

CHAPTER 33**P.L. 2000, C.72, SECTION 6 DEMONSTRATION PROJECTS****Authority**

P.L. 2000, c.72, §§ 6 and 26b.

Source and Effective Date

R.2002 d.9, effective December 11, 2001.
See: 34 N.J.R. 307(a).

Chapter Expiration Date

Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, expires on December 11, 2002.

Chapter Historical Note

Chapter 33, P.L. 2000, c.72, Section 6 Demonstration Projects, was adopted as special new rules by R.2002 d.9, effective December 11, 2001 (to expire December 11, 2002). See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**19:33-1.1 Purpose and applicability of rules**

(a) These rules are promulgated by the New Jersey Economic Development Authority ("the Authority") to implement Section 6 of the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, N.J.S.A. 18A:7G-6 ("the Act"). Section 6 of the Act establishes the program and process whereby the Authority shall review and recommend up to six school facilities projects with community design features to be selected by the Treasurer to be demonstration projects.

(b) Any school district applying for designation of a school facilities project with community design features as a demonstration project shall at a minimum comply with the requirements of this chapter, as applicable.

19:33-1.2 Definitions

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

"Abbott district" means a school district as defined in section 3 of P.L. 1996, c.138 (N.J.S.A. 18A:7F-3).

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c.72 (N.J.S.A. 18A:7G-1 et seq.).

"Authority" means the New Jersey Economic Development Authority established pursuant to P.L. 1974, c.80 (N.J.S.A. 34:1B-1 et seq.).

"Commissioner" means the Commissioner of the New Jersey Department of Education or his or her designee.

"Community design feature" means any area, rooms, equipment, recreational area or playground included in a demonstration project which is to be used in common by students of the district and by residents of the community.

"Consultant" means a consultant, including a design consultant, engaged by the redevelopment entity for a demonstration project providing professional services associated with research, development, design and construction administration, alteration, or renovation of real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. A consultant may provide services including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, shop drawing reviews, preparation of operating and maintenance manuals, and other related services.

"Contracted party" means a consultant, contractor, and their subconsultants and subcontractors and any other party providing material or services to the redevelopment entity in connection with a demonstration project.

"Demonstration project" means a school facilities project selected by the State Treasurer for construction by a redevelopment entity pursuant to section 6 of the Act (N.J.S.A. 18A:7G-6) and this chapter.

"Department" means the New Jersey Department of Education.

"Division" means the Division of Facilities and Transportation in the New Jersey Department of Education.

"Educational adequacy" means, for purposes of a demonstration project, the suitability of a facility for the provision of instruction that will enable students to achieve the Core Curriculum Content Standards and encompass the standards established in the facilities efficiency standards combined with the requirements of N.J.A.C. 6A:26.

"Executive Director" means the Executive Director of the New Jersey Economic Development Authority.

"Facilities efficiency standards" means, for the 2000-2001, 2001-2002 and 2002-2003 school years, the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4(h) and published in the New Jersey Register. For the 2003-2004 school year and thereafter, they shall be as established in the Biennial Report published by the Department.

"Final eligible costs" means, for a school facilities project to be constructed by the Authority, the final eligible costs of the school facilities project as determined by the Commissioner, in consultation with the Authority, pursuant to N.J.S.A. 18A:7G-5; for a demonstration project, the final eligible costs of the project as determined by the Commissioner and reviewed by the Authority which may include the cost of community design features determined by the Commissioner to be an integral part of the school facility and which do not exceed the facilities efficiency standards and any additional spaces approved by the Commissioner pursuant to N.J.S.A. 18A:7G-5, and which were reviewed by the Authority and approved by the State Treasurer pursuant to N.J.S.A. 18A:7G-6; and for districts whose district aid percentage is less than 55 percent and which elect not to have the authority construct a school facilities project final eligible costs as determined pursuant to N.J.S.A. 18A:7G-5(h)(1) and N.J.A.C. 6A:26-3.6.

"Grant" means the funds to be approved to the school district by the Authority to pay for the State share of a demonstration project pursuant to this chapter.

"Grant agreement" means the grant agreement among the Authority, school district, and redevelopment entity setting forth the contractual terms and conditions under which the Authority funds the State share.

"Local share" means, in the case of a school facilities project to be constructed by the Authority, the total costs less the State share as determined pursuant to N.J.S.A. 18A:7G-5, in the case of a demonstration project, the total costs less the State share as determined pursuant to N.J.S.A. 18A:7G-5 and 18A:7G-6; and in the case of a school facilities project not to be constructed by the Authority, but which shall be financed pursuant to N.J.S.A. 18A:7G-15, the total costs less the State share as determined pursuant to that section.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a school district pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6A:26-2.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7, which shall be deemed to include the costs of construction and other allowable costs.

"Redevelopment entity" means a redevelopment entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the "Local Redevelopment and Housing Law," P.L. 1992, c.79 (N.J.S.A. 40A:12A-1 et seq.).

"School district" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a State-operated school district established pursuant to P.L. 1987, c.399 (N.J.S.A. 18A:7A-34 et seq.).

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings, and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals such as engineers and architects, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project must be new construction in order to meet the housing needs of unhoused students, or rehabilitation for the purpose of keeping a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

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

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

19:31-2.4 Evaluation process

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

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

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment,

and the adequacy of the collateral available to secure the requested financing.

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

19:31-2.5 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

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

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the guarantee is delivered to the lender.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-2.6 Attorney General review

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

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) The Authority is empowered to make direct loans to applicants which are unable to obtain funding from conventional sources even with the help of an Authority guarantee.

(b) Direct loans are available in a maximum amount of \$750,000 for fixed asset financing and \$500,000 for working capital.

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

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

(e) Interest on fixed asset and working capital loans is at a rate no less than three percent or the Federal Discount Rate, whichever is greater, and no more than one percent below the highest Prime Rate as published in the Wall Street Journal at the time of approval. The interest rate will be variable, adjusted on the first business day of each calendar quarter in accordance with the relationship of the original calculated interest rate to Prime Rate or the Federal Discount Rate at the time of approval. The maximum increase in the variable interest rate over a five-year period will be five percentage points greater than the original calculated interest rate. Factors to be considered when calculating the interest rate may include the project's location-municipality, whether the applicant is locating to a former brownfield site, the industry type, the leveraging of total project costs to public dollars, the employment impact to public dollars, whether the business is new to the State or expanding operation in the State, and the increase in tax ratable values.

(f) The term of a fixed asset or working capital loan is a maximum of 10 years, although the repayment schedule is usually for a shorter time based on the applicant's ability to repay.

(g) The Authority may make direct loans in excess of \$750,000 and up to \$2 million for fixed assets. An applicant for a direct loan in excess of \$750,000 shall:

1. Be in an industry or municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5 or located in the Port District;
2. Demonstrate to the Authority that it has viable options to vacate the State, has been offered economic incentives by the competing state and, without the special guarantee, the applicant shall not undertake the relocation or expansion in the State; and
3. Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$50,000 per job created and/or maintained.

(h) Notwithstanding (g) above, an existing New Jersey company that is not targeted by the Authority as set forth in N.J.A.C. 19:30-5, but can meet the criteria set forth in (g)2 above shall be eligible for a direct loan in excess of \$750,000 if it can demonstrate that at least 400 permanent full-time jobs shall be maintained in New Jersey and the Authority's exposure shall be maintained in New Jersey and the Authority's exposure shall not exceed \$50,000 per job maintained.

(i) For purposes of (g) and (h) above, the direct loan term shall not exceed 10 years.

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

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

Revised (e).

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

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

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

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

Added (g) through (i).

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

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

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

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

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

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

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

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

Rewrote (e).

19:31-3.2 Eligibility standards

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

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

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

(c) The applicant must demonstrate to the Authority that it is unable to obtain conventional, affordable financing on its own or with the availability of an Authority guarantee.

19:31-3.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;
7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and
8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

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

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

19:31-3.4 Evaluation process

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

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;
2. An analysis of historic and projected financial statements and a comparison to industry peers;
3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and

considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

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

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

19:31-3.5 Approval process

(a) Only the Members can approve a direct loan.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor:

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

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

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

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

19:31-3.6 Attorney General review

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

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

SUBCHAPTER 4. DOWNTOWN BEAUTIFICATION PROGRAM

19:31-4.1 Program description

(a) The Authority is empowered to make direct loans to owners and operators of retail and commercial businesses located in downtown urban areas who are unable to obtain funding from conventional sources to upgrade their properties and to remain in such areas.

(b) Applicants may be eligible for loans in amounts ranging from \$5,000 to \$100,000.

(c) Proceeds of loans are to be used primarily to renovate, remodel or expand the interior and/or exterior of the facility, but a limited amount of the funds can be used for working capital.

(d) Interest on these loans is equal to one percent below the Federal Discount Rate at the time of loan closing, with a minimum of three percent and a maximum of 10 percent.

(e) The term of the loan is a maximum of 10 years, although the repayment schedule is usually for a shorter term based on the applicant's ability to repay.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Amended by R.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), substituted "\$100,000" for "\$50,000".
Amended by R.2002 d.223, effective July 15, 2002.
See: 34 N.J.R. 1247(a), 34 N.J.R. 2469(a).

In (d), substituted "three" for "four".

19:31-4.2 Eligibility standards

To be eligible, an applicant must be located in the downtown area of a targeted municipality (see N.J.A.C. 19:30-5).

19:31-4.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;
6. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and
7. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

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

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

19:31-4.4 Evaluation process

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

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

"Project" means an industrial or commercial enterprise within a municipality that would not be undertaken in its intended scope but for the assistance provided for under the Act and these rules.

"Sponsor" means the governing body of a municipality or, with the approval of the government of the municipality, a local development corporation, community development corporation, municipal port authority, or governing body of a county, or, with the approval of the government of a county, a county development corporation or other public entity designated by the Authority as a sponsor (see N.J.S.A. 40:68A-29).

19:31-7.3 Application for financial assistance

(a) Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of \$500.00.

(b) Each application for financial assistance from the Fund shall be accompanied by evidence of the support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall mean an approved resolution of the governing body of the municipality.

(c) Each application for financial assistance from the Fund shall be accompanied by a benefit statement prepared by the applicant. The benefit statement shall address:

1. The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;
2. The number of jobs preserved by the completion of the project in the case of an existing enterprise;
3. The increase in the valuation of real property in the municipality as a result of the completion of the project;
4. Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;
5. Whether the project will be located in an area targeted for economic development and receiving Federal, State and/or local development assistance under other programs;
6. The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;
7. The extent to which the project will advance State and/or regional planning and development strategies; and
8. The extent to which the location of the project is accessible to and promotes the use of public transportation.

(d) Each application for financial assistance from the Fund shall be accompanied by evidence of private source or other public source financing commitments.

(e) Each application for financial assistance from the Fund shall be accompanied by evidence of all requisite Federal and/or State environmental permits necessary for the project.

(f) Each application for financial assistance from the Fund shall be accompanied by a plan for the utilization of minority and women contractors and equal opportunity for employment in connection with the project (see N.J.A.C. 19:31-7.6).

19:31-7.4 Financial assistance

(a) No more than 20 percent of the total financial assistance provided from the Fund shall be in the form of grants or other non-lending assistance.

(b) The total amount of financial assistance provided to project applicants in any county during any year shall not exceed 20 percent of the appropriation made during that year to the Fund.

(c) No financial assistance from the Fund shall be granted to an individual applicant project unless at least 50 percent of the total eligible project cost consists of private resources. For purposes of these rules, private resources shall include, but are not limited to:

1. Conventional private sector mortgages;
2. Purchase money mortgages;
3. Industrial Revenue Bonds;
4. Leases;
5. Loans guaranteed by the Federal Small Business Administration, or similar loan guarantees of other governmental and/or quasi-governmental entities; and
6. Equity investments in the project.

(d) The Fund shall provide loans in the form of permanent subordinate mortgage financing for eligible project cost at or below market rates of interest, as determined by the Authority (see N.J.A.C. 19:31-7.5(c)).

(e) The applicant shall secure interim financing on all projects involving construction, unless the Authority agrees otherwise in writing. The interim lender shall assume full responsibility for monitoring the construction of a project and for its timely completion. The interim lender may be the first mortgage lender or another experienced, qualified construction lender and shall be approved by the Authority.

(f) The applicant shall have such equity in the project as the Authority may deem appropriate to insure the applicant's ability to repay the loan from the Fund.

(g) The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitment and that without assistance from the Fund the project would be economically unviable and unable to proceed.

(h) Assistance other than loans from the Fund may be approved where the Authority deems such assistance necessary to the success of the project. Such assistance shall not be provided for projects that can be funded by loans.

19:31-7.5 Terms of financial assistance

(a) The minimum loan amount from the Fund shall be \$50,000 and the maximum loan amount from the Fund shall be \$2,000,000.

(b) The term of a loan from the Fund can be up to 25 years.

(c) The interest rate on a loan from the Fund will be the one-half of the Federal Discount Rate at the time of loan closing or three percent, whichever is greater.

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

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

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

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

In (c), substituted "three for "five".

19:31-7.6 Evaluation of applications

(a) The Authority shall evaluate and rank each application for financial assistance considering the following factors:

1. The number of unemployed persons in the municipality in which the project is located;
2. The number of permanent full-time jobs to be created and/or maintained directly by the project, excluding the period of construction or development;
3. The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State;
4. The increase in the valuation of real property in the municipality as a result of the completion of the project;
5. The percentage of the total eligible project costs to be financed from private and/or other public sources;
6. Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;
7. Whether the project will be located in an area targeted for economic development and/or will be receiving Federal, State and/or local development incentives under other programs;

8. The extent to which the project will contribute to an economic revitalization of a municipality or region, and will promote or add to the rehabilitation of the physical environment of the immediate area or municipality in which it is to be located;

9. The degree to which the project will facilitate the advancement of State or regional planning development strategies;

10. The extent to which the locations of the project are accessible to and/or promote the use of public transportation;

11. The degree of support for, participation in, and/or consultation about the project, within the community in which the project will be located;

12. The likelihood that the project will create and/or preserve private sector jobs, which will last for a period of at least two years; and

13. The likelihood that the project will result in providing a significant increase in the real property tax base of the municipality in which the project is located.

(b) After the evaluation and ranking is completed, the projects will be presented to the members of the Authority for their review and approval.

19:31-7.7 Minority and women business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Fund shall set a target level of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses and women businesses.

(b) The developer and/or general contractor of the project shall identify the minority and/or women businesses that will participate in the project by construction trade, together with the contract sum to be paid to each minority business.

(c) In determining the target level and compliance therewith, a developer and/or general contractor must proceed in accordance with N.J.A.C. 12A:10-2.

19:31-7.8 Rescission of financial assistance from the Fund

(a) The Authority may at its discretion rescind part or all of the financial assistance from the Fund when it has become evident after the granting of financial assistance that:

1. The commitment of other financial resources from private sources has been withdrawn;
2. The project is judged no longer capable of repaying the Fund for the financial assistance it has received;

19:31-12.4 Application to the program

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable \$500.00 application fee. Complete applications must be received by June 30 for each State fiscal year thereafter.

(b) In order for the Department of Treasury, Division of Taxation to issue a certificate, each application submitted to the program shall include: a selling business application which includes the information set forth in (c) below; a spending certification form attesting to having spent the proceeds of the prior year's sale of tax benefits in accordance with the definition of allowable expenditures; a Buying Business Information Sheet which identifies the buying business name, address, telephone number, the estimated value of benefits to be transferred and from whom and a business certification; an agreement between the buying and selling business defining the terms of the sale of the certificate; and the Tax Benefit Identification Form which summarizes the accumulated net operating losses and research and development credits authorized to be sold and the value intended to be sold. For determination of eligibility for the program, the initial application package shall also include a selling business application and a spending certification form.

(c) In addition to the material specified in (b) above, a completed application shall include, but is not limited to:

1. A description of the nature of the business conducted by the company;
2. A company business plan;
3. Annual consolidated financial statements for the three most recent full years, including balance sheets, operating statements, statements of cash flow and annual company financial statements for the same periods and/or tax returns for the same periods;
4. Net income or loss for the three most recent fiscal years;
5. The number of permanent full time jobs created by the applicant over the course of the two most recent calendar years;
6. A list of all corporations and affiliated groups of corporations that directly or indirectly own or control 50 percent or greater of the selling business and the two most recent full years of financial statements for each;
7. An explanation of the actual or potential scientific and technological viability of the product(s), service(s) and/or process(es) produced in New Jersey;
8. A description of how the innovation of the product(s), service(s) and/or process(es) represents a competitive advantage in the business' field;
9. A description of how the proposed or expanded activities in the State of New Jersey can enhance and

diversify the State of New Jersey's capacity and competitiveness in the business' field;

10. A description of efforts made during the past two years to secure any form of financial assistance to support its operations; and

11. Any other supplemental information required by the Authority.

(d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the Authority's Board of Directors at its scheduled public meeting.

(e) The Division of Taxation, Department of Treasury separately reviews applicants and may make recommendations regarding program eligibility.

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

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

In (a), rewrote the second sentence.

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

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

In (a), deleted "July 28, 1999 for consideration in State FY 00 and by" preceding "June 30"; in (c)3, inserted "and/or tax returns for the same periods" at the end of the paragraph.

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (c), substituted "three" for "two" in 3, rewrote 4 and 5, deleted former 10 and 11, recodified former 12 as 10 and deleted "and projected two years", and recodified former 13 as 11.

19:31-12.5 Evaluation process

(a) When all of the required information is received, the Authority shall perform its own review based on the following minimum criteria:

1. The threshold criteria of eligibility in which the applicant meets the definition of technology business or biotechnology business, and satisfies the standards in N.J.A.C. 19:31-12.3;
2. The actual potential scientific and technological viability of the applicant's business product(s), service(s) and/or process(es) as demonstrated by its:
 - i. Uniqueness of concept;
 - ii. Creditability/plausibility of concept; and
 - iii. Scientific/technological resources of the applicant;
3. The degree to which the innovation of the applicant's product(s), service(s) and/or process(es) created in New Jersey offers a competitive advantage to the business and enhances and diversifies the State of New Jersey's capacity and competitiveness in the business' field;
4. The degree to which the proposed financial assistance will result in significant growth in permanent full-time employment based upon the increase in permanent full-time employment in the two most recent calendar years;

5. The financial resources of the applicant including:
 - i. The degree to which the proposed financial assistance demonstrates the prospect of a significant positive change in net income or loss based upon the recent net income or loss trend;
 - ii. Liquidity;
 - iii. Market share; and
 - iv. Ability to access other financial assistance; and
6. Use of the proceeds of the anticipated sale of tax benefits.

(b) After completing its review under (a) above, a determination shall be made by the Authority as to the merits of the request and its adherence to the statutory requirements of the program. Upon this determination, if the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification is reviewed and a determination that the agreement is in conformance with the requirements of the program.

(c) If a positive determination is made, the requested approval is forwarded to the Division of Taxation for review.

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (a), rewrote 4 and 5i.

19:31-12.6 Approval process

(a) Only the members of the Authority can deny an applicant's eligibility in the program.

(b) When the members deny a request, the minutes at which such denial occurs are submitted to the Governor.

(c) The members' action is effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued.

(d) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. The Authority cannot consider any new information about the project developed after the June 30 submission deadline. Only that information clarifies the application filed shall be reconsidered. In the event the company is reconsidered as eligible, its application shall be presented at the next available Board meeting.

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

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

Rewrote the section.

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

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

In (d), rewrote the first sentence.

19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide \$40,000,000 of tax benefits over each fiscal year. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of \$10 million.

2. Businesses with less than \$250,000 in tax benefits will be authorized to sell all of their benefits in the current year.

3. Businesses with more than \$250,000 in tax benefits will be authorized to sell at least \$250,000 of their benefits in the current year. In each successive year in which a selling business reapplies to the program, the applicant will be authorized to sell at least 50 percent of the amount sold in the prior year, with a minimum of \$250,000.

4. After the dollars are set aside in the amounts provided in (a)2 and 3 above, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than \$250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

$$\frac{\text{Fiscal Year Dollar Authorization—}}{\text{Total Minimum Tax Benefits Authorized}} \div \frac{\text{Total Tax Benefits Requested to be Transferred—}}{\text{Total Minimum Tax Benefits Authorized}}$$

The total minimum tax benefits authorized is the amount authorized for businesses with less than \$250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than \$250,000 of tax benefits. The total tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.

(b) In the event the authorized minimums exceed the authorized annual cap, applications shall be allocated benefits with priority given to those applicants with less than \$250,000 in tax benefits and to businesses with more than \$250,000 in tax benefits that are reaplying to the program pursuant to (a)3 above.

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

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

In (a), deleted "\$50,000,000 of tax benefits over State fiscal year 2000 and" following "provide" in the introductory paragraph.