

**CHAPTER 31
AUTHORITY ASSISTANCE PROGRAMS**

Authority

N.J.S.A. 34:1B-1 et seq. and 54A:4-13.d; P.L. 2009, c. 90; and P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.).

Source and Effective Date

R.2010 d.285, effective November 9, 2010.
See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 31, Authority Assistance Programs, expires on November 9, 2017. See: 43 N.J.R. 1203(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and Providing for the Financing Thereof through the New Jersey Economic Development Authority, P.L.2001, c.401 were repealed, effective August 15, 2005.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: Source and Effective Date. See, also, section annotations.

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).

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SUBCHAPTER 1. BOND FINANCING PROGRAM

19:31-1.1 Program description

(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.

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 a reference to governmental entities.

19:31-1.2 Bond purchaser

(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.

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

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

19:31-1.3 Bond financing

(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.

19:31-1.4 Eligibility standards

(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.

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) The Authority is empowered to make direct loans to applicants which 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 Redevelopment Loan Program, the maximum loan amount will be \$750,000.

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 \$500,000 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 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.

(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 Brownfield Redevelopment loans shall be used for financing those remediation costs deemed eligible by the New Jersey Department of Environmental Protection pursuant to the Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Department(s) of Environmental Protection and Treasury, and the New Jersey Commerce and Economic Growth Commission.

(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) 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 at 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 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.

(i) 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 (i)2i through iii below and must have at least one of the characteristics described in (i)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.

(j) 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.

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 para-

graph 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).

19:31-3.2 Eligibility standards

(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 Brownfield Redevelopment Loans, project sites must be the subject of a Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Departments of Environmental Protection and the Treasury.

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

1. A commercially available product which meets the Authority's programmatic requirements in revenue thresholds, that is, for the Edison Innovation Angel Growth Fund and 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.

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".

19:31-3.3 Application procedures

(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; and
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.

(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.

19:31-3.4 Evaluation process

(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, com-

paring 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.

19:31-3.5 Approval process

(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.

2. With the exception of the New Jersey Growth Fund, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund, 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, and the Edison Innovation Growth Stars Fund, 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 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.

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".

19:31-3.6 Attorney General review

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

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

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

SUBCHAPTER 4 ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

19:31-4.1 Applicability and scope

(a) The EDA and the State Treasurer may enter into a redevelopment incentive grant agreement with a 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 75 percent of the incremental increase in approved State revenues 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. The term of each approved State redevelopment incentive grant agreement may extend for up to 20 years; however, except for a redevelopment incentive grant agreement with a municipal redeveloper, the combined amount of reimbursements from State and local grants cannot exceed 20 percent of the eligible cost of the project; and, 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 redevelopment incentive grant agreement may be pledged and assigned by a developer.

19:31-4.2 Definitions

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 public structures or improvements that are located in the public right-of-way outside the project area of a redevelopment project, provided a developer or municipal redeveloper has demonstrated that the redevelopment project would not be economically viable without such improvements.

"Applicant" means a developer proposing to enter into a redevelopment incentive grant agreement.

"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).

"Cash on cash yield" means total revenues less operating expenses divided by eligible project costs.

"Developer" means any person who enters or proposes to enter into a redevelopment incentive grant agreement pursuant to the provisions of section 9 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489i and k).

"Developer contributed capital" means equity.

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

"Eligible project costs" means total costs incurred until the issuance of a permanent certificate of occupancy for a specific work or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including leaseholds 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, and any environmental remediation costs, plus soft costs and capitalized

interest paid to third parties, ancillary infrastructure projects and infrastructure improvements in the public right-of-way unless funded by the municipality, and excluding any costs for which the project has received State grant funding.

“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).

“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 equal 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.

“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: 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 output, 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.

“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, bicycle-oriented and mass transit improvements; and public utilities such as water, sewer, electric and gas.

“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.

“Municipal redeveloper” means a municipal government 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) that is an applicant for a redevelopment incentive grant agreement.

“Net profit margin” means net income as a percentage of project sales value.

“Project area” or “redevelopment project area” means land or lands 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.

“Project financing gap” means the part of the eligible 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 which shall not be less than 20 percent of the eligible project 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. When calculating the project financing gap, the factors set forth at N.J.A.C. 19:31-4.5(a)4, including, but not limited to, return on investment, net profit margin and cash on cash yield 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.

“Qualifying economic redevelopment and growth grant incentive area” or “incentive area” means Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a center as designated by the State Planning Commission; an area zoned for development pursuant to 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); 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); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the pinelands comprehensive management plan adopted pursuant to P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.); a transit village; and Federally owned land approved for closure under a Federal Base Realignment Closing Commission action.

“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.

“Redevelopment project” or “project” means a specific work 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, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer within a project area and any ancillary infrastructure project associated therewith.

“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.

“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 eligible project costs.

“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.

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”.

19:31-4.3 Eligibility criteria

(a) The Authority, in consultation with the Treasurer for a State grant, shall conduct a review to determine eligibility for any State or local incentive grant, wherein 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. 19:31-4.5(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. Pursuant to a fiscal impact analysis, for a State grant, the overall public assistance provided to the project will result in net benefits to the State.

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 eligible project costs, including any State or local grant funding to the project, and proposed terms of financing, including projected internal rate of return, 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 certain projects consisting of newly-constructed residential units, a certification that it meets the requirements of N.J.A.C. 19:31-4.3(c);
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. 19:31-4.6(b);

20. A description of how the green building standards 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, as listed on the EDA website at www.njeda.com;

21. A copy of a letter of support from the governing body of the municipality in which the proposed redevelopment project is located; and

22. Any other necessary and relevant information as determined by the applicant or the Authority for a specific application.

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

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

Rewrote (b)13.

19:31-4.5 Financing gap and fiscal impact analysis

(a) The Authority, in consultation with the State Treasurer, shall review the proposed redevelopment 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 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;

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 50 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 50 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 eligible 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; and

4. The financing gap analysis shall include, but not be limited to, an evaluation of the eligible project costs, proposed rental rates, vacancy rates, internal rate of return, net profit margin, return on investment and cash on cash yield in comparison to market ranges for such items, as noticed on the EDA website at www.njeda.com or, in the Authority's sole discretion, in comparison to alternative financing structures for a comparable project available to the developer or its tenants.

(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 redevelopment project will result in net positive economic benefits equaling 110 percent of the amount of grant assistance, to the State for a period equal to 75 percent of the useful life of the project 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, 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.

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."

19:31-4.6 Approval of application for State incentive grant

(a) The Authority and the State Treasurer may 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;

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;

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; and

7. The degree to which the redevelopment project enhances and promotes job creation and economic development.

(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, in no event shall the combined amount of the reimbursements under the redevelopment incentive grant agreements with the State and municipality exceed 20 percent of the eligible cost of the project.

19:31-4.7 State incentive grant agreement

(a) 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. 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) The Chief Executive Officer of the Authority, in consultation with the State Treasurer, shall negotiate the terms and conditions of any State redevelopment incentive 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 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. 19:31-4.8(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 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;

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

3. The annual percentage amount of reimbursement which shall not exceed 75 percent of the annual incremental State revenues;

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 length of time, which shall not exceed 20 years, during which that reimbursement shall be granted;

6. 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, 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;

7. 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;

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

9. 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;

10. 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;

11. Indemnification and insurance requirements;

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

13. Default and remedies; and

14. Reporting requirements, as required pursuant to section 6 of P.L. 2009, c. 90 (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.).

(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.

19:31-4.8 Incremental revenue sources

(a) In accordance with a State redevelopment incentive grant agreement, up to 75 percent of the projected annual incremental revenues directly realized from businesses operating on the redevelopment project premises may be paid to the developer 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 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.;

6. 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.);

7. The tax imposed pursuant to P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) from the purchase of materials used for the remediation, the construction of new structures, or the construction of new residences 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;

8. 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

9. 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.

(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.

19:31-4.9 Pledge and assignment of grant amount

A developer may, upon notice to and consent of the Authority and the State Treasurer, which consent shall not be unreasonably withheld, pledge and assign as security for any loan or bond, 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.

19:31-4.10 Affirmative action and prevailing wage

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 only to State incentive grant projects undertaken in connection with financial assistance received under the Economic Redevelopment and Growth Program.

19:31-4.11 Severability

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.

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. MAIN STREET BUSINESS ASSISTANCE PROGRAM

19:31-6.1 Applicability and scope

The New Jersey Economic Development Authority is promulgating these rules to implement the Main Street Business Assistance Program Act, P.L. 2008, c. 117 (the "Act"). The Act established the Main Street Business Assistance Program to provide guarantees and loans to small and mid-size businesses and not-for-profit organizations on an expedited basis to stimulate the economy.

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

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

Deleted "for a period not to exceed two years from the date of enactment" following "basis".

19:31-6.2 Terms of financial assistance

(a) Under the Main Street Business Assistance Program, the Authority may provide direct loan, loan participation and/or guarantee products and line of credit guarantee products.

1. For the direct loan and loan participation product, the maximum amount will be \$1 million per total transaction for fixed assets and \$750,000 per transaction for working capital, not to exceed 25 percent of total transaction;

2. For the loan guarantee product, the maximum guarantee will be \$2 million per transaction for fixed assets and \$1.5 million per transaction for working capital, not to exceed 50 percent of total transaction; and

3. For the line of credit product, the maximum amount will be \$500,000, not to exceed 50 percent of the total transaction.

(b) The combination of direct loan, loan participation, loan guarantee and line of credit guarantee shall not exceed the lesser of \$2 million or 50 percent of total bank commitment.

(c) The Authority shall provide public notice of the rate of interest to be charged for the Main Street Business Assistance Program as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

(d) For purposes of (a)1 and 2 above, the term shall not exceed five years; and for (a)3 above, the term shall be up to two years based on the term of bank line of credit.

Amended by R.2012 d.101, effective May 21, 2012.
See: 44 N.J.R. 433(a), 44 N.J.R. 1644(a).

In (a)3, substituted "\$500,000" for "\$250,000".

19:31-6.3 Eligibility criteria

(a) Under the Main Street Business Assistance Program, preference for assistance will be given to:

1. A business which has operated continuously for at least the two years preceding the filing of an application; and
2. A project which may:
 - i. Maintain employment;
 - ii. Create or maintain tax ratables;
 - iii. Be located in an economically distressed area; or
 - iv. Represent an important economic sector of the State.

19:31-6.4 Application requirements

(a) A business seeking to participate in the direct loan, loan participation and guarantee and line of credit products shall comply with the Authority's application procedures as set forth in N.J.A.C. 19:31-2.3.

(b) Authority staff will undertake the evaluation process set forth at N.J.A.C. 19:31-2.4. The Chief Executive Officer shall review and may approve applications, which will be processed in the order in which completed applications are received.

19:31-6.5 Affirmative action and prevailing wage

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 projects undertaken in connection with financial assistance received under the Main Street Business Assistance Program.

SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND

19:31-7.1 Applicability and scope

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.

19:31-7.2 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 New Jersey Local Development Financing Fund Act (P.L. 1983, c.190) as amended and supplemented.

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 fa-

cility 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.

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.

19:31-9.6 Application and servicing fees

(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) In addition to the application fees in (a)1, 2 and 3 above, for a qualified business facility, 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 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.

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".

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 within five years after July 28, 2009, the effective date of P.L. 2009, c. 90 (that is, by July 28, 2014).

(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

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 (d) and (e); inserted new (f) and (g).

19:31-10.10 Rescission and withholding of grant payments

(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.

(e) Refunds shall be made payable to the State of New Jersey with notice to the Authority for deposit in the Property Tax Relief Fund and mailed to the:

Business Employment Incentive Program
Division of Taxation
PO Box 248
Trenton, NJ 08625

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.

19:31-10.11 Prevailing wage and affirmative action

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.

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.

19:31-10.12 Fees

(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) 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.

(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.

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).

19:31-10.13 Attorney General review

All documents, including the application, for the program are subject to review by the Attorney General's office.

SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDIATION, UPGRADE AND CLOSURE FUND

19:31-11.1 Applicability and scope

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.

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".

19:31-11.2 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. 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.

"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. 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.

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.

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".

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.

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).

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 com-

pliance 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.

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).

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.

19:31-13.9 Appeals

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.

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.

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".

19:31-14.2 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.

“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.

"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).

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.

19:31-14.3 Eligibility criteria

(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.

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".

19:31-14.4 Restrictions on eligibility

(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.

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.

19:31-14.5 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 on forms and/or in a manner prescribed by the Authority.

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.

19:31-14.6 Application submission requirements

(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.

(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 to 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.

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".

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.

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).

19:31-14.13 Reporting requirements and annual reports

(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.

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).

19:31-14.14 Fees

(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) 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) 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.

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).

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

(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.

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).

19:31-15.7 Fees

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable fee of \$2,500.

(b) 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.

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).

19:31-15.8 Appeals

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.

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.

SUBCHAPTER 16. SALES AND USE TAX EXEMPTION PROGRAM

19:31-16.1 Applicability and scope

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.

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".

19:31-16.2 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 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

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.

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.

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.

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".

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.

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.

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.

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".

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.

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".

19:31-17.9 Appeals

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.

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.

SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

19:31-18.1 Applicability and scope

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. To implement this purpose, and to the extent that funding for the program is available, the program may provide tax credits to eligible businesses which make, acquire or lease a capital investment of at least \$20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs or create at least 100 new full-time jobs in an industry identified by the EDA as desirable for the State to maintain or attract. In addition, the capital investment and resultant retention and creation of eligible positions will yield a net positive benefit to the State; and, with one exception, 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. Qualified eligible businesses would receive a base tax credit of \$5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. In addition, a bonus credit of up to \$3,000 per job, per year may be received by an eligible business that, as determined by the Authority, is in an industry identified by the EDA as desirable for the State to

maintain or attract; locates or relocates to a location adjacent to, or within walking distance or short-distance shuttle service of, a public transit facility as determined by the Authority; creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or is negatively impacted by the approval of a "qualified business facility," under the Urban Transit Hub Tax Credit program. Businesses may apply for the tax credits by July 1, 2014 shall submit its documentation indicating that it has met the capital investment employment requirements specified in the project agreement for certification of its credit amount no later than July 28, 2017. The program provides for performance requirement "claw backs" if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance (10-year term plus additional five) requirements.

19:31-18.2 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 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.).

"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 or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses incurred after application, but before the earlier of the end of the 10th year after the effective date of P.L. 2011, c. 149 or July 28, 2017, whichever is sooner for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property; and 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, 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 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. A business that acquires or leases a qualified business facility, pursuant to N.J.A.C. 19:31-18.16, shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord.

"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 4 of P.L. 2011, c. 149 and pursuant to this subchapter.

"Eligible position" means a full-time position retained or created 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 chapter 27 of Title 17B of the New Jersey Statutes.

“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, 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, 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 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.

“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.

“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.

“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 Grow New Jersey Assistance Program established pursuant to P.L. 2011, c. 149 and provided in this subchapter.

“Public transit facility” means a rail station, light rail station, or bus hub.

“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.

“Qualified incentive area” means an area designated pursuant to P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or any urban, regional, or town designated center under the State Development and Redevelopment Plan; an area zoned for development pursuant to 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); 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); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the Pinelands Comprehensive Management Plan adopted pursuant to P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.); an area designated for development, redevelopment, or economic growth within the Highlands Region; Federally owned land approved for closure under any Federal Base Closure and Realignment Commission action; or any property consisting of 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 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).

“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 eligible positions of the business.

“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 credit term” means the 10-year period of time commencing in the year that the tax credits are issued in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 5 of P.L. 2011 c. 149.

19:31-18.3 Eligibility criteria

(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 will:

1. Make, acquire, or lease a capital investment totaling not less than \$20,000,000.

2. Employ not fewer than 100 full-time employees in retained full-time jobs at the qualified business facility, or create at least 100 new full-time jobs at the qualified business facility in an industry identified by the Authority as desirable for the State to maintain or attract; and

3. Demonstrate to the Authority that:

i. The proposed capital investment and the resultant retention and creation of eligible positions will yield a net positive 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); and

ii. 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.

(b) The Authority may determine as eligible for tax credits any business that is required to respond to a request for proposals and to fulfill a contract with the Federal government although the business's chief executive officer or equivalent officer for North American operations has not demonstrated to the Authority that the award of tax credits will be a material factor in the business's decision to retain at least 100 full-time jobs, as otherwise required by (a)3ii above. The Authority may, in its discretion, consider the economic benefit of the retained jobs servicing the contract in conducting the net benefit analysis required by (a)3i above. For the purposes of this subsection, "retained jobs" includes jobs that are at risk of being eliminated. Applications to the Authority for eligibility pursuant to this subsection shall be completed by March 31, 2012. Submission of a proposal to the Federal government prior to Authority approval shall not disqualify a business from the program.

(c) Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of \$20,000,000. If the owner uses space in a qualified business facility, in order to determine the amount of the owner's capital investment that may 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.

(d) In order to determine whether the tenant's leaseable 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 leaseable area and the denominator of which is the total net leaseable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$20,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$20,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

(e) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(f) 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.

(g) 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.

19:31-18.4 Restrictions

(a) Except as set forth in (f) below, a business shall not be allowed Grow New Jersey tax credits if the business participates in a Business Retention and Relocation Assistance Grant Program grant pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.) or 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 investment and employees that qualify the business for Grow New Jersey tax credits.

(b) Except as set forth in (f) below, 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 tax credits were provided to the business pursuant to the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.).

(c) Except as set forth in (f) below, a business that is allowed a tax credit 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 al.).

(d) 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. 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.

(e) Capital investments in a qualified business facility must be incurred after the effective date of P.L. 2011, c. 149, which is January 5, 2012, and the tax credit must be

submitted prior to July 1, 2014 except as set forth at N.J.A.C. 19:31-18.3(b). An approved business must submit its documentation for approval of its credit amount no later than July 28, 2017, except as otherwise set forth at N.J.A.C. 19:31-18.3(b). The credit amount allowed for a tax period ending after July 28, 2017 during which documentation of a business's credit amount remains uncertified by the Authority, shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it.

(f) If a business participating in a Business Employment Incentive Program grant or receiving assistance from the Business Retention and Relocation Assistance Grant Program, Urban Transit Hub Tax Credit Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act for the same capital investment and employees, seeks to qualify for Grow New Jersey 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, Urban Transit Hub Tax Credit Program, or Municipal Rehabilitation and Economic Recovery Act, as applicable.

(g) Notwithstanding the provisions of (a) and (b) above, the amount of tax credits available to be applied by the business annually shall not exceed the lesser of one tenth of the capital investment certified by the Authority pursuant to section 6 of P.L. 2011, c. 149 or \$4,000,000, and the number of new full-time jobs for which a business receives a tax credit shall not exceed the number of retained full-time jobs for which a business receives a tax credit, unless the business qualifies by creating at least 100 new full-time jobs in an industry identified by the Authority as desirable for the State to maintain or attract.

(h) The amount of credit allowed shall not exceed the capital investment made by the business or the capital investment represented by the business's leased area, as certified by the Authority pursuant to (b) above, as having met the capital investment and employment qualifications, subject to any reduction or disqualification as provided by N.J.A.C. 19:31-18.15 and 18.16 as determined by annual review by the Authority. 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.

(i) 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's total lease payments for occupancy of the qualified business facility for the tax period.

19:31-18.5 Application submission requirements

(a) Each application to the Authority made by 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. 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 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. 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;
- 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, equaling 110 percent of the requested tax credit allocation amount, to the State, for the period equal to 75 percent of the useful life of the improvement or 75 percent of the term of the tenant's lease, both not to exceed 20 years, taking into account the criteria listed at N.J.A.C. 19:31-18.7(c). 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 any existing jobs are at risk of leaving the State and that any projected creation of new full-time jobs would not occur but for the provision of tax credits under the program, and that the business's chief executive officer has reviewed the information submitted to the Authority and that the representations contained therein are accurate. 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 green building standards to be set forth in the green building manual or addendum 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;
- 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;
- 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 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

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 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. 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

iv. Any other necessary and relevant information as determined by the Authority for a specific application.

(b) 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, 2iv through ix, and 3 above.

(c) The business applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-18.6(a).

19:31-18.6 Fees

(a) A business 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) In addition to the application fee above, for a qualified business facility, 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 of .5 percent of the approved tax credit, not to exceed \$200,000, 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 \$200,000, 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. 19:31-18.13 shall pay to the Authority a fee of \$2,500.

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, 2014, except as set forth at N.J.A.C. 19:31-18.3(b), and shall submit its documentation indicating that it has met the capital investment and employment requirements specified in the project agreement for certification of its credit amount no later than July 28, 2017.

(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 re-submission 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 economic benefits test, 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 or retained employees, and peripheral economic growth caused by the business's relocation for the period equal to 75 percent of the useful life of the improvement or 75 percent of the term of the tenant's lease, both not to exceed 20 years, 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) 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, the maximum amount of tax credits to be granted and, 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. 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 project 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 six 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. 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 six months of the date of application approval, 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 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 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. 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 the employees shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional employees located at the qualified business facility, and in no event will the number of employees exceed the number of employees previously approved by the Board. 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 shall be submitted within six months of receipt of a temporary certificate of occupancy. Absent extenuating circumstances and the written approval of the Authority, the certification with respect to employment shall be submitted to the Authority no later than two years after the business's receipt of a temporary certificate of occupancy for the site, but in no event later than July 28, 2017.

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.

(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, 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 issued by the Authority.

19:31-18.8 Determination of grant amount; bonus award

(a) The value of each tax credit for an eligible business shall be equal to \$5,000 per job, per year for a period of 10 years for each new or retained full-time job determined by the

Authority pursuant to N.J.A.C. 19:31-18.3 to be located at the qualified business facility.

(b) In addition to any grant of tax credits determined pursuant to (a) above, a bonus award of up to an additional \$3,000 per job, per year of the amount of the original tax credits may be made to any eligible business as determined by the Authority. In making a bonus award to an eligible business, the Authority shall consider the following factors, such that whether the business:

1. Is an industry identified by the Authority as desirable for the State to maintain or attract;
2. Locates or relocates to a location within a qualified incentive area adjacent to, or within one-half mile walking distance or active short-distance shuttle service of, a public transit facility, as determined by the Authority;
3. Creates jobs using full-time employees in eligible positions whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the average full-time salary in this State; or
4. Is locating to a project site that is or 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).

(c) Notwithstanding the provisions of (a) and (b) above, the amount of tax credits available to be applied by the business annually shall not exceed the lesser of one-tenth of the capital investment certified by the Authority pursuant to P.L. 2011, c. 149 or \$4,000,000 and the number of new full-time jobs for which a business receives a tax credit shall not exceed the number of retained full-time jobs for which a business receives a tax credit, unless the business qualifies by creating at least 100 new full-time jobs in an industry identified by the Authority as desirable for the State to maintain or attract.

19:31-18.9 Tax credit amount; application and allocation of the tax credit

(a) For the 10 consecutive years following the notification pursuant to N.J.A.C. 19:31-18.7(g), a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, 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 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 value of all credits approved by the Authority against tax liabilities pursuant to P.L. 2011, c. 149, in any fiscal year shall not exceed \$150,000,000 and the combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.) and P.L. 2011, c. 149 shall not exceed \$1,500,000,000.

19:31-18.10 Project agreement

(a) All approved 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 project 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 full-time employees;
2. The term of the tax credits, and 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 at least 1.5 times the number of years of the term of the tax credits, with at least 100 full-time employees or 80 percent of the number of new and retained jobs specified in the project agreement, as required by section 6 of P.L. 2011, c. 149, and a provision to permit the Authority to recapture all or part of any tax credit awarded, at its discretion, if the business does not remain at the site for the commitment duration with at least 80 percent of the number of full-time employees certified pursuant to N.J.A.C. 19:31-18.7(f), reduces the total number of full-time employees below 100, or during the commitment duration 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 State workforce in the last tax period prior to the credit amount approval. The Authority may pursue recapture at any time during the commitment duration, including during any period in the tax credit term in which the tax credits are forfeited pursuant to N.J.A.C. 19:31-18.15;
4. Personnel information that will enable the Authority to administer the program;

5. A requirement that a certification by a certified public accountant relating to the amount of eligible capital investment, the number of employees at the time of submission of the certification and, if applicable, the amount of the annual lease payment 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;

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 benefit to the State; and, eligibility for the program and participation in the program as a material factor in the business's decision not to relocate outside of New Jersey and to relocate the project in 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; and

16. Reporting requirements.

(c) 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. 2011, c. 149.

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 a certified public accountant 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 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, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period; and

2. 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.

(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.

19:31-18.12 Tax credit certificate

(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.

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, 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 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. The total amount transferred for any single tax period shall be at least \$1,000,000 in tax credits. 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. 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 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.

19:31-18.14 Cap on total credits

The value of all credits approved by the Authority pursuant to P.L. 2011, c. 149 shall not exceed \$200,000,000. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the \$200,000,000 cap be exceeded if the Board determines the credits to be reasonable, justifiable, and appropriate; provided, however, 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.) shall not exceed \$1,500,000,000.

19:31-18.15 Reduction and forfeiture of tax credits

(a) If, in any tax period during the tax credit term, 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.

(b) If, in any tax period during the tax credit term and five years thereafter, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 100 full-time employees or 80 percent of the number of new and retained full-time jobs specified in the project agreement, 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 100.

(c) The restrictions set forth at N.J.A.C. 19:31-18.4(g) through (i) shall also apply on an annual basis.

(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's total lease payments for occupancy of the qualified business facility for the tax period.

19:31-18.16 Effect of sale or lease of qualified facilities

(a) 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, provided, however, that any credits of tenants shall remain unaffected.

(b) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period, the new tenant 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.

19:31-18.17 Severability

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.

SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM

19:31-19.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14 (the Act). The Act authorizes credits against corporation business and gross income taxes for qualified investments in New Jersey emerging technology businesses to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

19:31-19.2 Definitions

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

"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.

“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.

“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, 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, 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.;

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.;

3. An employee who is a resident of another state, works in New Jersey but whose income or distributive share of income, gain, loss, or deduction, or guaranteed payments, or any combination thereof, is 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; or

4. 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 transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but shall not be limited to, smartphones, electronic books and tablets, mp3 players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having to be connected to any physical or fixed link.

“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.

“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 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 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 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 by an investor that is not a related person of the New Jersey emerging technology business, 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.

For the transfer of cash to be considered non-refundable, the assets received by the investor in the exchange referred to in paragraph 1 above and the agreements entered into by the investor referred to in 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 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.

"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.

19:31-19.3 Eligibility criteria

(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.

(b) The Program applies to privilege periods and taxable years beginning on or after January 1, 2012. For qualified investments made on or before July 1, 2013, an investor must submit a completed application by July 1, 2014. For all other qualified investments, an investor must submit a completed application within one year of the date of the qualified investment.

(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) 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 an executed document in writing.

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 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 earliest of six months after the qualified investment or the time of application:
- (1) A description of the business, which demonstrates that such business meets the definition of New Jersey emerging technology business;
- (2) A list of all employees filling a position in New Jersey, 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, and either:
- (A) Copies of the most recent year's Federal and New Jersey W-3 forms for the business and all entities other than the investor with control over the business or in the same controlled group as the business; or
- (B) Documentation from a professional employer organization summarizing W-2 forms issued for full-time employees on behalf of the business, and all entities other than the investor with control over the business or in the same controlled group as the business, for the calendar year prior to the year in which the company files its application and at the time of the application; and
- iii. 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
3. 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.

19:31-19.5 Fees

(a) The following fees shall apply to applications for qualified investments of more than \$50,000:

1. A non-refundable application fee of \$1,000 shall accompany every application for tax credits; and
2. A fee of five percent of the approved tax credit amount or \$2,500, whichever is greater, shall be paid to the Authority upon the approval of the tax credit. The application fee of \$1,000, required under (a)1 above, shall be applied toward the approval fee.

(b) A non-refundable application fee of \$500.00 shall accompany every application for tax credits for qualified investments of \$50,000 or less.

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 10 percent of the qualified investment made by the investor in a New Jersey emerging technology business, up to a maximum allowed credit of \$500,000 for the tax credit vintage year for each qualified investment made by the investor.

(b) 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.

(c) 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 (e) below is not applicable to a credit claimed under the New Jersey Gross Income Tax Act.

(d) 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.

(e) Except as provided in (f) 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.

(f) 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.

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) If the Authority has approved the application, the Authority shall notify the Division of Taxation of the ap-

proval. The Division of Taxation shall then issue the tax credit certificate to the applicant investor.

(d) An applicant investor may appeal the Authority's action by submitting in writing to the Authority, within 20 days from the date of the Authority's action, an explanation as to how the investor or the New Jersey emerging technology business 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; 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.

19:31-19.8 Cap on total credits

(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 \$25 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.