If any labor harmony agreement requirement pursuant to N.J.A.C. 19:31-28.8(d) is not satisfied during the relevant tax period, then the applicant and any co-applicant shall forfeit, or the Authority shall recapture some or all of the tax credits for the tax period in which the labor harmony agreement requirements are not satisfied and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.
- (e)** As of the date of the annual report pursuant to N.J.A.C. 19:31-28.9, if any worker employed to perform construction work at the project is paid less than the prevailing wage rate for the worker's craft or trade during the relevant tax period as required pursuant to N.J.A.C. 19:31-28.13(b), then the applicant and any co-applicant shall forfeit, or the Authority shall recapture some or all of the tax credits for the tax period in which the prevailing wage is not paid and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.
- (f)** If, based on new information, the Authority determines that forfeiture or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture some or all of the tax credits for the relevant tax period(s).
- (g)** If, at any time, the Authority determines that the applicant or co-applicant made a material misrepresentation on the applicant's application, project completion certification, annual report, or

any related submissions, the applicant and any co-applicant shall forfeit, and the Authority may recapture any or all of the incentive award and all tax credits awarded pursuant to the Program, which shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the applicant, co-applicant, and the respective officers may be subject.

**(h)** Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

**(i)** If all or part of a tax credit sold or assigned pursuant to N.J.S.A. 34:1B-331 and N.J.A.C. 19:31-28.11(a) is subject to recapture, then the Authority shall pursue recapture from the applicant, and to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

**(j)** Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

## **N.J.A.C. 19:31-28.11**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.11 Application for tax credit transfer certificate**

**(a)** An applicant or co-applicant may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years, in lieu of the applicant or co-applicant being allowed any amount of the credit against the tax liability of the applicant. The tax credit transfer certificate, upon receipt thereof by the applicant or co-applicant from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000, in the privilege period during which the applicant or co-applicant receives the tax credit transfer certificate from the Director, to another person, who may apply the tax credit against a tax liability pursuant to N.J.S.A. 54:10A-5, 54:18A-2 and 54:18A-3, 17:32-15, or 17B:23-5. The certificate provided to the applicant or co-applicant shall include a statement waiving the applicant's or co-applicant's right to claim the amount of the credit that the applicant or co-applicant has elected to sell or assign against the applicant's or co-applicant's tax liability.

**(b)** The applicant or co-applicant shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration received by the applicant or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The applicant or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits that may include, but not be limited to, the purchase agreement.

**(c)** The tax credit transfer certificate issued to an applicant or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of original State tax credits issued pursuant to the Act and any other terms and conditions that the Director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

**(d)** A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

**(e)** The Authority shall publish, on its Internet website, the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferor;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;

4. The State tax against which the transferee may apply the tax credit; and
5. The consideration received by the transferor.

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End of Document

## **N.J.A.C. 19:31-28.12**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.12 Assignment of rights of incentive award agreement**

**(a)** An applicant who has entered into an incentive award agreement may, upon notice to and written consent of the Authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive award payable pursuant to the incentive award agreement, and the right to receive the incentive award, along with the rights and remedies provided to the applicant pursuant to the incentive award agreement. To decide whether to consent, the Authority and State Treasurer will consider the purchase price and terms of the pledge, assignment, transfer, or sale; the allocation of the purchase price to the tax credit; and the impact of the transaction to the reasonable and appropriate return on investment for the seller(s) and the purchaser. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. If the Authority approval included a co-applicant, prior to requesting the consent of the Authority and State Treasurer, the applicant shall obtain, in writing, the co-applicant's consent, and the applicant shall provide the co-applicant's written consent to the Authority and State Treasurer with the applicant's notice.

**(b)** A co-applicant who has entered into an incentive award agreement may, upon notice to and written consent of the Authority and State Treasurer, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive award payable pursuant to the incentive award agreement, and the right to receive the incentive award, along with the rights and remedies provided to the co-applicant pursuant to the incentive award agreement, provided that the purchaser shall be a non-profit pursuant to Section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority and State Treasurer will consider the contributions of the co-applicant, the proposed contributions by the purchaser, the purchase price and terms of the assignment, transfer or sale, and the allocation of the purchase price to the tax credit. The new purchaser shall be the co-applicant and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation agreement with the applicant. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Prior to requesting the consent of the Authority and State Treasurer, the co-applicant shall obtain, in writing, the applicant's consent, and the co-applicant shall provide the applicant's written consent to the Authority and State Treasurer with the co-applicant's notice.

**(c)** Any pledge of an incentive award made by the applicant shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the applicant shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind, in tort, contract, or otherwise against the



taxpayer irrespective of whether the parties have notice thereof. As a condition of any incentive grant, the grantee, assignee, pledgee, or subsequent holder of the incentive grant shall immediately file notice of the same with the clerk of the county in which the project is located.

**(d)** The Authority shall publish, on its Internet website, the following information concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in an incentive award agreement;
2. The name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the incentive award agreement;
3. The value of the right, title, or interest in the incentive award agreement; and
4. The consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the incentive award agreement.

## **N.J.A.C. 19:31-28.13**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.13 Affirmative action and prevailing wage**

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**(a)** For a financing gap tax credit:

1. The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 shall apply to the project, including, but not limited to, construction contracts for work performed before the application and after May 4, 2023 (the effective date of this subchapter), and included in the project cost.

2. The Authority's prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to the project, but not be limited to, construction contracts for work performed before the application and included in the project cost.

**(b)** For an initial operating cost tax credit, the Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3, and the prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to the project, including, but not limited to, construction contracts for work performed after the application is approved and construction contracts for work performed after the date of the application, if included in the initial operating shortfall.

**(c)** The Authority's affirmative action and prevailing wage requirements shall continue to apply to the project for two years after the first certificate of compliance is issued.

## **N.J.A.C. 19:31-28.14**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.14 Appeals**

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- (a)** The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b)** An applicant may appeal the Board's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c)** Appeals that are timely submitted shall be handled by the Authority as follows:
  - 1.** The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
  - 2.** Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
  - 3.** The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

## **N.J.A.C. 19:31-28.15**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.15 Reports on implementation of program**

By January 7, 2022 (one year after the effective date of the Act), and annually thereafter, the Authority shall submit a report to the Governor, the State Treasurer, and, pursuant to N.J.S.A. 52:14-19.1, the Legislature, on the effectiveness of the program in establishing supermarkets and grocery stores in food desert communities.

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## **N.J.A.C. 19:31-28.16**

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 55 No. 11, June 5, 2023

***NJ - New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM***

### **§ 19:31-28.16 Severability**

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If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

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