

CHAPTER 65

**CASINO REINVESTMENT DEVELOPMENT
AUTHORITY**

Authority

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

Source and Effective Date

R.2003 d.101, effective February 5, 2003.
See: 34 N.J.R. 3177(a), 35 N.J.R. 1274(a).

Chapter Expiration Date

Chapter 65, Casino Reinvestment Development Authority, expires on February 5, 2008.

Chapter Historical Note

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

Chapter 65, Casino Reinvestment Development Authority, was adopted as R.1986 d.256, effective July 7, 1986. See: 18 N.J.R. 852(a), 18 N.J.R. 1405(a).

Pursuant to Executive Order No. 66(1978), Chapter 65, Casino Reinvestment Development Authority, expired on July 7, 1991.

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

Pursuant to Executive Order No. 66(1978), Chapter 65, Casino Reinvestment Development Authority, was readopted as R.1997 d. 452, effective September 26, 1997. As part of R.1997 d.452, effective October 20, 1997, Subchapter 4, Female and Minority Targets in Authority Financed Construction Projects and Licensee's Direct Investment Construction Projects, was renamed Female and Minority Percentage Goals in Authority Financed Construction Projects and Licensee's Direct Investment Construction Projects; and Subchapter 9, Miscellaneous, was adopted as new rules. See: 29 N.J.R. 3708(a), 29 N.J.R. 4562(b).

Subchapter 8, Contracts for Architectural, Engineering and Land Surveying Services, was adopted as new rules, and former Subchapter 8, Waivers, was recodified as Subchapter 9, Waivers. Subchapter 9, Miscellaneous, was recodified as Subchapter 10, Miscellaneous, by R.1999 d.326, effective September 20, 1999. See: N.J.R. 1455(a), 31 N.J.R. 2759(a).

Chapter 65, Casino Reinvestment Development Authority, was readopted as R.2003 d.101, effective February 5, 2003.

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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 supplemented, and as the same may be further amended or supplemented from time to time.

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

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

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

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

“Authority” means the Casino Reinvestment Development Authority.

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

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

“Corridor Region” shall mean and include:

1. The area bounded as follows:
 - i. Having as its southern boundary the Boardwalk between Texas Avenue and the point of intersection between the Boardwalk and an imaginary line extending southerly from the Southeasternmost point of Mt. Vernon Avenue (hereinafter “Mt. Vernon/Boardwalk Intersection”);
 - ii. Having as its eastern boundary a line running north from the Mt. Vernon/Boardwalk Intersection to the Southeasternmost point of Mt. Vernon Avenue and continuing along Mt. Vernon Avenue north to Arctic Avenue and thence easterly to the point of intersection of Arctic Avenue with Bacharach Boulevard;
 - iii. Having as its northeastern border Bacharach Boulevard from Arctic Avenue and extended to Beach Thorofare;
 - iv. Having as its northwestern border the southern side of Beach Thorofare from the intersection of the southern side of Beach Thorofare with Bacharach Boulevard, so extended, to Texas Avenue;
 - v. Having as its western border Texas Avenue from Beach Thorofare to the Boardwalk; and
2. The following additional areas:
 - i. Albany Avenue (U.S. Route 40) from Beach Thorofare to the Boardwalk;
 - ii. The Atlantic City Expressway from the Pleasantville Toll Plaza to Arkansas and Missouri Avenues;
 - iii. Absecon Boulevard (U.S. Route 30) from Beach Thorofare to Delaware Avenue;
 - iv. Delaware Avenue to Pacific Avenue;
 - v. Arctic Avenue from Delaware Avenue westerly to Bacharach Boulevard;

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

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

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

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

References to the Boardwalk and to the various streets named in this definition are to be interpreted so as to include the entirety of the Boardwalk and the streets, together with rights-of-way associated therewith and any real estate parcels in proximity thereto as may be necessary and reasonable to include in order to accomplish projects within the general area. The geographic boundaries of the Corridor Region as defined herein are set forth on a map on file with the Authority and the Office of Administrative Law, incorporated herein by reference.

“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.

“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.

“Parking proceeds” shall mean proceeds from fees collected pursuant to N.J.S.A. 5:12-173.3 (section 3 of P.L. 1993, c.159) which are paid by the State Treasurer, pursuant to N.J.S.A. 5:12-173.4 (section 4 of P.L. 1993, c.159), into a special fund established and held by the State Treasurer and made available for the exclusive use of the Authority and any other income credited exclusively to the special fund.

“Parking proceeds bonds” shall mean bonds, notes or other evidence of indebtedness issued pursuant to N.J.S.A. 5:12-173.6 (section 6 of P.L. 1993, c.159) and shall not include, or be included as, bonds issued to licensees pursuant to N.J.S.A. 5:12-162 (section 14 of P.L. 1984, c.218).

“Participant” means any person, entity, government, governmental agency, authority, or instrumentality, municipality, political subdivision of the State, licensee, or prospective 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”.

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

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

Amended “Act”, “Applicant”, “Bonds”, “Corridor Region”, “Executive Director” and “Participant”; added “Parking proceeds” and “Parking proceeds bonds”; and deleted “Good cause”.

Amended by R.2000 d.203, effective May 15, 2000.

See: 32 N.J.R. 646(a), 32 N.J.R. 1785(a).

Rewrote “Corridor Region”.

Amended by R.2002 d.14, effective January 7, 2002.

See: 33 N.J.R. 3424(a), 34 N.J.R. 299(a).

Rewrote “Corridor Region”.

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 in accordance with the procedures set forth in these rules for a determination of eligibility of its proposed project at any time before the commencement of the project and shall not commence the project until the Authority makes a determination of eligibility.

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) 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 the licensee's South Jersey investment obligation;

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

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

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

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

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

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

agreement for credit with the licensee, as applicable, or in accordance with the provisions of the Act and these rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

Substantially amended.

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

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

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

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

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

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

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

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

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

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

Amended by R.2003 d.101, effective March 3, 2003.

See: 34 N.J.R. 3177(a), 35 N.J.R. 1274(a).

Rewrote (b)6v(1).

19:65-2.5 Approval criteria

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

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

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

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

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

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

(c) (Reserved)

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

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

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

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

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

ii. Containing private bathroom facilities; and

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

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

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

6. The licensee's Atlantic City investment obligations that are available for purposes of construction, recon-

struction or rehabilitation of facilities for low and moderate income housing, less any obligations that are committed by agreement with the Authority for such purposes, shall not exceed the greater of a specified percentage of such obligation for any year or an amount in excess of the last full year of such obligation.

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

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).

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

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

In (b), inserted requirement that applicant meet the outlined criteria prior to commencement of the project; and narrowed the application of (b)2 to those projects involving the loan of Bond proceeds.

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. 40A:12A-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 or any other pertinent provisions of the Act.

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.

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

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

In (a)1iv, amended N.J.S.A. references; and in (a)1v, added "or any other pertinent provisions of the Act".

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 approved 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. For purposes hereof, 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.

(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 the Authority approves a licensee's request to make an equivalent investment in an approved 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 Development 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.

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

SUBCHAPTER 6. FEES AND CHARGES

19:65-6.1 Application fees

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

Amended by R.1997 d.136, effective March 17, 1997.
See: 29 N.J.R. 115(a), 29 N.J.R. 934(a).
Changed N.J.A.C. reference from 19:65-2.8 to 19:65-2.7.

19:65-6.2 Administrative fees

(a) Initial fees shall be charged as follows:

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

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

3. With respect to approved projects for which a licensee is making an equivalent investment in accordance with N.J.A.C. 19:65-2.8, the Authority may, pursuant to criteria set forth in N.J.A.C. 19:65-9.2, charge an initial fee up to one percent of the amount of the equivalent investment.

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

(b) Annual fees shall be charged as follows:

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

2. With respect to approved projects for which a licensee is making an equivalent investment in accordance with N.J.A.C. 19:65-2.8, the Authority may, pursuant to criteria set forth in N.J.A.C. 19:65-9.2, charge a fee payable monthly in arrears up to 1/12 of one-quarter of one percent of the amount of the equivalent investment made as of such date of payment.

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

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

Section was Reserved.

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

Inserted (a)4.

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

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

Amended by R.2003 d.101, effective March 3, 2003.
See: 34 N.J.R. 3177(a), 35 N.J.R. 1274(a).

In (a)3 and (b)2, substituted "may, pursuant to criteria set forth in N.J.A.C. 19:65-9.2" for "will" following "the Authority".

19:65-6.3 Waiver of application and administrative fees

The Executive Director, pursuant to criteria set forth in N.J.A.C. 19:65-9.2, may waive the Application and/or Administrative fee or fees for any governmental entity or non-profit organization.

New Rule, R.2003 d.101, effective March 3, 2003.
See: 34 N.J.R. 3177(a), 35 N.J.R. 1274(a).

SUBCHAPTER 7. DISQUALIFICATION, DEBARMENT AND SUSPENSION

19:65-7.1 Definitions

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

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

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

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

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

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

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

19:65-7.2 Cause for debarment

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

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract thereunder, or in the performance or such contract or subcontract;
2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;
3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);
4. Violation of any laws governing the conduct of elections of the Federal Government, State of New Jersey or of its political subdivisions;
5. Violation of the "Law Against Discrimination" (P.L.1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L.1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.);
6. Violation of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;
7. Violation of any laws governing the conduct of occupations or professions or regulated industries;
8. Violation of any laws which may bear upon a lack of responsibility or moral integrity;
9. Willful and unjustified failure to perform in accordance with contract specifications or with contractual time limits;
10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;
11. Any other cause of such serious and compelling nature as may be determined by the Authority to warrant disqualification for assistance or debarment from contracting with the Authority or from Authority project contracting, even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;
12. Debarment by any department or agency of the Executive Branch of State Government;

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

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

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

19:65-7.3 Conditions affecting debarment

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Authority, upon its own action or upon recommendation by the Executive Director of the Authority, except as otherwise provided by law.
2. The existence of any of the causes set forth in N.J.A.C. 19:65-7.2 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Authority, upon its own action or upon recommendation of the Executive Director of the Authority, unless otherwise required by law, and shall be based upon the best interests of the State.
3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.
4. The existence of a cause set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)8 shall be established upon the rendering of a final judgment or conviction including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.
5. The existence of a cause set forth in N.J.A.C. 19:65-7.2(a)11 shall be established by evidence which the Authority determines to be clear and convincing in nature.
6. Debarment for the causes set forth in N.J.A.C. 19:65-7.2(a)12 and 13 shall be proper, provided that one of the causes set forth in N.J.A.C. 19:65-7.2(a)1 through 7.2(a)10 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such factors and additional facts.

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

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

19:65-7.4 Procedures: Period of debarment

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