

## CHAPTER 31

### AUTHORITY ASSISTANCE PROGRAMS

#### Authority

N.J.S.A. 34:1B-1 et seq.; P.L. 2009, c. 90; and P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.).

#### Source and Effective Date

R.2010 d.285, effective November 9, 2010.  
See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

#### Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 31, Authority Assistance Programs, expires on November 9, 2017. See: 43 N.J.R. 1203(a).

#### Chapter Historical Note

Chapter 31, Authority Assistance Programs, was adopted as R.1990 d.410, effective August 20, 1990. See: 22 N.J.R. 1545(a), 22 N.J.R. 2536(a).

Subchapter 7, Local Development Financing Fund, was adopted as R.1992 d.421, effective October 19, 1992. See: 24 N.J.R. 2534(a), 24 N.J.R. 3735(a).

Subchapter 8, Hazardous Discharge Site Remediation Fund, was adopted as R.1994 d.192, effective April 18, 1994. See: 25 N.J.R. 4468(a), 26 N.J.R. 1706(c).

Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund, was adopted as R.1994 d.376, effective July 18, 1994. See: 26 N.J.R. 1613(a), 26 N.J.R. 2919(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.1995 d.435, effective July 20, 1995. See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Subchapter 10, Business Employment Incentive Program, was adopted as R.1996 d.470, effective October 7, 1996. See: 28 N.J.R. 3058(a), 28 N.J.R. 4510(b).

Subchapter 11, Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, was adopted as R.1998 d.151, effective March 16, 1998. See: 29 N.J.R. 5236(b), 30 N.J.R. 1054(a).

Subchapter 12, Technology Business Tax Certificate Transfer Program, was adopted as R.1999 d.381, effective November 1, 1999. See: 31 N.J.R. 2522(a), 31 N.J.R. 3525(a).

Pursuant to Executive Order No. 66(1978), Chapter 31, Authority Assistance Programs, was readopted as R.2000 d.297, effective June 16, 2000. See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

Chapter 31, Authority Assistance Programs, was readopted as R.2005 d.274, effective July 22, 2005. As a part of R.2005 d.274, Subchapter 5, Export Revolving Line of Credit; Subchapter 6, New Jersey Trade Adjustment Assistance Center; Subchapter 9, New Jersey Boat Industry Loan Guarantee Fund and Subchapter 13, Rules for Implementation of an Act Concerning the Restructuring of Certain Solid Waste Facility Bonds, and Providing for the Financing Thereof through the New Jersey Economic Development Authority, P.L.2001, c.401 were repealed, effective August 15, 2005. See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Subchapter 4, Downtown Beautification Program, was repealed by R.2009 d.38, effective January 20, 2009. See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Subchapter 9, Urban Transit Hub Tax Credit Program, was adopted as new rules by R.2009 d.53, effective February 2, 2009. See: 40 N.J.R. 6426(a), 41 N.J.R. 807(a).

Pursuant to P.L. 2008, c. 27, §10 (N.J.S.A. 34:1B-219) and by notice of administrative change, Subchapter 3, Energy Sales Tax Exemption Program, of Chapter 121 of Title 12A was recodified as Subchapter 13 of Chapter 31 of Title 19, effective January 29, 2009. See: 41 N.J.R. 1102(a).

Subchapter 5, InvestNJ Business Grant Program, and Subchapter 6, Main Street Business Assistance Program, were adopted as special new rules by R.2009 d.73, effective February 2, 2009. See: 41 N.J.R. 1103(a). Subchapter 5, InvestNJ Business Grant Program, and Subchapter 6, Main Street Business Assistance Program, were adopted as concurrent new rules by R.2009 d.181, effective May 4, 2009. See: 41 N.J.R. 2338(a).

Subchapter 14, Business Retention and Relocation Assistance Grant Program, was recodified from Subchapter 1 of N.J.A.C. 12A:2; Subchapter 15, Tax Credit Certificate Transfer Program, was recodified from Subchapter 1 of N.J.A.C. 12A:2A; Subchapter 16, Sales and Use Tax Exemption Program, was recodified from Subchapter 2 of N.J.A.C. 12A:2A; and Subchapter 17, Energy Sales Tax Exemption Program for Certain Counties, was recodified from Subchapter 4 of N.J.A.C. 12A:2A by R.2010 d.231, effective October 18, 2010. See: 42 N.J.R. 1495(b), 42 N.J.R. 2436(a).

Chapter 31, Authority Assistance Programs, was readopted as R.2010 d.285, effective November 9, 2010. As a part of R.2010 d.285, Subchapter 5, InvestNJ Business Grant Program, was repealed, effective December 6, 2010. See: Source and Effective Date. See, also, section annotations.

Subchapter 4, Economic Redevelopment and Growth Program, was adopted as special new rules by R.2011 d.152, effective May 3, 2011. See: 43 N.J.R. 1372(a). Subchapter 4, Economic Redevelopment and Growth Program, was adopted as concurrent new rules by R.2012 d.030, effective January 6, 2012. See: 44 N.J.R. 307(a).

Subchapter 18, Grow New Jersey Assistance Program, was adopted as new rules by R.2012 d.118, effective June 18, 2012. See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

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### SUBCHAPTER 1. BOND FINANCING PROGRAM

#### 19:31-1.1 Program description

(a) The Authority is empowered to issue tax-exempt and taxable bonds, the proceeds of which can be used to provide low-interest loans to businesses, governmental entities and certain nonprofit organizations to finance projects which provide or maintain employment and/or tax ratables.

(b) Most bond financings are not guaranteed by the Authority or the State, and are payable solely from revenues generated by the project being financed.

(c) The general credit of neither the Authority nor the State is pledged to secure the bonds.

Amended by R.2000 d.297, effective July 17, 2000.  
See: 32 N.J.R. 1705(a), 32 N.J.R. 2602(c).

In (a), inserted a reference to governmental entities.

#### 19:31-1.2 Bond purchaser

(a) The applicant shall secure a written commitment from a bond purchaser.

(b) A bond purchaser shall be:

1. A commercial bank or other institutional lender;
2. An underwriter or placement agent;
3. A privately owned entity; or
4. An individual.

(c) A bond purchaser other than a commercial bank or institutional lender must submit an Application to Purchase Bonds, which will be reviewed by the Authority to determine acceptability to purchase a bond. This application includes requests for identification of, or information about:

1. The officers, directors, partners, owners and stockholders of the applicant;
2. Litigation involving the applicant;
3. Applicant's counsel, principal banks of account, and accountant; and
4. Financial statements of applicant.

(d) The bond purchaser establishes the amount, term, interest rate, collateral, etc., for the bond in negotiation with the applicant.

Amended by R.1997 d.270, effective July 7, 1997.  
See: 29 N.J.R. 1485(b), 29 N.J.R. 2844(b).

Deleted (c), barring bond purchaser from being substantial owner or user of project; and recodified former (d) and (e) as (c) and (d).

**19:31-1.3 Bond financing**

(a) Typically, the bonds are secured by a loan agreement and a mortgage on project assets.

(b) The funds raised by the bond issue are loaned by the Authority to pay for eligible project costs. The borrower signs an agreement with the Authority pledging to make payments sufficient to cover principal and interest on the bond. This agreement is then assigned to the bond purchaser.

(c) The borrower makes payments directly to the bond purchaser or trustee.

**19:31-1.4 Eligibility standards**

(a) Generally, to be eligible for bond financing:

1. A project must serve a public purpose; that is, maintain or expand employment in New Jersey, assist in the economic development or redevelopment of a municipality, maintain or increase the tax base of the municipality, and maintain or diversify business and industry in the State; and

2. Applicants must represent to the Authority that they would not proceed with their project in the present time, place, or scope without the Authority's assistance.

(b) The Authority generally will not approve financial assistance to a project involving relocation within New Jersey if the relocation will result in a job loss and/or hardship for the existing employees or if the relocation endangers the maintenance of tax ratables in a particular community.

1. The number of full-time employees and new full-time positions employed at the qualified business facility, the number pertaining to the business's Statewide employment, total lease payments and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period; and

2. A certification indicating whether or not the business is aware of any condition, event, or act which would cause the business not to be in compliance with the approval, the Act, or this subchapter.

(b) The tax credit certificate may provide for additional reporting requirements.

(c) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

#### 19:31-18.12 Tax credit certificate

(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the tax period and the commitment duration;

2. The amount of the tax credits;

3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;

4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;

5. Events that would trigger reduction and forfeiture of tax credit amounts; and

6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

#### 19:31-18.13 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or

assignment, in full or in part, pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. The total amount transferred for any single tax period shall be at least \$1,000,000 in tax credits. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

(b) The initial sale or assignment of any amount of a tax credit allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount.

(c) In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-18.5(a)1xiv.

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in

such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

#### **19:31-18.14 Cap on total credits**

The value of all credits approved by the Authority pursuant to P.L. 2011, c. 149 shall not exceed \$200,000,000. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the \$200,000,000 cap be exceeded if the Board determines the credits to be reasonable, justifiable, and appropriate; provided, however, the combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 and P.L. 2010, c. 57 (N.J.S.A. 34:1B-207 et seq.) shall not exceed \$1,500,000,000.

#### **19:31-18.15 Reduction and forfeiture of tax credits**

(a) If, in any tax period during the tax credit term, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(b) If, in any tax period during the tax credit term and five years thereafter, the number of full-time employees employed

by the business at the qualified business facility located within a qualified incentive area drops below 100 full-time employees or 80 percent of the number of new and retained full-time jobs specified in the project agreement, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 100.

(c) The restrictions set forth at N.J.A.C. 19:31-18.4(g) through (i) shall also apply on an annual basis.

(d) The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business's total lease payments for occupancy of the qualified business facility for the tax period.

#### **19:31-18.16 Effect of sale or lease of qualified facilities**

(a) If the qualified business facility is sold in whole or in part during the 10-year eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that any credits of tenants shall remain unaffected.

(b) If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period, the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.

#### **19:31-18.17 Severability**

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.