

CHAPTER 65

CASINO REINVESTMENT DEVELOPMENT
AUTHORITY

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

Pursuant to Executive Order No. 66(1978), Chapter 65, Casino Reinvestment Development Authority, expires October 5, 1997.

Chapter Historical Note

Chapter 65, Casino Reinvestment Development Authority, was filed and became effective as an Emergency New Rule on April 3, 1986 (expires June 2, 1986). See: 18 N.J.R. 852(a). Pursuant to Executive Order No. 66(1978), Chapter 65 was readopted as New Rules, effective July 7, 1986 as R.1986 d.256. 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 was adopted as new rules by R.1992 d.383, effective October 5, 1992. See: Source and Effective Date. See: Section annotations for specific rulemaking activity.

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 TARGETS
IN AUTHORITY FINANCED CONSTRUCTION
PROJECTS AND LICENSEES' DIRECT
INVESTMENT CONSTRUCTION PROJECTS

- 19:65-4.1 Subcontracting targets
19:65-4.2 Affirmative action
19:65-4.3 Enforcement and waivers

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. WAIVERS

- 19:65-8.1 Waivers generally
19:65-8.2 Procedure

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 as the same may be further amended from time to time.

"Applicant" means any person, entity, licensee, prospective licensee, government, governmental agency, 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 the Act.

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

"Cost" or "costs" means, with respect to an approved project, the reasonable costs, as determined by the sole discretion of the Authority, incurred in the development, construction, improvement or rehabilitation of such project, which costs shall include, but are not necessarily limited to, the following:

1. Costs of site preparation, development and demolition;
2. Costs of development, construction, improvement and rehabilitation of facilities, including equipment, and of the acquisition of equipment related thereto;
3. Cost of necessary studies, surveys, plans and permits, including the fees payable in connection with architectural, engineering, legal, accounting and other services incurred in connection therewith;

4. Costs of interest incurred during construction and for a reasonable period thereafter prior to the receipt of a certificate of occupancy of the project; and

5. Cost of working capital and operating deficits.

"Determination of eligibility" means a determination by the Authority that the applicant's project is an approved project.

"Equivalent investment" means an investment by a licensee in the form of an input of sufficient amounts from any source to provide for the payment of the costs and, if applicable, acquisition value of an approved project.

"Executive director" means the Executive Director of the Authority.

"Good cause" means and includes, but is not limited to, the following:

1. Managerial, operational and financial responsibility for the project; or
2. Acquisition, development, construction, improvement or rehabilitation of a project which would not be so acquired, developed, constructed, improved or rehabilitated through an investment by the Authority from the proceeds of bonds.

"Hotel development project" shall mean the construction of a facility in the City of Atlantic City to provide at least 200 units for overnight visitors or the reconstruction or rehabilitation of at least 200 units for overnight visitors (together with ancillary reconstruction or rehabilitation) of an existing facility in the City of Atlantic City, which are operated as part of a licensed facility of the licensee or in a facility otherwise approved by the Authority, and the construction, reconstruction or rehabilitation of appurtenant facilities.

"Initial contract" means the first contract entered into between the Authority and any licensee.

"Licensee" means the holder of a current and valid casino license issued by the New Jersey Casino Control Commission.

"Neighborhood Strategy Areas" means areas within a municipality designated from time to time by the Authority by resolution.

"Participant" means any person, entity, government, governmental agency, municipality, political subdivision of the State or Licensee participating or involved in any aspect of a project.

"Project" means any undertaking made to meet the purposes set forth in the Act, which include the following:

1. To provide, further and promote tourist industries in New Jersey and especially Atlantic County, by providing financial assistance for the planning, acquisition, construction, improvement, maintenance and operation of facilities for the recreation and entertainment of the public which may include an arts center, cultural center, historic site or landmark, or sports center;

2. To provide loans and other financial assistance for the planning, acquisition, construction, reconstruction, demolition, rehabilitation, conversion, repair or alteration of buildings or facilities to provide decent, safe and sanitary dwelling units for persons of low, moderate, median range, and middle income in need of housing, and to provide mortgage financing for such units;

3. To assist in the financing of structures, franchises, equipment and facilities for operation of, expansion of and the development of public transportation or for terminal purposes, including but not limited to development and improvement of port terminal structures, facilities and equipment for public use;

4. To provide loans and other financial assistance for the construction, reconstruction, demolition, conversion, repair or alteration of convention halls in Atlantic County and the State of New Jersey, including but not limited to office facilities, commercial facilities, community service facilities, parking facilities, hotel facilities and other facilities for the accommodation and entertainment of tourists and visitors;

5. To make loans and assist in the financing of the construction, reconstruction, rehabilitation, repair or acquisition of infrastructure projects, including but not limited to sewage disposal facilities, water facilities, solid waste disposal facilities, roads, highways and bridges;

6. To assist in financing buildings, structures and other property to increase opportunities in manufacturing, industrial, commercial, recreational, retail and service enterprises in the State so as to induce and to accelerate opportunity for employment in these enterprises, particularly of unemployed and underemployed residents of the jurisdiction in which the investment is to be made;

7. To provide loans and other financial assistance for the planning, developing or preservation of new and existing small businesses as well as the planning, acquisition, construction, reconstruction, rehabilitation, conversion or alteration of the facilities that house these enterprises, particularly those which provide services or employment to unemployed or underemployed residents of the State;

8. To provide loans and other financial assistance to provide employment training and retraining, particularly for unemployed and underemployed residents of the State;

9. To encourage investment in, or financing of, any plan, project, facility, or program which directly serves

pressing social and economic needs of the residents of the jurisdiction or region in which the investment is to be made, including but not limited to schools, supermarkets, commercial establishments, day care centers, parks and community service centers, and any other plan, project, facility or program which best serves the interest of the public as determined by the Authority.

"Prospective licensee" means a person who has applied for a license issued by the New Jersey Casino Control Commission to operate a casino.

"State" means the State of New Jersey.

"SBMWE Development Authority" means the New Jersey Development Authority for Small Business, Minorities and Women's Enterprises.

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).

SUBCHAPTER 2. APPLICATION, ELIGIBILITY, PRIORITY AND HEARING

19:65-2.1 Applications generally

(a) The Authority will act upon applications which involve projects that meet the requirements of the Act, these rules and the specific goals of the Authority as determined from time to time by the Authority.

(b) From time to time the Authority may issue guidelines outlining, among other things, the nature of the projects it intends to fund or approve and the approximately amounts available to fund such projects.

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

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

Repealed (c).

19:65-2.2 Time for application

(a) Except as otherwise provided in these rules or in the Act, an applicant shall apply to the Authority for a determination of eligibility of its proposed project at any time before the commencement of the project.

(b) With respect to a project commenced by a licensee or prospective licensee prior to the effective date of these rules which such licensee or prospective licensee intends to qualify as an approved project, such person shall apply to the Authority for a determination of eligibility within 90 days of the date of the effective date of these rules.

(c) With respect to a project to be commenced after the effective date of these rules, an applicant shall apply to the Authority in accordance with the procedures set forth in these rules for a determination of eligibility before commencing such project, and shall not commence the project until the Authority makes a determination of eligibility.

(d) 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.

(e) 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.

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. 19:65-2.1(c) if a donation of property is involved; and

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

19:65-2.4 Application review and approval

(a) The preliminary review of a project application and the 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. 19:65-2.8. Notwithstanding anything to the contrary herein, no further action under this Section shall be taken until after such public hearing has been held.

(b) Project approval and the reservation of funds for an approved 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 shall reserve funds for such approved project in an amount necessary to complete the approved project.

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. 19:65-2.9 and/or a donation in accordance with N.J.A.C. 19:65-2.10, 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; and

iii. The reservation of funds shall be for such length of time not exceeding six 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 six months), during which time the conditions set forth above shall be satisfied.

4. (Reserved)

5. The reservation of funds for an approved hotel development project 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 35 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 (a)5ii above; and

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).

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.

(c) The procedure for final approval of an approved project is as follows:

1. Final approval of an approved project for investment shall occur within the time period prescribed in accordance with (b)3iii above. Final approval shall be granted through the adoption of a 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 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.

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).

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

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 December 31, 1996;

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; and

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.

Recodified from 19:65-2.6 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.

Prior rulemaking activity was as follows:

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

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

Section was "Final review."

Emergency Amendment, R.1993 d.478, effective August 30, 1993 (expired 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.1995 d.4, effective January 3, 1995.

See: 25 N.J.R. 5455(a), 27 N.J.R. 144(b).

19:65-2.6 Priorities

(a) In considering whether to approve a project, the Authority shall be guided by and accord priority to projects which, among other things:

1. As to projects in Atlantic City:

i. Will be situated in Neighborhood Strategy Areas so as to lead to the establishment of a balanced community and the development of a comprehensive housing program for the City of Atlantic City;

ii. Addresses the housing needs of the persons and their families residing in the city of Atlantic City in 1983 and continuing such residency through December 19, 1984 and as set forth in the determination, from time to time, by the Authority as to the housing needs for Atlantic City made in consultation with the city of Atlantic City and specifically its zoning and planning boards;

iii. Are in accordance with any other comprehensive plan or project which is consistent with the standards set forth in N.J.S.A. 5:12-144.1f(3) and which is acceptable to the Authority pursuant to N.J.S.A. 5:12-173;

iv. Are located within the area designated for redevelopment under the redevelopment plan known as "Inlet Community Redevelopment—A Balanced Community Concept and Strategy for Reinvestment, Atlantic City, New Jersey, October, 1983" approved and adopted by the New Jersey Casino Control Commission (sometimes referred to as the "American Cities Plan"), and are found by the Authority to be consistent, in location, housing type, design, and other relevant criteria with the goals, objectives, and implementation strategy of that plan; or, a part of a redevelopment plan adopted in accordance with N.J.S.A. 55:14A-1 et seq., N.J.S.A. 40:55C-1 et seq., or similar laws and formally approved by the Authority on the basis of findings by the Authority that implementation of the plan will have a significant positive impact on the creation of sound neighborhood conditions and the creation of affordable housing opportunities in the city of Atlantic City;

v. Will further the development of Atlantic City in the ways specified by N.J.S.A. 5:12-160.

2. As to projects outside of Atlantic City, will lead to the revitalization of the urban areas of this State in the ways specified in N.J.S.A. 5:12-160. Those areas shall include, but not be limited to all municipalities qualifying for aid pursuant to N.J.S.A. 52:27D-178 et seq.

3. As to any project, the Authority will give consideration to the fact that the project utilizes sources of financial assistance in addition to assistance provided by the Authority.

4. As to a hotel development project, the Authority will give priority to those hotel development projects for which the Authority, by September 1, 1993, has either received a fully complete application, as determined by the Authority, or for which the Authority has received a notice in writing from a casino licensee indicating the licensee's intent to proceed with such project, a description of the project, the number of units involved and the estimated cost of the project and the investment credit sought. No other hotel development projects shall receive consideration, unless, after giving consideration to projects for which application or notices of intent are received by September 1, 1993, amounts are available after the process described in N.J.A.C. 19:65-2.10.

5. Only those hotel development projects which shall have received all approvals from the Authority and have financing or other commitments in place to cover costs in excess of the Authority's allocable investment amount for a hotel development project by September 1, 1994, or such later date as may be fixed by the Authority, shall receive financing from the Authority.

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

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

Added text in (a)1i "be situated in Neighborhood Strategy Areas so as to"

Recodified from 19:65-2.7 by R.1992 d.383, effective October 5, 1992.

See: 24 N.J.R. 1692(b), 24 N.J.R. 3535(a).

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).

19:65-2.7 Public hearing

(a) In considering whether a particular project shall be an approved project, the Authority shall conduct in the jurisdiction of the local government unit in which the project is located such hearings as may be necessary or appropriate to determine whether the project satisfies the standards, criteria and guidelines set forth in the Act and these rules. The Authority may conduct such hearings directly or the Chairman may designate one member of the Authority, the Executive Director or any Authority employee to preside at the hearing. Unless required by law, such hearings shall be conducted as non-adversarial, informational proceedings and shall not be considered "contested cases" within the meaning of P.L.1968, c.410, as amended (N.J.S.A. 52:14B-1 et seq.). The fees and costs of such hearings, including the cost of any transcript, shall be borne by the applicant.

(b) The Authority shall give notice of any hearing at least 15 days before the date of the hearing by publication in a newspaper of general circulation in the municipality in which the project will be located, by posting a notice at the Authority's office and by delivering a copy of the notice to the clerk of the municipality in which the project will be located, the applicant and any other interested party. The notice shall include the time and place of the hearing, the names and addresses of the parties involved in the project and a brief description of the project. The Authority shall not be obligated to provide notice of any adjournment or adjournments of any scheduled hearing so long as it gives notice, as provided by these rules, of the new hearing date.

Recodified from 19:65-2.8 by R.1992 d.383, effective October 5, 1992.

See: 24 N.J.R. 1692(b), 24 N.J.R. 3535(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).

19:65-2.8 Approval of projects which constitute equivalent investments

(a) The Authority may permit, in its sole discretion, a licensee to make equivalent investments in projects in lieu of purchasing bonds. In such instance, the licensee shall make an Application in the same manner as other applicants under these rules.

(b) The Authority may waive the requirement of a licensee to purchase bonds only after the licensee has provided the Authority with sufficient information to show good cause.

(c) In determining the amount of an equivalent investment to be permitted as a tax credit in lieu of purchasing bonds, the Authority shall review all information provided by the licensee and permit credit only for costs of the project actually incurred by the licensee and, in the case of the acquisition of land or other property, the acquisition value approved by the Authority.

(d) The licensee shall be required to provide the Authority with information sufficient for the Authority to make a determination of the amount of costs actually incurred, including a certification of such costs by a certified public accountant, licensed engineer or architect or other person or firm in a similar capacity independent of the licensee and acceptable to the Authority.

(e) In the event the licensee requests credit for an equivalent investment pursuant to these rules which includes as part of the investment a donation of realty, the amount of such investment shall include, in addition to the actual costs incurred, the amount of the donation of the realty determined in accordance with N.J.A.C. 19:65-2.10.

(f) In the event that a licensee requests to make an equivalent investment in a Project the amount of which is in excess of the licensee's current tax obligation, the Authority shall provide that such excess amount be applied against such licensee's tax obligations of future years, which annual amount of obligation shall be reduced by the Authority taking into account a current market discount rate (as determined from time to time by resolution of the Authority) from the date of the investment to the date on which the obligation would have been incurred.

(g) Notwithstanding anything in this Section to the contrary, the Authority shall not permit the licensee to make equivalent investments in lieu of purchasing bonds if it would result in:

1. The violation of any agreement or covenant, or the impairment of any contractual or financial obligation, of the Authority; or
2. The impairment of the set aside for the SBMWE Authority as provided in N.J.S.A. 5:12-181; or
3. The reduction or impairment of the allocation to be made pursuant to N.J.S.A. 5:12-144.1f relating to Atlantic City, South Jersey and North Jersey and the portions thereof to be used to finance housing facilities for persons or families of low through middle income.

(h) In addition to the provisions of this section, the Authority shall require that, in order to permit a licensee to make an equivalent investment in a project in lieu of purchasing bonds, all the other requirements of N.J.A.C. 19:65-2 be met, including, in particular, the priorities set forth in N.J.A.C. 19:65-2.7; provided, that the provisions of N.J.A.C. 19:65-2.6(b)2 and 3 need not be met.

New Rule R.1987 d.213, effective May 4, 1987.

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

Recodified from 19:65-2.9 by R.1992 d.383, effective October 5, 1992.

See: 24 N.J.R. 1692(b), 24 N.J.R. 3535(a).

19:65-2.9 Approval of projects which constitute donation of money or realty

(a) The Authority may permit, in its sole discretion, a licensee to make a donation of money or realty to projects in lieu of purchasing bonds. In such instance, the licensee shall make an application in the same manner as other applicants under these rules.

(b) With respect to a donation of realty, in determining the amount of the donation to be permitted as a tax credit in lieu of purchasing bonds, the Authority shall require the licensee to provide information relating to its acquisition value.

(c) Notwithstanding anything in this Section to the contrary, the Authority shall not permit the licensee to make donations in lieu of purchasing bonds if it would result in:

1. The violation of any agreement or covenant, or the impairment of any contractual or financial obligation, of the Authority; or
2. The impairment of the set aside for the SBMWE Authority as provided in N.J.S.A. 5:12-181; or
3. The reduction or impairment of the allocation to be made pursuant to N.J.S.A. 5:12-144.1f relating to Atlantic City, South Jersey and North Jersey and the portions thereof to be used to finance housing facilities for persons or families of low through middle income.

New Rule R.1987 d.213, effective May 4, 1987.
See: 19 N.J.R. 404(a), 19 N.J.R. 775(a).
Recodified from 19:65-2.10 by R.1992 d.383, effective October 5, 1992.
See: 24 N.J.R. 1692(b), 24 N.J.R. 3535(a).

19:65-2.10 Approval of hotel development projects and allocation of investment credit

(a) With respect to approved hotel development projects for which, on or prior to September 1, 1993, the Authority received either a fully complete application, or a notice by the casino licensee of its intent to proceed as set forth in N.J.A.C. 19:65-2.6(a)4, the Authority shall determine the estimated cost of each approved hotel development project and the amount of investment credit available to each licensee based upon the estimated costs of each approved hotel development project and proceed as follows:

1. In the event that the estimated aggregate amount of investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, is equal to or less than \$100,000,000, the Authority shall allocate the full amount of investment credit available for hotel development projects to the respective licensee for each approved hotel development project; and

2. In the event that the estimated aggregate amount of investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, is in excess of \$100,000,000, the Authority shall allocate the full amount of the investment credit available for hotel development projects proportionately among the licensees for the approved hotel development projects based upon a formula pursuant to which the amount of investment credit allocated to each licensee bears the same relationship to \$100,000,000 as the estimated amount of investment credit available to such licensee for such licensee's approved hotel development project, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof, bears to the estimated aggregate amount in investment credit available to all licensees for approved hotel development projects, as determined in accordance with the provisions of N.J.A.C. 19:65-2.4 through 2.6, inclusive, hereof.

(b) If an approved hotel development project does not receive all Authority approvals or financing or other commitments are not received on or prior to September 1, 1994 or such later date as may be fixed by the Authority or is otherwise abandoned or terminated, the Authority shall recapture the investment credit with respect to such hotel development project and allocate such amount first in accordance with the provisions of (a) above and second in accordance with the provisions of (c) below.

(c) With respect to approved hotel development projects not described in (a) above, the Authority shall allocate any investment credit available pursuant to (a)1 above or any other unused investment credit not otherwise used to such hotel development project.

Emergency New Rule, 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).

19:65-2.11 Cost certification

All applicants shall be required to provide the Authority with information sufficient for the Authority to make a determination of the amount of costs actually incurred, including a certification of such costs by a certified public accountant, licensed engineer or architect or other person or firm in a similar capacity independent of the applicant and acceptable to the Authority.

New Rule R.1987 d.213, effective May 4, 1987.
See: 19 N.J.R. 404(a), 19 N.J.R. 775(a).
Recodified from 19:65-2.11 by R.1992 d.383, effective October 5, 1992.
See: 24 N.J.R. 1692(b), 24 N.J.R. 3535(a).
Recodified from 19:65-2.10 by R.1993 d.478, effective August 30, 1993.
See: 25 N.J.R. 4514(a), 25 N.J.R. 5523(a).

19:65-4.2 Affirmative action**(a) In connection with construction projects:**

1. The Authority shall ensure that minority or women's businesses receive at least 20 percent of the total expenditures on the total number of approved projects financed each year by or through the Authority or in the case of direct investments by licensees, 20 percent of the total expenditures on the total amount of such investments by licensees.

2. The Authority shall enforce the provisions of the Act with respect to the 20 percent set-aside described in (a) above, but the primary obligation to carry out the 20 percent minority or women's business set-aside rests with the borrowers of proceeds of bonds or the licensees in the case of direct investments in projects involving construction.

3. Each applicant and its respective contractors shall make every effort to use as many minority or women's businesses from as wide a market areas as is economically feasible to satisfy the set-aside requirements. This effort shall include the employment of such minority businesses with less experience than otherwise available nonminority enterprises, and each applicant shall be required to provide reasonable technical assistance to minority businesses as needed.

19:65-4.3 Enforcement and waivers

(a) The Authority shall take such steps as are necessary to ensure compliance with this subchapter.

(b) Under exceptional circumstances, after a public hearing with notice given as provided in N.J.A.C. 19:65-2.3(b) and upon determination by the Authority that there are not sufficient, relevant or qualified minority business enterprises, whose market areas include the project location, the Authority may waive up to 10 percent of the 20 percent set-aside requirement. In order to be entitled to such a waiver, the applicant shall comply with the timing requirements of and demonstrate and detail the matters set forth in N.J.S.A. 5:12-181(b)(2). Nothing herein shall preclude the Authority from hearing any information provided by any other person, or Federal, State or local governmental agency.

**SUBCHAPTER 5. INVESTMENT BY LICENSEES
PURSUANT TO N.J.S.A. 5:12-144**
19:65-5.1 New Jersey Casino Control Commission rules

Eligibility of investments or contributions by licensees which were commenced or made prior to the effective date of the Act and the determination of which were pending before the New Jersey Casino Control Commission, shall be determined by the Authority by reference to the rules of the New Jersey Casino Control Commission set forth at

N.J.A.C. 19:54-2.1 through and including N.J.A.C. 19:54-2.37, to the extent not inconsistent with the Act. All references in such rules to the "Commission" shall, except where the context clearly indicates otherwise, be deemed to refer to the "Authority". Nothing herein shall be construed to alter or disturb final determinations by the New Jersey Casino Control Commission as to matters within its jurisdiction prior to the effective date of these rules nor to permit licensees to seek determinations from the Authority as to matters which were not brought in a timely fashion before the New Jersey Casino Control Commission.

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. 19:65-2.8, which payment shall be credited toward any administrative fee if the project is approved by the Authority.

19:65-6.2 Administrative fees**(a) Initial Fees.**

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 equal 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 equal 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 equal to one percent of the amount of the equivalent investment.

(b) Annual Fees.

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 equal 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 equal to 1/12 of one-quarter of

one percent of the amount of the equivalent investment made as of such date of payment.

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.

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:

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

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

"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.

"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.

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

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 with 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.

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.