

CHAPTER 197

AN ACT concerning the development and rehabilitation of cultural arts institution facilities, and amending and supplementing P.L.2020, c.156.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.34:1B-383 Short title.

1. P.L.2023, c.197 (C.34:1B-383 et al.) shall be known and may be cited as the “Cultural Arts Incentives Program Act.”

C.34:1B-384 Findings, declarations.

2. The Legislature finds and declares that:

a. The New Jersey Economic Development Authority can effectively utilize cultural arts institution facilities as catalysts for broad economic development in targeted communities. Under the legislation, facilities engaged in the cultural, educational, or artistic enrichment of the people of this State are provided with the opportunity to facilitate targeted development, utilizing proceeds from the sale of State tax credits. This approach harnesses the ability of cultural arts institution facilities to attract visitors and businesses to the State by leveraging the incalculable economic and cultural benefits of building and supporting world class cultural arts institutions.

b. Projects involving the development or rehabilitation of a cultural arts institution facility are inherently beneficial to the State because they provide vital contributions to the communities in which they are located, and together the arts community provides immeasurable economic and cultural benefits to the State.

c. Through a competitive application process, a cultural arts institution will make its case for an amount of tax credits necessary for a project to be able to establish occupancy costs at a competitive level.

d. The Legislature declares that two principal objectives underscore the policy approach of this legislation: first, that providing spaces for arts and culture to flourish will result in thriving communities; and second, the State must help to provide these spaces through an incentives program that better reflects the economics of arts and culture facilities and that the current suite of real estate programs cannot succeed in this endeavor.

C.34:1B-385 Definitions.

3. As used in P.L.2023, c.197 (C.34:1B-383 et al.):

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by a cultural arts institution. 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 federal Internal Revenue Code (26 U.S.C. s.1563) or the entity is an organization in a group of organizations under common control that is subject to the regulations applicable to organizations pursuant to subsection (b) or (c) of section 414 of the federal Internal Revenue Code (26 U.S.C. s.414). A cultural arts institution may establish by clear and convincing evidence, as determined by the authority, that control exists in situations involving lesser percentages of ownership if the cultural arts institution shall have control, at a minimum, of all aspects of compliance with this program. An affiliate of a cultural arts institution may contribute to the project cost and may satisfy the requirement for site control during construction and the eligibility period, but in no event shall the tax credit certificate be issued to any affiliate.

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

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

"Cultural arts institution" means a governmental entity or nonprofit or governmental economic or community development entity incorporated pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes, operating on a not-for-profit basis, and having the primary mission and specific policy goal of cultural, educational, or artistic enrichment of the people of this State. A "cultural arts institution" shall include a for-profit business seeking a tax credit for a cultural arts institution facility open to the public provided that the cultural arts institution facility is receiving a federal historic rehabilitation tax credit pursuant to section 47 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.47, or a tax credit pursuant to the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276).

"Cultural arts institution facility" means an existing or proposed facility within this State, operated and maintained by a cultural arts institution. A "cultural arts institution facility" includes, without limitation, an aquarium, botanical society, historical society, library, museum, gallery, performing arts center, or any related facility that is principally for the support and benefit of any of the foregoing.

"Cultural arts project" means a capital project for the construction or improvement of a cultural arts institution facility that is located in the State for which a cultural arts institution is to be awarded tax credits by the authority under the program pursuant to a tax credit agreement, provided that the project for which the tax credits are awarded will result in a capital investment of at least \$5,000,000.

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

"Eligibility period" means the period during which a cultural arts institution may claim, sell, transfer, or otherwise use a tax credit under the program, beginning with the tax period in which the authority accepts certification of the cultural arts institution that it has met the capital investment requirements of the program and extending thereafter for a term of at least five years.

"Eligible position" means a full-time position in an entity in this State which the entity has filled with a full-time employee. An eligible position shall not include an independent contractor or a consultant.

"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, is subject to financial restrictions imposed pursuant to the "Municipal Stabilization and Recovery Act," P.L.2016, c.4 (C.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.

"New full-time job" means an eligible position created by a cultural arts institution at a cultural arts project that did not previously exist in this State. 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 cultural arts institution.

"Operating reserve" means an unrestricted fund balance set aside to stabilize a nonprofit's finances to mitigate against unexpected events, losses of income, and large unbudgeted expenses.

"Program" means the Cultural Arts Incentives Program established pursuant to section 4 of P.L.2023, c.197 (C.34:1B-386).

"Project cost" means the costs incurred in connection with a cultural arts project by a cultural arts institution until the issuance of a permanent certificate of occupancy, or until such other time specified by the authority, 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 costs not directly related to construction, including capitalized interest paid to third parties, of an amount not to exceed 20 percent of the total costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. The fees associated with the application or administration of tax credits under P.L.2023, c.197 (C.34:1B-383 et al.) shall not constitute a project cost.

"Project financing gap" means the part of the total project 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 capital contributed by the cultural arts institution, which shall not be less than 20 percent of the total project cost, and investor or financial entity capital or loans; provided, however, that for a cultural arts project located in a government-restricted municipality, the capital contributed by the cultural arts institution shall not be less than 10 percent of the total project cost.

"Qualified incentive tract" means a. a population census tract having a poverty rate of 20 percent or more; or b. 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.

"Tax credit agreement" means a tax credit agreement entered into pursuant to section 8 of P.L.2023, c.197 (C.34:1B-390) between the authority and a cultural arts institution.

"Work First New Jersey program" means the Work First New Jersey program established pursuant to P.L.1997, c.38 (C.44:10-55 et seq.).

C.34:1B-386 "Cultural Arts Incentives Program" established, New Jersey Economic Development Authority.

4. a. The Cultural Arts Incentives Program is established as a program under the jurisdiction of the New Jersey Economic Development Authority. The board shall certify an eligible cultural arts institution based on the requirements of section 5 of P.L.2023, c.197 (C.34:1B-387), and may approve the award of a tax credit to a cultural arts institution pursuant to the provisions of P.L.2023, c.197 (C.34:1B-383 et al.). The value of all tax credits approved by the authority to cultural arts institutions under the program shall be subject to the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362). Any tax credit awarded under the program may be utilized by a cultural arts institution for the same project in conjunction with a tax credit award made pursuant to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335); provided, however, that any tax credit awarded under the program shall not be considered to be developer contributed capital for the purposes of calculating the project financing gap for an incentive award under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335).

b. (1) The authority shall administer the program to incentivize the establishment of cultural arts projects by a cultural arts institution independently or in collaboration with one or more governmental entities. A cultural arts project involving the development or rehabilitation of a

cultural arts institution facility shall be eligible for a tax credit award in an amount not to exceed 100 percent of eligible project costs, except, in the case of a cultural arts institution operating on a not-for-profit basis, the tax credit award may include up to 100 percent of such cultural arts institution's appropriate operating reserve as determined by the authority. The value of tax credits approved by the authority under the program for a cultural arts project shall not exceed \$75,000,000 per cultural arts project.

(2) (a) A cultural arts institution shall sell and transfer the tax credits awarded under the program, or adopt a plan to use such tax credits in order to finance the completion of the cultural arts project. A cultural arts institution receiving tax credits under the program shall use the proceeds derived from the sale or financing of the tax credits to make an equity investment in, or secure other financial support for, the cultural arts project that will permit the cultural arts institution to develop the cultural arts project and to attract tenants, owners, investors, lenders, partners, collaborators, and other beneficial parties to the cultural arts project. The authority shall evaluate each proposed cultural arts project to determine the likelihood of the project's success. A cultural arts institution shall submit to the authority an independent market study showing there is demand for a cultural arts institution facility at the proposed project site and that it is expected to be successful. The authority may procure third party consultants to determine a project's likelihood of success.

(b) Consistent with an applicable tax credit agreement, a tax credit awarded to a cultural arts institution may be applied against tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

C.34:1B-387 Cultural arts institution, tax credit eligibility.

5. a. A cultural arts institution shall be eligible to receive a tax credit under the program only if the cultural arts institution is eligible pursuant to subsection b. of this section and submits a program application to the authority that results in completion of a cultural arts project.

b. At the time of application, a cultural arts institution seeking tax credits pursuant to the program shall demonstrate to the authority:

(1) that the proposed cultural arts project will result in a capital investment of at least \$5,000,000;

(2) the structure and terms of the financial, corporate, and real estate instruments to be utilized to successfully complete and then operate the cultural arts project;

(3) that construction has not commenced at the site of the cultural arts project prior to submitting an application, unless the authority determines that the cultural arts project would not be completed without an award of tax credits under the program;

(4) the value of the tax credit that is necessary in each year of the eligibility period, in order for the cultural arts institution to finance the establishment of the cultural arts project;

(5) the total aggregate value of the tax credits for the entire eligibility period that is necessary in order for the cultural arts institution to finance the establishment of the cultural arts project;

(6) that the cultural arts project shall comply with the standards established by the authority through regulation based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.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;

(7) that the cultural arts project shall comply with the authority's affirmative action requirements, adopted pursuant to section 4 of P.L.1979, c.303 (C.34:1B-5.4);

(8) a description of the significant economic, social, planning, employment, and other benefits that would accrue to the State, county, or municipality from the cultural arts project;

(9) that during the eligibility period, each worker employed to perform construction work and building services work at the cultural arts project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.). In the event the cultural arts project constitutes a lease of more than 55 percent of a single facility, these requirements shall apply to construction work and building services work at the entire facility. In the event the cultural arts project constitutes a lease of more than 35 percent of a single facility, these requirements shall apply to construction work at the entire facility;

(10) that during the eligibility period, the cultural arts institution shall partner with one or more local community organizations that provide support and services to Work First New Jersey program recipients, in order to provide work activity opportunities and other appropriate services to Work First New Jersey program recipients, which activities and services may include, but shall not be limited to: work-study programs, internships, sector-based contextualized literacy training, skills-based training in growth industries in the State, and job retention and advancement services;

(11) that the timing of the award of tax credits under the program shall allow for the successful completion and operation of the cultural arts project demonstrated through an independent market study submitted by the applicant showing there is demand for a cultural arts institution facility at the proposed project site and that it is expected to be successful; and that the cultural arts institution has a strong prior track record of success or an independent analysis demonstrates that a newly formed cultural arts institution will be successful;

(12) a project financing gap exists, or the authority determines that the cultural arts project will generate a below market rate of return. The authority shall evaluate past and projected fundraising efforts of the cultural arts institution to determine whether a project financing gap exists;

(13) that the cultural arts institution will have ownership of, or lease space in, the cultural arts institution facility and operate or hold an operating agreement for at least the eligibility period; and

(14) that the cultural arts institution will have at least 20 percent equity in the cultural arts project, which equity interest may include amounts contributed through government grants, not including economic subsidies provided by the authority, received by the cultural arts institution; provided, however, for a cultural arts project located in a government-restricted municipality, the equity required shall not be less than 10 percent.

c. Prior to the board considering an application submitted by a cultural arts institution, the authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury whether the cultural arts institution 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. The cultural arts institution shall certify that any contractors or subcontractors that will perform work at the cultural arts project: (1) are registered as required by "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) 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 (3) possess a tax clearance certificate issued by the

Division of Taxation in the Department of the Treasury. The authority may also contract with an independent third party to perform a background check on a cultural arts institution.

C.34:1B-388 Cultural arts institution seeking tax credit, application, New Jersey State Council on the Arts, consultation.

6. a. Prior to March 1, 2029, a cultural arts institution seeking a tax credit pursuant to the program that satisfies the eligibility criteria set forth in section 5 of P.L.2023, c.197 (C.34:1B-387) shall submit an application to the authority in a form and manner prescribed in regulations adopted by the authority, in consultation with the New Jersey State Council on the Arts. The authority shall accept and certify applications for tax credits during the award rounds established pursuant to section 7 of P.L.2023, c.197 (C.34:1B-389).

b. The authority shall not consider an application for a cultural arts project unless the cultural arts institution submits, with the application, a letter evidencing support for the cultural arts project from the chief executive or governing body of the municipality in which the cultural arts project is located.

c. The authority shall review the project costs for a proposed cultural arts project and evaluate and validate the underlying financial structure proposed by the cultural arts institution. The authority shall review an independent market study submitted to the authority by the cultural arts institution showing there is demand for a cultural arts institution facility at the proposed project site and that it is expected to be successful. The authority may procure third-party consultants to determine a project's likelihood of success. The authority shall assess the cost of these reviews to the applicant. A cultural arts institution shall pay to the authority the full amount of the direct costs of an analysis concerning the cultural arts institution's application for tax credits that a third party retained by the authority performs, if the authority deems such retention to be necessary.

d. If at any time during the eligibility period the authority determines that a cultural arts institution made a material misrepresentation on the program application, the cultural arts institution shall forfeit or repay to the authority the value of tax credits associated with that application.

C.34:1B-389 New Jersey Economic Development Authority, awarding tax credits, competitive application process, at least one award round each year.

7. a. The authority shall award tax credits under the program through a competitive application process consisting of at least one award round each year. The authority shall provide notice to the public of the opening and closing dates for submission of program applications on the authority's Internet website.

b. The authority shall review applications for tax credits submitted to the authority by the deadline date of the award round and shall evaluate each application as if it were received on the deadline date, without providing any preference for early submissions. To determine priority for an award of a tax credit, all applications for cultural arts projects that satisfy the criteria set forth in sections 5 through 7 of P.L.2023, c.197 (C.34:1B-387 through 34:1B-389) in a given award round shall be ranked on the basis of a scoring system developed by the authority, in consultation with the New Jersey State Council on the Arts. Prior to the commencement of an award round, the authority shall determine the minimum score for the award round that each applicant is required to attain to be eligible for a tax credit.

c. The scoring system developed by the authority pursuant to subsection b. of this section shall assess applications for tax credits based on competitive criteria, which shall include, but shall not be limited to:

(1) the amount of tax credits requested by the cultural arts institution compared to the amount of tax credits required for the completion of the cultural arts project;

(2) how the cultural arts project will advance State, regional, and local goals concerning the development of arts and cultural facilities in underserved communities;

(3) the relationship of the cultural arts project to a comprehensive local development strategy, including its relation to other development and redevelopment projects in the municipality;

(4) the degree to which the cultural arts project enhances and promotes job creation and economic development;

(5) the extent of economic and related social distress in the municipality and the immediate area surrounding the cultural arts project, including whether the cultural arts project is located in a qualified incentive tract or other areas of the State identified from time to time by the authority in rules;

(6) the quality and number of new full-time jobs that will be created by the cultural arts institution; and

(7) if the cultural arts institution has a board of directors, the extent to which that board of directors is diverse and representative of the community in which the cultural arts project is located.

d. Notwithstanding the provisions of subsection c. of this section, the authority may adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations adjusting competitive criteria required under the program when necessary to respond to conditions in the State.

e. Prior to the award of a tax credit, 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 cultural arts institution 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 for the cultural arts institution and the cultural arts institution shall confirm that any contractors and subcontractors performing work at the cultural arts project: (1) are registered as required by "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) 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 (3) possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. Provided that all parties are in compliance with this subsection, the authority shall allocate tax credits to cultural arts projects according to the cultural arts projects' scores and until either the available tax credits are exhausted or all cultural arts projects obtaining the minimum score receive a tax credit, whichever occurs first. If insufficient funding exists to fully fund all eligible cultural arts projects, a cultural arts project may be offered a partial tax credit valued at less than what is provided for in paragraph (1) of subsection b. of section 4 of P.L.2023, c.197 (C.34:1B-386).

f. Applications that do not receive the minimum score established by the authority for that award round shall not receive further consideration for a tax credit by the authority in that award round; however, a cultural arts institution may revise or complete a new application to be submitted in a subsequent award round.

g. If a cultural arts institution declines a tax credit offered by the authority, the authority shall offer the tax credit to the applicant with the application having the next highest score, and having obtained at least the minimum score in that award round.

C.34:1B-390 New Jersey Economic Development Authority, cultural arts institution, tax credit agreement.

8. a. Following approval and selection of an application pursuant to sections 6 and 7 of P.L.2023, c.197 (C.34:1B-388 and 34:1B-389), the authority shall enter into a tax credit agreement with the cultural arts institution.

b. (1) A tax credit agreement shall specify the amount of the tax credit that the authority shall award to the cultural arts institution and specify the duration of the eligibility period, which shall be no less than five years and shall not exceed 10 years. The tax credit agreement shall provide an estimated date of completion for the cultural arts project and include a requirement for periodic progress reports through completion, including the submittal of executed financing commitments and documents or agreements that evidence site control.

(2) If, as a result of a default under the tax credit agreement, the authority rescinds a tax credit in the same calendar year in which the authority approved the tax credit, then the authority may assign the tax credit to another applicant that attained the minimum score determined pursuant to section 7 of P.L.2023, c.197 (C.34:1B-389).

c. The terms of the tax credit agreement shall:

(1) provide for a verification of project financing at the time the cultural arts institution provides executed financing commitments to the authority and a verification of the cultural arts institution's projected cash flow at the time of certification that the project is completed;

(2) specify that the authority or the State may purchase tax credits offered for sale by a cultural arts institution for 90 percent of the stated value of the tax credit before considering any further discounting to present value which shall be permitted;

(3) at a minimum, require a cultural arts institution to provide oversight of the cultural arts project through ongoing reporting by the cultural arts institution to the authority;

(4) specify other measures through which the authority shall ensure oversight of outstanding tax credits, and, in the event that a cultural arts institution fails to meet its obligations under the tax credit agreement or any program requirement, including any representations made by the cultural arts institution during the competitive award rounds conducted pursuant to section 7 of P.L.2023, c.197 (C.34:1B-389), establish the right of the authority to reduce, rescind, or recapture tax credits in the authority's discretion; and

(5) at a minimum, require that the cultural arts institution adopt specific nondiscrimination policies for the operation of a cultural arts project.

d. The tax credit agreement shall include a requirement that the chief executive officer of the authority receive annual reports from the cultural arts institution. As part of the authority's review of the annual reports required from each cultural arts institution, the authority shall confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the cultural arts institution is in substantial good standing with the respective department, or has entered into an agreement with such department that includes a practical corrective action plan for the cultural arts institution; and the cultural arts institution shall confirm that any contractors and subcontractors performing work at the cultural arts project: (1) are registered as required by "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.); (2) 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 (3) possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The tax credit agreement shall include a provision that the cultural arts institution shall forfeit the tax credit in any year in which an uncured default exists under the tax credit agreement, or the cultural arts institution is neither in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, or the Department of the Treasury nor has entered into a practical corrective action plan. The tax credit agreement shall,

however, allow the authority to extend, in individual cases, the deadline for any annual reporting requirement.

e. A cultural arts institution shall, as required at the discretion of the authority, submit to the authority 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. The cultural arts institution, or an authorized agent of the cultural arts institution, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

C.34:1B-391 Cultural arts institution, approved cultural arts project, tax credit, awarded.

9. a. Up to the limits established in paragraph (1) of subsection b. of section 4 of P.L.2023, c.197 (C.34:1B-386), and in accordance with a tax credit agreement, beginning upon the receipt of occupancy permits for any portion of the cultural arts project, or upon any other event evidencing project completion as set forth in the tax credit agreement, a cultural arts institution of such approved cultural arts project shall be awarded a tax credit. No more than the amount of tax credits equal to the total credit amount awarded under the program divided by the duration of the eligibility period in years may be taken in any tax period.

b. A cultural arts institution that is awarded a tax credit under P.L.2023, c.197 (C.34:1B-383 et al.) shall, commencing in the year in which the tax credit is awarded, and each year thereafter for the remainder of the eligibility period, submit a report indicating whether the cultural arts institution is aware of any condition, event, or act that would cause the cultural arts institution not to be in compliance with the tax credit agreement, the representations made to the authority during the competitive award rounds conducted pursuant to section 7 of P.L.2023, c.197 (C.34:1B-389), or the provisions of P.L.2023, c.197 (C.34:1B-383 et al.) and any additional reporting requirements contained in the tax credit agreement or tax credit certificate. The cultural arts institution or an authorized agent of the cultural arts institution shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

c. (1) Upon receipt and review of each report submitted during the eligibility period, the authority shall provide to the cultural arts institution and the Director of the Division of Taxation in the Department of the Treasury a certificate of compliance indicating the amount of tax credits awarded to the cultural arts institution, that the cultural arts institution may:

(a) offer for sale through the provision of a tax credit transfer certificate pursuant to section 10 of P.L.2023, c.197 (C.34:1B-392); or

(b) use as collateral or to secure any financial instrument approved by the authority to provide financing for the cultural arts project, if that use is in accordance with rules and regulations adopted by the authority to govern the use of program tax credits.

(2) Upon receipt by the director of the certificate of compliance, the director shall coordinate with the cultural arts institution and the authority to provide the cultural arts institution with a tax credit transfer certificate, as described in section 10 of P.L.2023, c.197 (C.34:1B-392), or a tax credit certificate for the value awarded by the authority for that year that the cultural arts institution may use as provided in paragraph (1) of this subsection and in accordance with the rules adopted pursuant to subparagraph (b) of paragraph (1) of this subsection.

C.34:1B-392 Cultural arts institution, tax credit transfer certificate, selling, assigning.

10. a. A cultural arts institution may apply to the director and the chief executive officer of the authority for a tax credit transfer certificate, covering one or more years. The tax credit transfer certificate, upon receipt thereof by the cultural arts institution 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 cultural arts institution 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 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5.

b. The cultural arts institution shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed under this section for consideration received by the cultural arts institution of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The tax credit transfer certificate issued to a cultural arts institution by the director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to P.L.2023, c.197 (C.34:1B-383 et al.) and any other terms and conditions that the director may prescribe; provided, however, that the holder of a tax credit certificate may transfer all or part of the tax credit amount, on or after the date of issuance of the tax credit transfer certificate, for use by the transferee in the tax period for which it was issued, and the transferee may carry forward all or part of the tax credit amount in any of the next five successive tax periods. Notwithstanding any provision of this section to the contrary, the amount of tax credits that may be claimed by the transferee in any tax period shall not exceed the total tax credit amount divided by the duration of the eligibility period in years.

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.

d. 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.

C.34:1B-393 Rules, regulations.

11. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the chief executive officer of the authority shall, in consultation with the New Jersey State Council on the Arts, adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as the chief executive officer deems necessary to implement the provisions of P.L.2023, c.197 (C.34:1B-383 et al.), which rules and regulations shall be effective for a period not to exceed 365 days after the date of the filing. Before the expiration of the rules and regulations, the chief executive officer, in consultation with the New Jersey State Council on the Arts, shall amend, adopt, or readopt the rules and regulations in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

12. Section 48 of P.L.2020, c.156 (C.34:1B-316) is amended to read as follows:

C.34:1B-316 Submission of application by anchor institution.

48. a. Beginning January 1, 2026, but prior to March 1, 2029, an anchor institution and, if applicable, each partner anchor institution seeking a tax credit pursuant to the program shall

submit an application to the authority in a form and manner prescribed in regulations adopted by the authority pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The authority shall accept and certify applications for tax credits during the award rounds established pursuant to section 49 of P.L.2020, c.156 (C.34:1B-317).

b. The authority shall not consider an application for a community-anchored project unless the anchor institution and, if applicable, each partner anchor institution submits, with the application, a letter evidencing support for the community-anchored project from the governing body of the municipality in which the community-anchored project is located.

c. The authority shall review the project costs for a proposed community-anchored project and evaluate and validate the underlying financial structure proposed by the anchor institution and, if applicable, each partner anchor institution. The authority shall conduct a State fiscal impact analysis to ensure that the overall value of tax credits provided to the community-anchored project is projected to result in net benefits to the State, taking into account the current and deferred returns to the authority. The authority shall assess the cost of these reviews to the applicant. An anchor institution and, if applicable, each partner anchor institution shall pay to the authority the full amount of the direct costs of an analysis concerning the anchor institution's and, if applicable, each partner anchor institution's application for tax credits that a third party retained by the authority performs, if the authority deems such retention to be necessary.

d. If at any time during the eligibility period the authority determines that an anchor institution or a partner anchor institution made a material misrepresentation on the program application, the anchor institution or partner anchor institution shall forfeit or repay to the authority the value of tax credits associated with that application.

13. Section 98 of P.L.2020, c.156 (C.34:1B-362) is amended to read as follows:

C.34:1B-362 Combined value, all tax credits.

98. a. The combined value of all tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276); the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287); the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302); the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310); the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321); the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335); the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.); section 6 of P.L.2010, c.57 (C.34:1B-209.4), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.) shall not exceed an overall cap of \$11.5 billion over a nine-year period, subject to the conditions and limitations set forth in this section. Of this \$11.5 billion, \$2.5 billion shall be reserved for transformative projects approved under the Aspire Program.

b. (1) The total value of tax credits awarded under any constituent program of the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.) and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), shall be subject to the following limitations, except as otherwise provided in subsection c. of this section:

(a) for tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276), the total value of tax credits

annually awarded during each of the first six years of the nine-year period shall not exceed \$50 million;

(b) for tax credits awarded under the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed \$50 million;

(c) for tax credits awarded under the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed \$60 million and the total value of tax credits awarded over the entirety of the nine-year period shall not exceed \$300,000,000;

(d) for tax credits awarded under the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed \$40 million;

(e) for tax credits awarded under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), the total value of tax credits awarded during the nine-year period shall not exceed \$1,200,000,000; provided, however, tax credits shall not be available under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), until January 1, 2026. Beginning January 1, 2026, the authority shall annually award tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), valuing no greater than \$130 million for projects located in the 13 northern counties of the State, and the authority shall annually award tax credits valuing no greater than \$70 million for projects located in the eight southern counties of the State. If during any year of operation of the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), the authority awards tax credits pursuant to the program in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year without consideration to the county in which a project is located;

(f) for tax credits awarded under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed \$1.1 billion. If the authority awards tax credits in an amount less than the annual limitation, then the uncommitted portion of the annual limitation shall be made available for qualified offshore wind projects awarded under section 6 of P.L.2010, c.57 (C.34:1B-209.4), pursuant to subparagraph (h) of this paragraph, or New Jersey studio partners and New Jersey film-lease production companies awarded under sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b), pursuant to subparagraph (i) of this paragraph and subsection d. of this section. During each of the first six years of the nine-year period, the authority shall annually award tax credits valuing no greater than \$715 million for projects located in the northern counties of the State, and the authority shall annually award tax credits valuing no greater than \$385 million for projects located in the southern counties of the State under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.). If

during any of the first six years of the nine-year period, the authority awards tax credits under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year, provided that the uncommitted portion of tax credits shall be awarded for projects located in the applicable geographic area, except that (i) after the completion of the third year of the nine-year period, the authority may deploy 50 percent of the uncommitted portion of tax credits for any previous year without consideration to the county in which a project is located; and (ii) after the completion of the sixth year of the nine-year period, the authority may deploy all available tax credits, including the uncommitted portion of the annual limitation for any previous year, without consideration to the county in which a project is located;

(g) except as provided in subparagraph (j) of this paragraph, for tax credits awarded for transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), the total value of tax credits awarded during the nine-year period shall not exceed \$2.5 billion. The total value of tax credits awarded for transformative projects in a given year shall not be subject to an annual limitation, except that the total value of tax credits awarded to any transformative project shall not exceed \$400 million;

(h) from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed \$350,000,000 shall be made available for qualified offshore wind projects awarded a credit pursuant to section 6 of P.L.2010, c.57 (C.34:1B-209.4) during the first three years of the nine-year period;

(i) beginning in fiscal year 2023, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, additional amounts shall be made available for New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b); and

(j) beginning in fiscal year 2024, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed \$500,000,000 may be annually transferred for the award to transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), provided that: (i) the remaining allocation of tax credits otherwise available for transformative projects, pursuant to subparagraph (g) of this paragraph, is less than \$1,000,000,000; and (ii) the authority board determines that the transfer of tax credits is warranted based on such criteria as the authority deems appropriate, which may include the criteria set forth in paragraph (2) of this subsection. If a transfer of tax credits is made pursuant to this subparagraph, the authority shall award no greater than 65 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the northern counties of the State and no

greater than 35 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the southern counties of the State.

(2) The authority may in any given year determine that it is in the State's interest to approve an amount of tax credits in excess of the annual limitations set forth in paragraph (1) of this subsection, but in no event more than \$200,000,000 in excess of the annual limitation, upon a determination by the authority board that such increase is warranted based on specific criteria that may include:

(i) the increased demand for opportunities to create or retain employment and investment in the State as indicated by the volume of project applications and the amount of tax credits being sought by those applications;

(ii) the need to protect the State's economic position in the event of an economic downturn;

(iii) the quality of project applications and the net economic benefit to the State and municipalities associated with those applications;

(iv) opportunities for project applications to strengthen or protect the competitiveness of the State under the prevailing market conditions;

(v) enhanced access to employment and investment for underserved populations in distressed municipalities and qualified incentives tracts;

(vi) increased investment and employment in high-growth technology sectors and in projects that entail collaboration with education institutions in the State;

(vii) increased development proximate to mass transit facilities;

(viii) any other factor deemed relevant by the authority.

c. In the event that the authority in any year approves projects for tax credits in an amount less than the annual limitations set forth in paragraph (1) of subsection b. of this section, then the uncommitted portion of the annual limitation shall be available to be deployed by the authority in future years for projects under the same program; provided however, that in no event shall the aggregate amount of tax credits approved be in excess of the overall cap of \$11.5 billion, and in no event shall the uncommitted portion of the annual limitation for any previous year be deployed after the conclusion of the nine-year period.

d. Notwithstanding the provisions of any other law to the contrary, the uncommitted balance of the total value of tax credits authorized for award by the authority pursuant to subparagraph (f) of paragraph (1) of subsection b. of this section to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 et seq.), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall be made available for tax credits allowed to New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b). The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners and New Jersey film-lease production companies pursuant to this subsection shall be as follows:

(1) in fiscal year 2023, \$250,000,000 for New Jersey studio partners and \$250,000,000 for New Jersey film-lease production companies;

(2) in fiscal year 2024, \$250,000,000 for New Jersey studio partners and \$250,000,000 for New Jersey film-lease production companies; and

(3) in fiscal year 2025, \$250,000,000 for New Jersey studio partners and \$250,000,000 for New Jersey film-lease production companies.

If the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved to New Jersey studio partners and New Jersey film-lease production companies in any fiscal year pursuant to this subsection is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall

certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year.

14. This act shall take effect immediately.

Approved December 21, 2023.