

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.

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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.

"Corridor Region" shall mean a region of the City of Atlantic City in Atlantic County, the specific geographic boundaries of which will be set forth by the Authority by resolution.

"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 land (except in connection with those hotel development projects approved after September 16, 1996), costs of site preparation, development and demolition;

2. Costs of appurtenant facilities, provided, however, notwithstanding that appurtenant facilities are part of an eligible hotel development project, with respect to hotel development projects approved following September 16, 1996, eligible costs for such appurtenant facilities shall be limited to costs of those facilities which are necessary to a hotel development project and parking facilities to the extent reasonably commensurate in size for use by overnight visitors utilizing the units in the hotel development project and shall exclude costs for recreation and park facilities.

3. Costs of development, construction, improvement and rehabilitation of facilities, including equipment, and of the acquisition of equipment related thereto;

4. 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;

5. 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

6. 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; and

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).

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

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

Added "Corridor Region"; and amended "Cost" and "Project".

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 approximate 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).

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

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

In (b), substituted "approximate" for "approximately".

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. 19:65-2.9(b) if a donation of property is involved; and

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

Amended by R.1997 d.136, effective March 17, 1997.
See: 29 N.J.R. 115(a), 29 N.J.R. 934(a).
In (a)1, amended N.J.A.C. reference.

19:65-2.4 Application review and approval

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

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

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

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

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

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

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

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

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

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

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

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

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

4. (Reserved)

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

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

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

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

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

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

construction, rehabilitation or reconstruction of facilities for low and moderate income housing for any year.

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

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

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

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

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

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

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

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

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

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

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

7. The reservation of funds shall be for such length of time, not exceeding 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.

(c) Final approval of an approved project for investment shall occur within the time period prescribed in accordance with (b)7 above. Final approval shall be granted through the adoption of a bond resolution 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

Substantially amended.

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

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

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

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

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

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

In (a)4, amended N.J.A.C. references; in (b), substituted "Approval" for "Project approval"; in (b)1, added reference to project funding limitations; in (b)3ii, amended N.J.A.C. references; in (b)5, added reference to the \$100,000,000 set aside under P.L. 1993 c.159; in (b)5ii, increased licensee percentage; in (b)5iii, amended section reference; added (b)6 and 7; deleted existing (c) and recodified (c)1 as (c); and added (d).

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;

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

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

(c) (Reserved)

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

1. The construction, reconstruction or rehabilitation of the units is to be accomplished pursuant to a schedule of

development so as to be completed on or before such date as shall be established by the Authority by resolution;

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

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

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

ii. Containing private bathroom facilities; and

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

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

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

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

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

1. Any change to an approved hotel development project which may alter investment credit or materially change the nature, scope or size of the hotel development project, including, but not limited to, those which will result in an increase in the number of hotel rooms for which investment is sought, or result in a substitution of suites for first class hotel rooms, shall only be permissible by way of amendment to the project application and by prior approval of the Authority by resolution. With respect to any such change that includes improvements or facilities or supports an expansion of space used for the conduct of casino gaming, the licensee shall provide to the Authority a detailed analysis and allocation of the costs reasonably related to the units and appurtenant facilities in the project and the costs reasonably related to space used for the conduct of casino gaming; and

2. Any other change to an approved hotel development project shall only be permissible by prior approval of the Executive Director.

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).

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

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

In (d)1, changed the required completion date of the construction, reconstruction or rehabilitation of any units; and added (d)4 through 6 and (e).

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. Address 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.

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).

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

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

In (a)1ii and (a)1vi, made non-substantive changes; and deleted (a)4 and 5.

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. The Authority shall have the right to retain the services of its own certified public accountant, licensed engineer or architect or other consultant at the cost and expense of the licensee, whenever it deems it necessary to do so to appropriately discharge its obligations.

(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. 19:65-2.9.

(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 this subchapter be met, including, in particular, the priorities set forth in N.J.A.C. 19:65-2.6; provided, that the provisions of N.J.A.C. 19:65-2.6(a)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).
Amended by R.1997 d.136, effective March 17, 1997.
See: 29 N.J.R. 115(a), 29 N.J.R. 934(a).

In (d) added the right of the Authority to retain professional services at the expense of the licensee to discharge its obligations; and amended N.J.A.C. references in (e) and (h).

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 allocating the \$75,000,000 set aside under P.L. 1996, c.118, the Authority shall proceed as follows:

1. With respect to hotel development projects approved on or prior to September 16, 1996, the Authority shall determine the amount of investment credit which would have been provided to each licensee had there been sufficient investment funds available to fund such projects at the maximum amount of investment and shall allocate to each respective licensee, subject to compliance by the licensee with the terms and conditions set forth in N.J.A.C. 19:65-2.4(d)1, the difference between the investment amount actually allocated to the licensee and the maximum amount of investment it would have received had there been sufficient funds.

i. In the event that the aggregate additional amount of investment credit required to bring each licensee to the maximum amount of investment it would have received had there been sufficient funds is equal to or less than \$75,000,000, the Authority shall allocate that amount of funds to raise each respective licensee's original allocation to the amount each licensee would have received had there been sufficient funds.

ii. In the event that the aggregate additional amount of investment credit required to bring each licensee to the maximum amount of investment it would have received had there been sufficient funds is in excess of \$75,000,000, the Authority shall allocate the \$75,000,000 proportionately among the respective licensees based upon a formula pursuant to which the amount of investment credit allocated to each licensee bears the same relationship to \$75,000,000 as the amount of funds necessary to raise each licensee's original allocation to the amount each licensee would have received had there been sufficient funds bears to the aggregate additional amount of investment credit required to bring each licensee to the maximum amount of investment it would have received had there been sufficient funds.

2. Thereafter, with respect to hotel development projects approved following September 16, 1996, 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 cost of each approved hotel development project.

i. In the event that the estimated aggregate amount of investment credit available to all licensees for such approved hotel development projects is equal to or less than the amount of the \$75,000,000 fund remaining after the allocations made under (a)1 above, the Authority shall allocate to each respective licensee, subject to compliance by the licensee with the terms and conditions set forth in N.J.A.C. 19:65-2.4(d)2, the full amount of investment credit available to that licensee for its respective approved hotel development project.

ii. In the event that the estimated aggregate amount of investment credit available to all licensees for such approved hotel development projects is in excess of the amount of the \$75,000,000 fund remaining after the allocations made under (a)1 above, the Authority shall allocate proportionately among the respective licensees, subject to compliance by the licensee with the terms and conditions set forth in N.J.A.C. 19:65-2.4(d)2, the amount of investment credit available based upon a formula pursuant to which the amount of investment credit allocated to each licensee bears the same relationship to the amount remaining from the \$75,000,000 fund after the allocations made under (a)1 above as the estimated amount of investment credit available to such licensee for such licensee's approved hotel development project bears to the estimated aggregate amount of investment credit available to all licensees for such approved hotel development projects.

(b) If an approved hotel development project is abandoned or terminated or any funds set aside for such projects are not invested by the Authority as the result of the failure of a licensee to comply with the provisions of the Act, as amended by P.L. 1996, c.118, or the rules contained in this chapter, the Authority shall recapture the investment credit with respect to such hotel development project and allocate such amount in accordance with the provisions of (a) above.

(c) Notwithstanding anything in these rules to the contrary, the Authority shall not permit a licensee, granted a license following September 16, 1996, during the first 10 years of its operations to satisfy its investment tax obligations or to credit future tax obligations through investment in a hotel development project or to transfer or exchange present or future investment tax obligations in connection with a 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).

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

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

Substantially amended the section.

Amended by R.1997 d.263, effective June 16, 1997.

See: 29 N.J.R. 1292(a), 29 N.J.R. 2677(a).

Added (a)2.

19:65-2.11 Cost certification

All hotel development project 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. The Authority

shall have the right to retain the services of its own certified public accountant, licensed engineer or architect or other consultant at the cost and expense of the hotel development project applicant, whenever it deems it necessary to do so to appropriately discharge its obligations.

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).

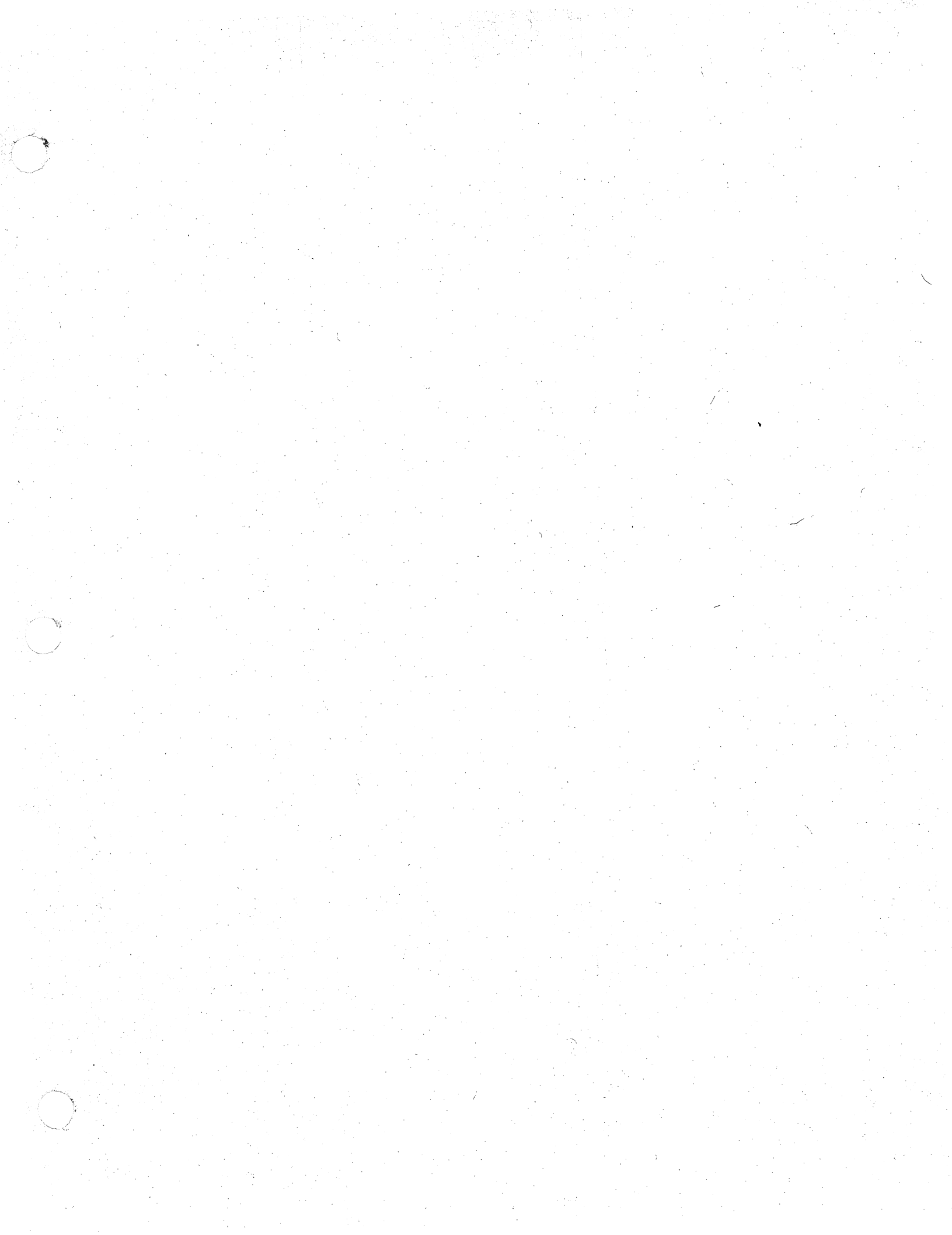
Recodified from 19:65-2.10 by R.1993 d.478, effective August 30, 1993.

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

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

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

Added the right of the Authority to retain professional services at the expense of the licensee to discharge its obligations.



SUBCHAPTER 3. CONTRACTS

19:65-3.1 Contract as requirement to credit

No Licensee shall be entitled to any investment tax credit provided by N.J.S.A. 5:12-144.1 resulting from the purchase of bonds unless and until such licensee has entered into a contract. No termination of any contract shall be construed to, in any way, alter or diminish a licensee's tax obligations under the Act.

19:65-3.2 Contract provisions

(a) Contracts shall include, without limitation, the following terms and provisions:

1. Unless a licensee's remaining investment alternative tax obligation is for less than 10 years in which case the term of the contract will be for such remaining lesser period, a term of not less than 10 continuous years from the year in which a licensee's investment alternative tax obligation was first incurred or a previous contract has expired or terminated pursuant to N.J.A.C. 19:65-3.2(b) or 3.2(c), such 10 year period to end at the end of the tenth calendar year after the year of commencement of such contract or the expiration or termination thereof, during which period the contracting licensee shall be obliged to purchase bonds in annual purchase amounts which will constitute a credit against not less than 50 percent of such licensee's investment alternative tax obligation in any such year or years, subject to any investment options otherwise provided in the contract. For the purposes hereof, the year in which a licensee first incurred an investment alternative tax obligation shall mean the year in which a tax obligation was incurred under N.J.S.A. 5:12-144.1a(1) and for which the money representing the purchase price of bonds is available to the Authority.

2. Unless waived by the licensee, that the initial contract may be terminated:

i. In the sole discretion of the Authority at the written request of a licensee, at the end of the fifth calendar year from commencement provided the licensee provides the Authority with one year prior written notice of such request;

ii. At the election of the licensee at the end of the eighth calendar year from commencement (for example, at the end of calendar year 1991 if the year of commencement was 1984) and thereafter by the licensee at the end of subsequent calendar years, upon not less than three years prior written notice by the licensee in any case; or

iii. In any event at any time by the Authority upon not less than one year prior written notice to the licensee by the Authority;

iv. In exercising its discretion under the provisions of i. above, the Authority shall consider, in addition to such other matters it may deem relevant, whether such termination will violate any agreement or covenant or impair any financial obligation of the Authority.

3. Unless waived by the licensee, that, at the election of the licensee, contracts other than the initial contract may be terminated by the licensee at the end of the fifth calendar year from commencement and thereafter by the licensee at the end of subsequent calendar years, upon not less than three years prior written notice by the licensee in any case or, in any event at any time, the contract may be terminated by the Authority upon not less than one year prior written notice by the Authority.

4. That, upon establishment of the grounds set forth in the Act:

i. The obligation of the licensee to pay for and take delivery of bonds be deferred in any year, but no deferral shall occur for more than two years consecutively, and

ii. No deferral granted shall alter or reduce the total obligations to purchase bonds incurred by the licensee under the contract.

5. Such default and remedy provisions as the Authority shall deem appropriate including, without limitation, those set forth in the Act and all other cumulative remedies otherwise available at law or in equity.

6. That:

i. The licensee shall be obliged to purchase bonds as issued by the Authority without regard to the approved project for which the proceeds of such purchase shall be committed;

ii. Bonds available for purchase in any given year shall be allocated pro rata to licensees based upon the percentage that each licensee's contractual purchase obligation bears to the total available amount of bonds;

iii. Bonds pertaining to particular approved projects shall be allocated on a pro rata basis to each licensee without preference or priority; and

iv. To the extent the actual amount of bonds offered by the Authority in any year is less than the amount such licensee has agreed to purchase pursuant to its contract, such difference shall be paid by the licensee to the Authority and invested as permitted by N.J.S.A. 5:12-161(m) with interest on such investment payable to the licensee as provided therein.

7. That the bonds offered for sale by the Authority shall be issued to finance approved projects and shall otherwise have the attributes for bonds set forth in N.J.S.A. 5:12-162(d).

8. That each licensee shall continue to pay to the State Treasurer on a quarterly basis the amount imposed by N.J.S.A. 5:12-144.1, such funds to be placed in an escrow account as provided by N.J.S.A. 5:12-144.1(a)(2).

9. That, if approved by the Authority, the licensee may purchase through the Authority bonds or other obligations of the State, any political subdivision thereof, or any authority created by the State or any political subdivisions thereof in lieu of purchasing bonds as may be otherwise required by its contract for any period covered thereby, provided that such bonds fulfill purposes of the Authority and are in accordance with the requirements of the Act. Nothing in this paragraph shall preclude the Authority from requiring a license to purchase Authority bonds or to purchase through the Authority bonds or other obligations of the State, any political subdivision thereof, or any authority created by the State or any political subdivisions.

10. That, if a waiver of a licensee's obligation to purchase bonds is granted by the Authority in accordance with the provisions of the Act, the licensee may, in lieu of purchasing bonds as may be required by its contract for any period covered thereby, make an equivalent direct investment in, contribution to or guaranty in connection with an approved project.

11. That any obligation imposed by the contract to purchase bonds as a credit against payment by a licensee of any investment alternative tax owing by such licensee shall be the continuing responsibility of the licensee which is a party to the contract unless such obligation shall have been assumed by a licensee purchaser of the casino hotel or related property or some other provision for fulfillment of such obligation is made which is satisfactory to the Authority.

12. That the Authority may invest and reinvest and otherwise deal with any monies to be derived pursuant to the contract as permitted by N.J.S.A. 5:12-161(m), and that the Authority shall pay the licensee, no less often than annually and as reasonably practicable based upon maturities of investments, the portion of the interest on such monies to which the licensee is entitled.

13. That annual amounts due by licensees under the contract be paid by the licensee to the Authority upon entering the contract or at other times specified therein but not later than April 30 of each year; provided however that a licensee's obligation under N.J.S.A. 5:12-144.1(a)(2) shall not be altered by the provisions of any contract.

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

19:65-4.1 Subcontracting targets

(a) The Authority, in connection with approved projects financed each year by or through bonds issued by the Authority or direct investments by licensees, shall require the following in its relevant contracts relating to the approved project:

1. Each applicant, its respective contractors and subcontractors shall seek to provide that construction contracts comprising at least 20 percent of the aggregate total expenditures on an approved project will be awarded to female or minority businesses as defined in and qualified under N.J.A.C. 17:14-1 et seq.

2. Upon request by the applicant and a determination by the Authority that there are not sufficient, relevant or qualified female or minority business enterprises whose market areas include the project location, the Authority may decrease the target requirement.

3. If the above levels are satisfied, the applicant, contractor or subcontractor, as the case may be, will be presumed not to be engaging in unlawful race or sex discrimination in the selection of contractors or subcontractors.

4. If the above target levels are not satisfied, the Authority shall review the contracting and subcontracting practices to determine if there has been unlawful race or sex discrimination.

5. If the Authority determines, after such review, that an applicant, contractor or subcontractor has engaged in unlawful race or sex discrimination, the Authority may begin debarment procedures pursuant to N.J.A.C. 19:65-7.1.

6. In determining whether the targets in N.J.A.C. 19:65-4.2(a) have been satisfied, a business may only be treated once as a female or minority business.

7. Each applicant, contractor and subcontractor shall provide such information as is deemed necessary by the Authority to permit the Authority to make a determination as to the number of contracts awarded to female or minority businesses.

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

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. 19:65-2.7, which payment shall be credited toward any administrative fee if the project is approved by the Authority.

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

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

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

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.

4. With respect to approved hotel development projects, the Authority shall charge an initial fee equal to one percent of the amount of the 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 $\frac{1}{2}$ 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 $\frac{1}{2}$ 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.

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

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

Inserted (a)4.

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.

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

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

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

6. Debarment for the causes set forth in N.J.A.C. 19:65-7.2(a)11 shall be proper, provided that one of the causes set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)10 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such factors and additional facts.

19:65-7.4 Procedures: Period of debarment

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

1. Debarment is being considered;
2. The reasons for the proposed debarment; and
3. An opportunity will be afforded to such person or persons for a hearing if the hearing is requested within seven days from the date of personal delivery or the date of mailing of such notice.

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

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

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

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

19:65-7.5 Causes for suspension of a person

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

19:65-7.6 Conditions for suspension of a person

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

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

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

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

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

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

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

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

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

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

i. Stating that a suspension has been imposed and its effective date;

ii. Setting forth the reasons for the suspension to the extent that the Attorney General determined that such reasons may be properly disclosed;

iii. Stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

iv. Indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if it, he or she so requests, or a statement declining to give such reasons and setting forth the Authority's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by the Authority, the Authority shall note that fact as a reason for its suspension.

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

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

19:65-7.8 Extent of debarment and suspension

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

19:65-7.9 Notice to Attorney General and Treasurer

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

19:65-7.10 Lists of other agencies

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

19:65-7.11 Authority discretion

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

19:65-7.12 Executive Director to implement subchapter

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

SUBCHAPTER 8. WAIVERS

19:65-8.1 Waivers generally

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

19:65-8.2 Procedure

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