

CHAPTER 65
CASINO REINVESTMENT DEVELOPMENT
AUTHORITY

Authority

N.J.S.A. 5:12-144.1j and 5:12-161(f).

Source and Effective Date

R.1997 d.452, effective September 26, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 65, Casino Reinvestment Development Authority, expires on March 25, 2003. See: 34 N.J.R. 3177(a).

Chapter Historical Note

Chapter 65, Casino Reinvestment Development Authority, was filed and became effective as an Emergency New Rule on April 3, 1986 (expired June 2, 1986). See: 18 N.J.R. 852(a).

Chapter 65, Casino Reinvestment Development Authority, was adopted as R.1986 d.256, effective July 7, 1986. See: 18 N.J.R. 852(a), 18 N.J.R. 1405(a). Pursuant to Executive Order No. 66(1978), Chapter 65 expired on July 7, 1991.

Chapter 65, Casino Reinvestment Development Authority, was adopted as R.1992 d.383, effective October 5, 1992. See: 24 N.J.R. 1692(b), 24 N.J.R. 3535(a).

Pursuant to Executive Order No. 66(1978), Chapter 65, Casino Reinvestment Development Authority, was readopted as R.1997 d. 452, effective September 26, 1997. See: Source and Effective Date. As part of R.1997 d.452, effective October 20, 1997, Subchapter 4, Female and Minority Targets in Authority Financed Construction Projects and Licensee's Direct Investment Construction Projects, was renamed Female and Minority Percentage Goals in Authority Financed Construction Projects and Licensee's Direct Investment Construction Projects; and Subchapter 9, Miscellaneous, was adopted as new rules. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 19:65-1.1 Purpose and objectives
- 19:65-1.2 Definitions

SUBCHAPTER 2. APPLICATION, ELIGIBILITY, PRIORITY AND HEARING

- 19:65-2.1 Applications generally
- 19:65-2.2 Time for application
- 19:65-2.3 Application
- 19:65-2.4 Application review and approval
- 19:65-2.5 Approval criteria
- 19:65-2.6 Priorities
- 19:65-2.7 Public hearing
- 19:65-2.8 Approval of projects which constitute equivalent investments
- 19:65-2.9 Approval of projects which constitute donation of money or realty
- 19:65-2.10 Approval of hotel development projects and allocation of investment credit
- 19:65-2.11 Cost certification

SUBCHAPTER 3. CONTRACTS

- 19:65-3.1 Contract as requirement to credit
- 19:65-3.2 Contract provisions

SUBCHAPTER 4. FEMALE AND MINORITY PERCENTAGE GOALS IN AUTHORITY FINANCED CONSTRUCTION PROJECTS AND LICENSEES' DIRECT INVESTMENT CONSTRUCTION PROJECTS

- 19:65-4.1 Contracting and subcontracting; percentage goals and enforcement thereof
- 19:65-4.2 through 19:65-4.3 (Reserved)

SUBCHAPTER 5. INVESTMENT BY LICENSEES PURSUANT TO N.J.S.A. 5:12-144

- 19:65-5.1 New Jersey Casino Control Commission rules

SUBCHAPTER 6. FEES AND CHARGES

- 19:65-6.1 Application fees
- 19:65-6.2 Administrative fees

SUBCHAPTER 7. DISQUALIFICATION, DEBARMENT AND SUSPENSION

- 19:65-7.1 Definitions
- 19:65-7.2 Cause for debarment
- 19:65-7.3 Conditions affecting debarment
- 19:65-7.4 Procedures: Period of debarment
- 19:65-7.5 Causes for suspension of a person
- 19:65-7.6 Conditions for suspension of a person
- 19:65-7.7 Procedures: Period of suspension; Scope of suspension affecting the suspension of a person
- 19:65-7.8 Extent of debarment and suspension
- 19:65-7.9 Notice to Attorney General and Treasurer
- 19:65-7.10 Lists of other agencies
- 19:65-7.11 Authority discretion
- 19:65-7.12 Executive Director to implement subchapter

SUBCHAPTER 8. CONTRACTS FOR ARCHITECTURAL, ENGINEERING AND LAND SURVEYING SERVICES

- 19:65-8.1 Applicability
- 19:65-8.2 Definitions
- 19:65-8.3 Criteria for the selection of the most highly qualified professional firms
- 19:65-8.4 Effective date of rules

SUBCHAPTER 9. WAIVERS

- 19:65-9.1 Waivers generally
- 19:65-9.2 Procedure

SUBCHAPTER 10. MISCELLANEOUS

- 19:65-10.1 Severability

SUBCHAPTER 1. GENERAL PROVISIONS

19:65-1.1 Purpose and objectives

(a) The rules contained in this chapter are established to effectuate, and shall be applied so as to accomplish the general purposes of the Act, including, without limitation:

1. To assist in the development or redevelopment of political subdivisions within the State in the manner and priority set forth in the Act; and
2. To increase opportunities for gainful employment and to improve living conditions in such political subdivisions; and
3. To foster and promote the economy of the State generally.

19:65-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context.

“Acquisition value” means the value at a time within a reasonable period of time prior to the approval of the project in accordance with N.J.A.C. 19:65-2.4(b) as determined by an appraisal of such property in form and substance acceptable to the Authority undertaken on a fair market value basis by an appraiser appointed by the Authority.

“Act” means P.L. 1984, c.218, as amended and supplemented, and as the same may be further amended or supplemented from time to time.

“Applicant” means any person, entity, licensee, prospective licensee, government, governmental agency, authority, or instrumentality, municipality or political subdivision of the State permitted under the provisions of the Act or these rules to apply for review and approval and/or a determination of eligibility of or with respect to a project by the Authority under the Act and these rules.

“Application” means a fully completed and signed application submitted pursuant to the provisions of N.J.A.C. 19:65-2.3 in such form or forms as may be prescribed from time to time by the Authority.

“Approved project” means a project which satisfies the provisions of the Act and these rules and is approved by the Authority.

“Appurtenant facilities” shall mean facilities which are necessary or convenient to facilities with units for overnight visitors, including, but not limited to, parking facilities and recreational and park facilities to the extent reasonably commensurate in size for use by the overnight visitors of such units. In no event shall appurtenant facilities include casino space or facilities related thereto.

“Authority” means the Casino Reinvestment Development Authority.

“Bonds” means bonds, notes or evidences of Authority debt issued to licensees pursuant to N.J.S.A. 5:12-162 (section 14 of P.L. 1984, c.218).

“Contract” means a written contract between the Authority and a Licensee to purchase Bonds pursuant to N.J.A.C. 19:65-3.

“Corridor Region” shall mean and include:

1. The area bounded as follows:

- i. Having as its southern boundary the Boardwalk between Texas Avenue and the point of intersection between the Boardwalk and an imaginary line extending southerly from the Southeasternmost point of Mt. Vernon Avenue (hereinafter “Mt. Vernon/Boardwalk Intersection”);

- ii. Having as its eastern boundary a line running north from the Mt. Vernon/Boardwalk Intersection to the Southeasternmost point of Mt. Vernon Avenue and continuing along Mt. Vernon Avenue north to Arctic Avenue and thence easterly to the point of intersection of Arctic Avenue with Bacharach Boulevard;

- iii. Having as its northeastern border Bacharach Boulevard from Arctic Avenue and extended to Beach Thorofare;

- iv. Having as its northwestern border the southern side of Beach Thorofare from the intersection of the southern side of Beach Thorofare with Bacharach Boulevard, so extended, to Texas Avenue;

- v. Having as its western border Texas Avenue from Beach Thorofare to the Boardwalk; and

2. The following additional areas:

- i. Albany Avenue (U.S. Route 40) from Beach Thorofare to the Boardwalk;

- ii. The Atlantic City Expressway from the Pleasantville Toll Plaza to Arkansas and Missouri Avenues;

- iii. Absecon Boulevard (U.S. Route 30) from Beach Thorofare to Delaware Avenue;

- iv. Delaware Avenue to Pacific Avenue;

- v. Arctic Avenue from Delaware Avenue westerly to Bacharach Boulevard;

- vi. Boardwalk from Albany Avenue (U.S. Route 40) easterly to Caspian Avenue;

- vii. Brigantine Boulevard (State Route 87) to the Brigantine Bridge including the inlet shoreline between Clam Thorofare and Huron Avenue;

- viii. The area bounded by Texas Avenue, Atlantic Avenue, Albany Avenue and the Boardwalk; and

- ix. The area bounded by Mt. Vernon Avenue, Atlantic Avenue, New Jersey Avenue and the Boardwalk.

(b) For purposes of this section, commencement of a project shall not be deemed to have occurred by mere acquisition of land or real property or by engagement of an architect, engineer or other consultant to draw plans or to determine feasibility, legality, costs or other such factors, or by negotiations with prospective sellers, contractors and investors, or by execution of agreements or contracts which are expressly conditioned upon a determination of eligibility by the Authority.

(c) Failure of an applicant to apply timely for a determination of eligibility as provided in this section shall render the project ineligible unless the applicant establishes to the satisfaction of the Authority that good cause existed for such failure in which case the Authority may waive the time provisions provided for herein.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

In (a), inserted reference to application procedures and requirement that no project commence prior to Authority's determination of eligibility; deleted existing (b) and (c); and recodified former (d) and (e) as (b) and (c).

19:65-2.3 Application

(a) An applicant shall file with the Authority an application, together with:

1. Such other information as the Executive Director and/or the Authority may require including, without limitation, the appraisal required by N.J.A.C. 19:65-2.9(b) if a donation of property is involved; and

2. The application fee(s) provided in N.J.A.C. 19:65-6.1.

Amended by R.1997 d.136, effective March 17, 1997.

See: 29 N.J.R. 115(a), 29 N.J.R. 934(a).

In (a)1, amended N.J.A.C. reference.

19:65-2.4 Application review and approval

(a) The preliminary review of a project application and the preliminary determination of its eligibility for Authority funds shall be conducted as follows:

1. The Executive Director shall review the application for completeness and prepare a summary as to potential eligibility of the project and forward the application and summary to the Authority.

2. The Authority shall, by resolution, preliminarily determine whether the project is of the character and type which is eligible to be an approved project. In the event the Authority has so determined, the applicant shall thereafter submit such other information as the Authority from time to time may request in accordance with the provisions set forth herein.

3. A preliminary determination of eligibility by the Authority pursuant to this Section shall in no event constitute a determination by the Authority that the project is an approved project.

4. After the Authority has made a preliminary determination of eligibility, the Authority shall conduct a public hearing in accordance with N.J.A.C. 19:65-2.7. Notwithstanding anything to the contrary herein, no further action under this section shall be taken until after such public hearing has been held.

(b) Approval and the reservation of funds for a project shall occur as follows:

1. After the public hearing has been held and the Authority has received an application that has been determined to be complete, the Authority, in accordance with the provisions of the Act and these rules, shall, by resolution, determine whether the project is an approved project and, if the project is determined to be an approved project, the Authority, at the time of such determination or thereafter, shall, by resolution, reserve funds, in one or more stages, for such approved project in an amount necessary to complete the approved project subject to any limitations described in these rules or in the Act.

2. In addition to considering information provided by the applicant, the Authority may utilize any relevant information or data which is within its knowledge or which is supplied by any Federal, State or local agency, or any other person, entity, group or association which has an interest in the project and which desires to provide such information to the Authority. Further, the Authority may approve a project with such modification and conditions as it deems necessary and appropriate.

3. The reservation of funds for an approved project shall be subject to such terms and conditions as the Authority shall deem necessary and appropriate; provided, that any such reservation of funds shall be subject to the following:

i. In the event the funds for such approved project are to be derived from the issuance of bonds by the Authority:

(1) The adoption of a bond resolution by the Authority containing such terms and conditions as the Authority shall deem necessary and appropriate and the approval of such bond resolution, prior to the adoption thereof, by the Treasurer of the State; and

(2) The approval for execution by the Authority of any agreements or contracts in connection with the loan or other use of the proceeds of the bonds for the approved project and the approval of the financing terms set forth in any such agreement or contract by the Treasurer of the State;

ii. In the event the funds for such approved project are to be derived through the making of an equivalent investment in accordance with N.J.A.C. 19:65-2.8 and/or a donation in accordance with N.J.A.C. 19:65-2.9, the approval for execution by the Authority of an agreement for credit with the licensee containing such terms and conditions as the Authority shall deem necessary and appropriate and the approval of the terms of the investments contained therein by the Treasurer of the State;

iii. In the event the funds for such approved project are to be derived from parking proceeds:

(1) The State Treasurer may require that a financial plan demonstrating the need, schedule and use for moneys placed in the special fund be approved by the State Treasurer prior to allocation; and

(2) The approval for execution by the Authority of any agreements or contracts in connection with the loan or other use of the parking proceeds for the approved project;

iv. In the event the funds for such approved project are to be derived from the issuance of parking proceeds bonds by the Authority:

(1) The adoption of a parking proceeds bond resolution by the Authority containing such terms and conditions as the Authority shall deem necessary and appropriate; and

(2) The approval for execution by the Authority of any agreements or contracts in connection with the loan or other use of the proceeds of the parking proceeds bonds for the approved project;

v. In the event the funds for such approved project are to be derived from the Atlantic City Fund created and established pursuant to section 44 of P.L.1995, c.18 (N.J.S.A. 5:12-161.1), the approval for execution by the Authority of any agreements or contracts in connection with the loan or other use of the funds derived from the Atlantic City Fund for the approved project.

4. (Reserved)

5. The reservation of funds for an approved hotel development project from the \$100,000,000 set aside under P.L. 1993, c.159 shall be subject to such terms and conditions as the Authority shall deem necessary and appropriate, provided, that such reservation of funds shall be subject to the following:

i. The approval of the execution of an agreement between the Authority and a licensee setting forth the terms and provisions by which investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) is to be calculated;

ii. The amount of the reservation cannot exceed the lesser of the amount of investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) to which a licensee is entitled or 27 percent of the costs of the hotel development project; provided, that in no event shall the amount reserved exceed \$52,500 per unit;

iii. The receipt of financing or other commitments by September 1, 1994 for the costs of the hotel development project in excess of those set forth in (b)5ii above;

iv. The establishment of a schedule of the stages of development of and incurrence of the costs in connection with the hotel development project to provide for the completion of the hotel development project on or before December 31, 1996 (or such later date as extended by the Authority upon a good faith showing of special circumstances or unforeseen occurrences); and

v. Agreement by the casino licensee that the investment in the hotel development project shall be credited at the times that the licensee's investment alternative tax obligation becomes due as set forth in section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1), provided that, in the case of the licensee's Atlantic City investment obligation, in no event shall the investment credit exceed 75 percent of that portion of the licensee's Atlantic City obligation that is available for purposes other than the construction, rehabilitation or reconstruction of facilities for low and moderate income housing for any year.

6. The reservation of funds for an approved hotel development project from the \$75,000,000 set aside under P.L. 1996, c.118 shall be subject to such terms and conditions as the Authority shall deem necessary and appropriate, provided, that such reservation of funds shall be subject to the following:

i. The approval of the execution of an agreement between the Authority and a licensee setting forth the terms and provisions by which investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) is to be calculated;

ii. The amount of the reservation cannot exceed the lesser of the amount of investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) to which a licensee is entitled or 27 percent of the costs of the hotel development project reasonably related to constructing, reconstructing or rehabilitating the hotel units and appurtenant facilities excluding the costs reasonably related to space used for the conduct of casino gaming, ineligible costs of appurtenant facilities and, with respect to hotel development projects approved following September 16, 1996, costs associated with the acquisition of land; provided, that in no event shall the amount reserved exceed \$52,500 per unit;

iii. The receipt of financing or other commitments by such date as may be specified by the Authority by resolution for the costs of the hotel development project in excess of those set forth in (b)6ii above;

iv. The establishment of a schedule of the stages of development of and incurrence of the costs in connection with the hotel development project to provide for the completion of the hotel development project on or before such date as may be specified by the Authority by resolution (or such later date as extended by the Authority upon a good faith showing of special circumstances or unforeseen occurrences);

v. Agreement by the licensee that the investment in the hotel development project shall be credited at the times that the licensee's investment alternative tax obligation becomes due as set forth in section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1), provided that:

(1) Seventy percent of the investment credit received by the licensee for its hotel development project shall be from the licensee's Atlantic City investment obligation that is available for purposes other than construction, reconstruction or rehabilitation of facilities for low and moderate income housing and 30 percent of the investment credit received by the licensee for its hotel development project shall be from the licensee's South Jersey investment obligation;

(2) In the case of the licensee's Atlantic City investment obligation, in no event shall the level of funding of the investment credit exceed 75 percent of that portion of the licensee's Atlantic City investment obligation that is available for purposes other than the construction, reconstruction or rehabilitation of facilities for low and moderate income housing for any year;

(3) In the case of the licensee's South Jersey investment obligation, in no event shall the level of funding of the investment credit exceed 25 percent of the licensee's South Jersey investment obligation for any year;

(4) No investment credits shall be funded if the licensee's total Atlantic City investment obligations that are available for the purposes of construction, reconstruction or rehabilitation of facilities for low and moderate income housing are in excess of the greater of the last full year of such obligations or a percentage specified by the Authority of the prior year end obligation balance; and

vi. Any funds which are remaining after all eligible applicants have received the maximum percentage of investment credit permitted under these rules shall be available for Authority investment in other eligible projects.

7. The reservation of funds shall be for such length of time, not exceeding 12 months, as the Authority shall determine in its discretion (which may be extended by the Authority, in its discretion, for an additional period or additional periods of not to exceed 12 months), during which time the conditions set forth above shall be satisfied.

(c) Final approval of an approved project for investment shall occur within the time period prescribed in accordance with (b)7 above. Final approval shall be granted through the adoption of a bond resolution or parking proceeds bond resolution and resolution relating to the authorization for execution of any agreements or contracts in connection with the loan or other use of the proceeds of the bonds or parking proceeds bonds or the approval for execution of an agreement for credit with the licensee, as applicable, or in accordance with the provisions of the Act and these rules.

(d) Receipt of investment credit by a licensee for an approved hotel development project from the \$75,000,000 set aside under P.L. 1996, c.118 shall be subject to such terms and conditions as the Authority shall deem necessary and appropriate, provided, that such receipt of investment credit shall be subject to the following:

1. With respect to hotel development projects approved on or prior to September 16, 1996:

i. The licensee shall have filed a fully complete project application on or before April 1, 1996;

ii. The licensee shall establish that the construction, reconstruction or rehabilitation of the hotel development project actually and substantially commenced on or before August 31, 1996; and

iii. The amount of investment credit to be received by the licensee shall not be greater than the difference between the amount of investment credit for the approved hotel development project that the licensee would have received had there been sufficient funds to receive investment credit in the amount of 27 percent of the eligible costs of the project and the amount which the Authority actually approved for the project.

2. With respect to hotel development projects approved following September 16, 1996:

i. The licensee shall have filed a fully complete project application by December 15, 1996;

ii. The licensee shall establish that the construction, reconstruction or rehabilitation of the hotel development project actually and substantially commenced within 12 months after the execution by the Authority of the agreement for credit with the licensee;

iii. The approved hotel development project commences, proceeds and is completed in accordance with the schedule of the stages of development of and incurrence of the costs as established under (b)6iv above which shall be made a part of the agreement for credit with the licensee. The licensee agrees that failure to comply in any material respect with said development schedule will result in the reversal by the Authority of investment credit previously received by the licensee in connection with such hotel development project; and

iv. The amount of investment credit to be received by the licensee shall not be greater than the lesser of the amount of investment credit (as permitted under section 3 of P.L. 1984, c.218 (N.J.S.A. 5:12-144.1)) to which a licensee is entitled or 27 percent of the costs of the hotel development project reasonably related to constructing, reconstructing or rehabilitating the hotel units and appurtenant facilities excluding costs reasonably related to space used for the conduct of casino gaming, ineligible costs of appurtenant facilities and costs associated with the acquisition of land.

3. For purposes of this section, actual and substantial commencement of a hotel development project shall not include the mere planning, preliminary or developmental work requisite to the hotel development project or the mere acquisition of land or real property. Factors to be considered when determining whether there has been actual and substantial commencement of a hotel development project, without limitation, are whether there has been actual and substantial excavation and/or construction at the hotel development project site and whether other work has been performed or actions have been taken which are necessary to accomplish the final construction of the hotel development project.

Amended by R.1987 d.213, effective May 4, 1987.

See: 19 N.J.R. 404(b), 19 N.J.R. 775(a).

Substantially amended.

Emergency Amendment, R.1993 d.478, effective August 30, 1993 (expires October 29, 1993).

See: 25 N.J.R. 4514(a).

Adopted Concurrent Proposal, R.1993 d.605, effective October 29, 1993.

See: 25 N.J.R. 4514(a), 25 N.J.R. 5523(a).

Amended by R.1997 d.136, effective March 17, 1997.

See: 29 N.J.R. 115(a), 29 N.J.R. 934(a).

In (a)4, amended N.J.A.C. references; in (b), substituted "Approval" for "Project approval"; in (b)1, added reference to project funding limitations; in (b)3ii, amended N.J.A.C. references; in (b)5, added

reference to the \$100,000,000 set aside under P.L. 1993 c.159; in (b)5ii, increased licensee percentage; in (b)5iii, amended section reference; added (b)6 and 7; deleted existing (c) and recodified (c)1 as (c); and added (d).

Amended by R.1997 d.452, effective October 20, 1997.

See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

In (a), substituted "preliminary determination" for "determination"; in (b)1, added the clause regarding reservation of funds for projects determined to be approved projects by the Authority; inserted (b)3iii through (b)3v; in (b)7, changed the maximum time for reservation of funds from six months to 12 months; and in (c), inserted reference to parking proceeds bond resolutions.

19:65-2.5 Approval criteria

(a) The Authority shall approve projects in accordance with the guidelines and criteria set forth in the Act.

(b) The Authority shall require that the applicant establish before commencement of the project, among other things, the following:

1. In the case of projects involving construction, that the site for the proposed project is under the control of the applicant or that a governmental or public body or agency has manifested its intent to permit the applicant to acquire control over the site of the proposed project;

2. In the case of projects involving the loan of bond proceeds, that the project is sufficiently financially feasible such that it has the minimum characteristics of an investment in that a degree of assurance exists that interest and principal payments can be made and other terms of the proposed investment be maintained over the period thereof and that a loan of the bond proceeds in connection therewith would qualify for a bond rating of "C" or better;

3. That the applicant has the financial capability to undertake the project; and

4. That the project, with respect to projects not in Atlantic City, will result in minimal displacement of existing households; and with respect to projects in Atlantic City, in cases where displacement of commercial or residential facilities may be necessary, such displacement must be consistent with the Atlantic City Task Force on Housing and Community Development of March 24, 1983 and incorporated in the redevelopment plan known as "Inlet Community Redevelopment—A Balanced Community Concept and Strategy for Reinvestment, Atlantic City, New Jersey, October, 1983" (sometimes referred to as the "American Cities Plan") approved and adopted by the New Jersey Casino Control Commission.

(c) (Reserved)

(d) The Authority shall require that the applicant establish, among other things, with respect to hotel development projects, the following:

1. The construction, reconstruction or rehabilitation of the units is to be accomplished pursuant to a schedule of development so as to be completed on or before such date as shall be established by the Authority by resolution;

2. The cost of the construction, reconstruction or rehabilitation of appurtenant facilities shall be an amount commensurate with appurtenant facilities of a scope and size reasonable for use for the total number of units so constructed, reconstructed or rehabilitated;

3. The project does not include the construction, reconstruction or rehabilitation of any unit which was in existence and used or available for use as a hotel unit as of July 1, 1993 except when the project will result in the hotel units being upgraded to first class hotel units, and the cost of such construction reconstruction or rehabilitation exceeds 50 percent of the acquisition value of the structure as defined in N.J.A.C. 19:65-1.2. For purposes of this subsection, "first class hotel unit" shall mean a sleeping unit:

i. Containing at least approximately 325 square feet measured to the center of perimeter walls, including bathroom and closet space and excluding hallways, balconies and lounges;

ii. Containing private bathroom facilities; and

iii. To be held available and to be used regularly for the lodging of tourists and convention guests and conforming in all respects to the facilities requirements contained in the Casino Control Act, N.J.S.A. 5:12-27, except that the building or buildings containing units need not be operated as a part of one casino hotel facility nor be physically connected to a casino hotel;

4. The existence of a room block agreement executed by the licensee effective on or before the date the new rooms are put into service that requires certain units to be reserved, at certain times and under certain conditions agreeable to the Authority, for convention business;

5. A plan acceptable to the Authority pursuant to which employment opportunities are enhanced for Atlantic City residents both with respect to construction jobs and permanent employment; and

6. The licensee's Atlantic City investment obligations that are available for purposes of construction, reconstruction or rehabilitation of facilities for low and moderate income housing, less any obligations that are committed by agreement with the Authority for such purposes, shall not exceed the greater of a specified percentage of such obligation for any year or an amount in excess of the last full year of such obligation.

(e) Following approval of a hotel development project by the Authority, no change shall be made to the hotel development project unless prior written notification of such change has been provided to the Authority and approval has been granted as follows:

Substituted "which were in effect and codified at that time at N.J.A.C. 19:54-2.1" for "set forth at N.J.A.C. 19:54-2.1".

SUBCHAPTER 6. FEES AND CHARGES

19:65-6.1 Application fees

An initial non-refundable payment of \$500.00 shall accompany every application. Upon favorable preliminary review of an application pursuant to N.J.A.C. 19:65-2.4, an additional non-refundable application fee of \$1,000 shall be payable by an applicant before the hearing required by N.J.A.C. 19:65-2.7, which payment shall be credited toward any administrative fee if the project is approved by the Authority.

Amended by R.1997 d.136, effective March 17, 1997.
See: 29 N.J.R. 115(a), 29 N.J.R. 934(a).

Changed N.J.A.C. reference from 19:65-2.8 to 19:65-2.7.

19:65-6.2 Administrative fees

(a) Initial fees shall be charged as follows:

1. With respect to approved projects for which the Authority will make a loan or loans to a participant, the Authority will charge an initial fee up to two percent of the initial amount of the loan.

2. With respect to approved projects in which the Authority is a participant (alone or with other participants), the Authority will charge an initial fee up to two percent of the sum of the total costs of the project and administrative and other expenses related to the project.

3. With respect to approved projects for which a licensee is making an equivalent investment in accordance with N.J.A.C. 19:65-2.8, the Authority will charge an initial fee up to one percent of the amount of the equivalent investment.

4. With respect to approved hotel development projects, the Authority shall charge an initial fee up to one percent of the amount of the investment.

(b) Annual fees shall be charged as follows:

1. With respect to approved projects for which the Authority will make a loan or loans to a participant, the Authority will charge a fee payable monthly in advance up to 1/12 of one-half of one percent of the outstanding amount of the loan on the date of payment.

2. With respect to approved projects for which a licensee is making an equivalent investment in accordance with N.J.A.C. 19:65-2.8, the Authority will charge a fee payable monthly in arrears up to 1/12 of one-quarter of one percent of the amount of the equivalent investment made as of such date of payment.

(c) The amount of the fees assessed in accordance with (a) and (b) above shall be based on the complexity of the application and the need for ongoing monitoring by the Authority.

Amended by R.1992 d.383, effective October 5, 1992.
See: 24 N.J.R. 1692(b), 24 N.J.R. 3535(a).

Section was Reserved.

Amended by R.1997 d.136, effective March 17, 1997.
See: 29 N.J.R. 115(a), 29 N.J.R. 934(a).

Inserted (a)4.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

In (a) and (b), inserted "shall be charged as follows"; in (a)1 through (a)4 and (b)1 and (b)2, substituted "up to" for "equal to"; and added (c).

SUBCHAPTER 7. DISQUALIFICATION, DEBARMENT AND SUSPENSION

19:65-7.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings unless a different meaning clearly appears from the context:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Authority project contracting" means any arrangement giving rise to an obligation to supply anything or to perform any service in connection with the construction, financing or administration of a project.

"Debarment" means an exclusion from Authority project contracting on the basis of a lack of responsibility evidenced by an offense, or failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, or failure or inadequacy of performance.

"Person" means any natural person, corporation, partnership, company, firm, association or other entity.

"Suspension" means an exclusion from Authority project contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

Amended "Debarment".

19:65-7.2 Cause for debarment

(a) The Authority may decline to approve a project, give financial assistance to any project or participant therein, debar a person from contracting with the Authority or debar a person from Authority project contracting for the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract thereunder, or in the performance or such contract or subcontract;

2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;

3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);

4. Violation of any laws governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivisions;

5. Violation of the "Law Against Discrimination" (P.L.1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L.1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.);

6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violation of any laws governing the conduct of occupations or professions or regulated industries;

8. Violation of any laws which may bear upon a lack of responsibility or moral integrity;

9. Willful and unjustified failure to perform in accordance with contract specifications or with contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

11. Any other cause of such serious and compelling nature as may be determined by the Authority to warrant disqualification for assistance or debarment from contracting with the Authority or from Authority project contracting, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

12. Debarment by any department or agency of the Executive Branch of State Government;

13. Debarment by the Department of Housing and Urban Development, Federal Housing Administration or any other instrumentality, agency or department of the United States Government.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

In (a)10, substituted "within the control of the person debarred" for "with the control of the person debarred".

19:65-7.3 Conditions affecting debarment

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 19:65-7.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Authority, upon its own action or upon recommendation of the Executive Director of the Authority, unless otherwise required by law, and shall be based upon the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 19:65-7.2(a)11 shall be established by evidence which the Authority determines to be clear and convincing in nature.

6. Debarment for the causes set forth in N.J.A.C. 19:65-7.2(a)12 and 13 shall be proper, provided that one of the causes set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)10 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such factors and additional facts.

Amended by R.1997 d.452, effective October 20, 1997.

See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

In (a)6, amended N.J.A.C. references.

19:65-7.4 Procedures: Period of debarment

(a) When the Authority seeks to debar a person or its or his or her affiliates, such person or persons shall be furnished with a written notice stating that:

1. Debarment is being considered;

2. The reasons for the proposed debarment; and

3. An opportunity will be afforded to such person or persons for a hearing if the hearing is requested within seven days from the date of personal delivery or the date of mailing of such notice.

(b) All such hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 54:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Where any State department or agency has already imposed debarment upon a party, the Authority may also impose a similar debarment without affording an opportunity for a hearing, provided the Authority furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in its or his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) Debarment shall be for a reasonable, definitely stated period of time which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in its or his or her behalf to explain why the additional period of debarment should not be imposed.

(d) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the Authority, upon its own action or upon recommendation of the Executive Director, upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the cause for which the debarment was imposed.

(e) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of a person may be imputed to an affiliate of such person, where such conduct was accomplished within the course of its or his or her official duty or was effected by it or him or her with the knowledge or approval of such person.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

In (c), substituted "Debarment shall be for a reasonable" for "Debarment shall be a reasonable".

19:65-7.5 Causes for suspension of a person

In the public interest, the Authority may, upon approval of the Attorney General, suspend a person for any cause specified in N.J.A.C. 19:65-7.2 or upon a reasonable suspicion that such cause exists.

19:65-7.6 Conditions for suspension of a person

(a) The following conditions concerning suspension shall be adhered to:

1. Suspension shall be imposed only upon approval of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, and upon approval of Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, and at the discretion of the Attorney General, and shall be rendered in the best interests of the State.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 19:65-7.2 may be the basis for the imposition of a concurrent suspension by the Authority, which suspension may be imposed when found to be in the best interest of the State.

Amended by R.1997 d.452, effective October 20, 1997.

See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

In (a)5, substituted "administrative agency of competent jurisdiction" for "administrative agency or competent jurisdiction".

19:65-7.7 Procedures: Period of suspension; Scope of suspension affecting the suspension of a person

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by the Authority:

1. Upon approval of the Attorney General, the Authority may suspend a person or its or his or her affiliates, provided that within 10 days after the effective date of the suspension, the Authority provides such party with a written notice:

- i. Stating that a suspension has been imposed and its effective date;
- ii. Setting forth the reasons for the suspension to the extent that the Attorney General determined that such reasons may be properly disclosed;
- iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and
- iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if it, he or she so requests, or a statement declining to give such reasons and setting forth the Authority's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Authority, the Authority shall note that fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal proceedings regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution, civil action or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom it, he or she is affiliated, where such conduct was accomplished within the course of its, his or her official duty or was effectuated by it, him or her with the knowledge or approval of such person.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

In (a)2, substituted "civil or criminal proceedings regarding" for "civil or criminal in regarding".

19:65-7.8 Extent of debarment and suspension

The exclusion from Authority project contracting by virtue of debarment or suspension shall extend to all contracting and subcontracting within the control or jurisdiction of the Authority including any contracts which utilize Authority funds. When it is determined by the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, to be essential to the public interest, and upon filing of a finding thereof by the Attorney General, and in the case of suspension, upon approval of the Attorney General, an exemption from total exclusion may be made with respect to a particular Authority contract.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

Substituted "made with respect to a particular Authority contract" for "made by respect to a particular Authority contract".

19:65-7.9 Notice to Attorney General and Treasurer

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given by the Authority to the Attorney General and the State Treasurer. The Authority shall supply to the State Treasurer a list of all persons having been debarred or suspended in accordance with the procedures prescribed in these rules, including the effective date and term, if any, of such debarment or suspension. Such list shall at all times be available for public inspection.

19:65-7.10 Lists of other agencies

Notwithstanding the failure of the Authority to debar or suspend any person pursuant to these rules, whenever the Authority participates in any program financed, issued or guaranteed by any department, agency or instrumentality of the State or the United States Government, it may rely on any list of persons suspended or debarred by such agency, department or instrumentality and prevent the listed person from participating in that program.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

Substituted "guaranteed by any department" for "guaranteed by and department".

19:65-7.11 Authority discretion

Nothing contained in this subchapter is intended to limit the discretion of the Authority in determining eligibility for financial or other assistance or to contract or refrain from contracting with any person. The purpose of this subchapter is to provide notice of certain offenses or failures which may result in disqualification for assistance or debarment. Project applicants and participants must meet any other applicable standards and policies.

19:65-7.12 Executive Director to implement subchapter

The Executive Director is authorized to take all necessary action to implement and administer the provisions of this subchapter.

SUBCHAPTER 8. CONTRACTS FOR ARCHITECTURAL, ENGINEERING AND LAND SURVEYING SERVICES

Authority

N.J.S.A. 5:12-144.1j, 5:12-161f and 52:34-9.1 et seq.

Source and Effective Date

R.1999 d.326, effective September 20, 1999.
See: 31 N.J.R. 1455(a), 31 N.J.R. 2759(a).

Subchapter Historical Note

Subchapter 8, Contracts for Architectural, Engineering and Land Surveying Services, was adopted as new rules, and former Subchapter 8, Waiver, was recodified as Subchapter 9 by R.1999 d.326, effective September 20, 1999. See: 31 N.J.R. 1455(a), 31 N.J.R. 2759(a).

19:65-8.1 Applicability

The provisions of this subchapter shall apply only to contracts for architectural, engineering and land surveying services which are in excess of \$25,000 and subject to the procurement provision requirements of N.J.S.A. 52:34-9.1 et seq. Nothing in this subchapter shall preclude the Authority from using procurement processes other than those prescribed herein if those processes have been approved by the Federal government or other State statute or if an emergency has been declared by the Executive Director of the Authority.

19:65-8.2 Definitions

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

"Compensation" means the basis of payment by an agency for professional architectural, engineering or land surveying services.

"Professional architectural, engineering and land surveying services" means those services, including planning, environmental, and construction inspection services required for the development and construction of projects, within the scope of the practice of architecture, professional engineering or professional land surveying as defined by the laws of this State or those performed by an architect, professional engineer or professional land surveyor in connection with his or her professional employment practice.

"Professional firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to provide professional architectural, engineering, or land surveying services in this State.

19:65-8.3 Criteria for the selection of the most highly qualified professional firms

(a) Prior to the solicitation of proposals or expressions of interest pertaining to the procurement of professional architectural, engineering, or land surveying services, the Authority shall publicly advertise its need for such services. The advertisement shall either include a statement of the criteria by which the Authority shall evaluate the technical qualifications of professional firms and determine the order of preference to be used in designating the firms most highly qualified to perform the services or identify such criteria by reference to the provisions of this subchapter.

(b) In selecting the most highly qualified professional firms with which to contract for architectural, engineering or

land surveying services, the Authority, where applicable, shall consider the following criteria:

1. The experience and qualifications of the firm and designated project team in providing similar services;
2. The experience and qualifications of the firm and designated project team on projects of similar size and complexity;
3. The experience and capability of the firm and designated project team in respect to any special technologies, techniques, or expertise the project may require;
4. The past performance of the firm; and
5. Any other criteria specified in the Authority's public advertisement of the project.

(c) In selecting and ranking qualified professional firms, the Authority shall establish weights for the criteria applicable to each project. The Authority may disqualify any firm determined to be unacceptably deficient in one or more of the applicable criteria, regardless of the firm's ranking or score on the remainder of the criteria.

19:65-8.4 Effective date of rules

Any Authority procurement proceeding for the contracting of architectural, engineering or land surveying services where the Authority has not solicited proposals or expressions of interest or publicly advertised its need for such services prior to September 20, 1999 shall be subject to the applicable provisions of this subchapter.

SUBCHAPTER 9. WAIVERS**Subchapter Historical Note**

Subchapter 9, Waivers, was recodified from Subchapter 8, and former Subchapter 9, Miscellaneous, was recodified as Subchapter 10 by R.1999 d.326, effective September 20, 1999. See: 31 N.J.R. 1455(a), 31 N.J.R. 2759(a).

19:65-9.1 Waivers generally

Nothing in these rules shall be construed to prohibit the Authority from granting waivers from the provisions hereof or the provisions of the Act as expressly provided for in the Act.

19:65-9.2 Procedure

Any party desiring a waiver or release from the express provisions of any of these rules may submit a written request to the Authority to the attention of the Executive Director. Waivers may be granted by the Authority only when such waiver would not contravene the provisions of the Act and upon a finding that in granting the waiver the Authority will be consistent with the statutory purposes of the Authority. Such waivers may also be granted by the Authority upon its own action.

Amended by R.1997 d.452, effective October 20, 1997.
See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).
Added the third sentence.

SUBCHAPTER 10. MISCELLANEOUS

Subchapter Historical Note

Subchapter 10, Miscellaneous, was recodified from Subchapter 9 by R.1999 d.326, effective September 20, 1999. See: 31 N.J.R. 1455(a), 31 N.J.R. 2759(a).

19:65-10.1 Severability

If any clause, sentence, subparagraph, paragraph, subsection, section, subchapter or other portion of this chapter or the application thereof to any person or circumstances shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of this chapter or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, subchapter or other portion thereof directly involved in such holding or to the person or circumstance therein involved.