

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

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

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

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

#### 19:31-9.8 Approval process

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

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

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

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

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

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

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

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

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

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

#### 19:31-9.9 Attorney General review

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

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

#### 19:31-9.10 Fees

Fees for loan guarantees will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

### SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

#### 19:31-10.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1996, c.26, as amended by P.L. 2003, c.166. This Act establishes the Business Employment Incentive Program, a special business assistance program to provide grants to businesses located in, or relocating to, New Jersey that create new jobs in New Jersey.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Added ", as amended by P.L. 2003, c.166" at the end of the first sentence.

#### 19:31-10.2 Definitions

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

"Act" means the New Jersey Economic Development Authority Act, N.J.S.A. 34:1B-1 et seq. as amended and supplemented.

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

"Advanced computing company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

"Advanced materials company" means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of advanced materials for the purpose of developing or providing products or processes for specific commercial or public purposes.

“Authority” means the New Jersey Economic Development Authority.

“Base years” means the first two complete calendar years following the effective date of an agreement, except that in those instances where significant construction/renovation of the project requires a certificate of occupancy to be awarded prior to occupancy of the project site, the base years will commence upon the issuance of a certificate of occupancy by the municipality.

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and subatomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

“Biotechnology company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person, whose headquarters or base of operations is located in New Jersey, engaged in providing services or products necessary for such research, development, production, or provision.

“Bonds” means bonds, notes, or other obligations issued by the Authority pursuant to the Act.

“Business” means a corporation, sole proprietorship; partnership; corporation that has made an election under Subchapter S corporation, or any other business entity through which income flows as a distributive share to its owners; limited liability company; a nonprofit corporation; or any other form of business organization located within or outside this State. A grant received by a partnership, Subchapter S corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

“Business Employment Incentive Commitment Letter” or “Commitment Letter” means the written commitment issued by the Authority which sets forth the terms and conditions that must be met by the business in order to receive the grant.

“Department” means the Department of Commerce and Economic Development.

“Designated industry” means a business engaged in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology.

“Director” means the Director of the Division of Taxation in the Department of Treasury.

“Division” means the Division of Taxation in the Department of Treasury.

“Electronic device technology” means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

“Electronic device technology company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of electronic device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

“Eligible partnership” means a partnership or limited liability company that is qualified to receive a grant as established in the Act.

“Eligible position” means a new full-time position created by a business in New Jersey or transferred from another state by the business during the base years or subsequent years of a grant. For grants awarded on or after July 1, 2003, eligible position includes only a position for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes. “Eligible position” also includes all current and future partners or members of a partnership or limited liability company created by a business in New Jersey or transferred from another state by the business pursuant to the conditions set forth in the act during the base years or in subsequent years of a grant. An “eligible position” shall also include a position occupied by a resident of this State whose position is relocated to this State from another state but who does not qualify as a “new employee” because prior to relocation his or her wages or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to relocation, were not subject to income taxes imposed by the state or municipality in which the position was previously located. An “eligible position” shall also include a position occupied by a resident of another state whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. An “eligible position” shall not include any position located within New Jersey, which, within a period either three months prior to the business’ application for a grant under the Act or six months after the date of application, ceases to exist or to be located within New Jersey.

“Employment incentive” means the percentage and term of a grant.

“Environmental technology” means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, or the development of alternative energy sources.

“Environmental technology company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of environmental technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

“Estimated tax” means an amount calculated for a partner in an eligible position equal to 6.37 percent of the lesser of:

1. The amount of the partner’s net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner’s Schedule NJK-1 of the application year less the amount of the partner’s net income from the eligible partnership that is sourced to New Jersey as reflected in Column B of the partner’s Schedule NJK-1 in the foundation year; or
2. The net of all items of partnership income upon which tax has been paid as reflected on the partner’s New Jersey Gross Income Tax return in the application year.

“Foundation year” means the year immediately prior to the creation of the eligible position.

“Full-time employee” means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages is subject to withholding as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and who is certified by the applicant to be employed in a permanent position. “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the business.

“Grant” means a business employment incentive grant provided by the Authority to eligible businesses based on the withholdings of the New Jersey Gross Income Tax collected by that business annually resulting from eligible positions for new employees.

“Medical device technology” means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the Federal Food and Drug Administration.

“Medical device technology company” means a person, whose headquarters or base of operations is located in New Jersey, engaged in the research, development, production, or provision of medical device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

“Net income” means the net combination of a partner’s distributive share of the eligible partnership’s income, gain, loss, deduction, or guaranteed payments.

“Net income from the eligible partnership” means the net combination of a partner’s distributive share of the eligible partnership’s income, gain, loss, deduction, or guaranteed payments.

“New employee” means a full-time employee first employed in an eligible position by a business at the project which is the subject of an Agreement or who is a partner of an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, (N.J.S.A. 54A:1-1 et seq.); except that such a New Jersey resident whose position is relocated to this State shall not be classified as a “new employee” unless his or her wages, or his or her distributive share of income from a gain, from a loss or deduction, or his or her guaranteed payments or any combination thereof, prior to the relocation, where subject to income taxes imposed by the state or municipality in which the position was previously located. “New employee” also may include an employee rehired or called back from a bona fide layoff during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years. “New employee” shall not include: any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of an Agreement unless the employee’s position at his or her previous employer is filled by a new employee; a child, grandchild, parent, or spouse of an individual associated with the business who has direct or indirect ownership of at least 15 percent of the profits, capital or value of the business. New employee shall also include an employee whose position is relocated to this State but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. In addition, if a grantee merges, consolidates, or otherwise combines with another business entity and the resulting company employs former employees

in eligible positions on the project, then such employees shall be deemed new employees, except for any such employee who was employed by the combined entity as of the date of the merger or consolidation.

“Partner” means a person who is entitled to either a distributive share of a partnership’s income, gain, loss or deduction or guaranteed payments, or any combination thereof, by virtue of holding an interest in the partnership. Partner also includes a person who is a member of a limited liability company which is treated as a partnership, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54:1-1 et seq.

“Point-of-purchase retail facility” means a business wherein the normal and customary method of patronizing the business conducted at the facility requires the retail consumer to travel to the location to purchase the goods or professional or consumer services of that business. “Point-of-purchase retail facilities” shall not include catalog distribution centers for the purposes of this program.

“Project” means the relocation and/or expansion of a business in New Jersey that is creating new employment opportunities; the wages of which are subject to the provisions of the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.). Project may constitute multiple locations of a business within New Jersey, but each location must meet the requirements of N.J.A.C. 19:31-10.3.

“Residual withholdings” means for any period of time, the excess of the estimated cumulative withholdings for all executed agreements eligible for payments under the Act over the cumulative anticipated grant amounts.

“Schedule NJK-1” means Schedule NJK-1 as the form existed for taxable year 1997.

“Targeted industry” means a business engaged in the field of advanced computing, advanced materials, biotechnology, electronic device technology, environmental technology or medical device technology.

“Withholdings” means the amount withheld by a business from the wages of new employees or estimated taxes paid by, or on behalf of, partners that are new employees, or any combination thereof, pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1-1 et seq., and, if the new employee is an employee whose position has moved to New Jersey but whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., the amount of withholding that would occur if the employee were to move to New Jersey.

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

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

Rewrote the section.  
Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).  
Rewrote the section.

### 19:31-10.3 Eligibility

(a) A business may apply to the Authority for a grant if the Authority finds that:

1. The project proposed by the business shall result in a net increase in new employment at the project during the term of the agreement, and the business shall:

i. Create at least 25 eligible positions in the base years; or

ii. Create at least 10 eligible positions in the base years if the business is a targeted industry;

2. In the case of a business which is a landlord, the landlord may apply to the Authority in one consolidated application for a Business Employment Incentive Grant for any project which creates at least 25 eligible positions in the base years, and in which the tenants of members of the cooperative association have agreed to assign to the landlord any claim of right that they may have individually to a grant and have agreed to cooperate with the landlord in providing to the Authority all information required for the initial application, the Agreement and annually thereafter any other information which may be required by the Authority.

i. In the event the tenants individually meet the eligibility standards set forth herein, the tenant may elect to submit its own application for a grant rather than through its landlord;

3. The project is economically sound and will benefit the people of New Jersey by increasing opportunities for employment and by strengthening the State’s economy;

i. The Authority will evaluate the financial statements and projections of the business and the proposed sources and uses of funds to ensure that the proposed project is economically viable; and

4. The Authority determines that the receipt of the business employment incentive grant will be a material factor in the business’s decision to go forward with the project.

(b) Projects which consist solely of point-of-final-purchase retail facilities shall not be eligible for a grant.

1. For projects consisting of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant, and only withholdings from new employees which are employed in the portion of the project which represents non-retail facilities shall be used to determine the grant.

2. If warehouse facilities are part of a point-of-final purchase retail facility and the warehouse facilities supply only the retail facility, the warehouse facility shall not be eligible for a grant.

(c) A business which is receiving a Business Relocation Assistance Grant pursuant to P.L. 1996, c.25 shall not be eligible for a Business Employment Incentive Grant, except upon written approval by the State Treasurer.

(d) A business shall not be eligible to be approved for a grant on or after July 1, 2003 unless the business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes.

Amended by R.2004 d.94, effective March 1, 2004.  
See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).  
Rewrote (a) and added (d).

#### 19:31-10.4 Amount/term of grant

(a) The amount of the business employment incentive grant in each case shall be not less than 10 percent and not more than 50 percent of the withholdings of the eligible positions for new employees or not less than 10 percent and not more than 30 percent of the estimated tax of a partner of an eligible partnership whether paid directly by the partner or by the eligible partnership on behalf of such partner's account, or any combination thereof. In no case shall the aggregate amount of the employment incentive grant awarded pursuant to a business employment incentive agreement entered into on or after July 1, 2003 exceed an average of \$50,000 for all new employees over the term of the grant.

(b) A business may be eligible to be awarded a grant of up to 80 percent of the withholdings of the business or up to 50 percent of the estimated tax of the partners of an eligible partnership if the grant promotes smart growth and the goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) as determined by and based upon criteria promulgated by the Authority following consultation with the Department of Community Affairs, Office of Smart Growth and set forth in (c) below.

(c) The following criteria shall be considered when determining the grant amount and term that a business will be eligible to receive:

1. The number of eligible positions created for new employees and the expected duration of those positions;
2. The total number of existing employees of the business;

3. The type of contribution the business can make to the long-term growth of the State's economy;

4. The amount of other financial assistance the business will receive from public sources versus private investment;

5. The total dollar investment the business is contributing to the project;

6. The type of industry that the business is involved in;

7. The location of the project;

8. The type of jobs to be created and the associated wages, with priority given to those companies that create full-time positions that average at least 1.5 times the minimum hourly wage;

9. Whether the business is a designated industry;

10. The impact of the business on State tax revenues. For the period of the grant during which the Authority remits payments to the grantee, the amount of the grant allocable to eligible employees that are residents of another state whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., shall not exceed the amount allocable to such employees at the time of the Authority's approval of the grant;

11. Whether the business is located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan;

12. Whether the business is located in a former Urban Coordinating Council or other distressed municipality as defined by the Department of Community Affairs;

13. Whether the business is located in a brownfield site, defined as the first occupants of the site after issuance of a new no-further action letter;

14. Whether the business is located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan;

15. Whether the business is located within one-half mile of a rail station or bus hub; or whether the business has created or subscribed to an ongoing transportation program for mass transit as defined by New Jersey Transit;

16. Whether the business is located in an area designated by the locality as an "area in need of redevelopment";

17. Whether the project is linked with housing production or renovation (market or affordable) utilizing at least 25 percent of the total buildable area of the site;

18. Whether the business is located within five miles of and is working cooperatively with a public or non-profit university on research and development; and

19. Such factors as presented by a specific applicant.

(d) The term of a grant may be for a period up to 10 years as approved by the Authority. Grant payments shall be issued by the Authority, subject to either annual appropriation from the General Fund to the Authority or issuance of a bond, the proceeds of which are intended for grant payments, beginning the next calendar year following achievement of the employment conditions and other conditions set forth in the Agreement and annually thereafter only if the State Treasurer has certified that the amount of withholdings received in the previous year by the Division from the business equals or exceeds the amount of the grant.

(e) Payment of a grant shall be subject to a certified copy of the business's prior year's payroll categorized by employees not subject to the grant and new employees subject to the grant. The certification shall identify the number of employees and partners in each category, the salary of each employee, the estimated tax paid by each partner in the foundation year, the date of hire, and withholding taxes paid for each employee.

1. Upon receipt from the Division Director of a certification of the available withholdings of the new employees and a determination by the Authority that all requirements of the agreement have been met, the Authority shall calculate the annual grant by multiplying the withholdings attributable to eligible positions for new employees by the grant percentage.

2. In the event the business creates in excess of the number of eligible positions represented in its application, as provided in the Grant Agreement, the business may be eligible to receive an adjustment in its grant to include the request for consideration of the additional eligible positions.

(f) A business that is receiving any other grant by operation of State law is limited to a Business Employment Incentive Grant which value when combined with the other grants cannot exceed 80 percent of the business's withholdings or 50 percent of the estimated tax of partners of an eligible partnership, except upon the written approval of the State Treasurer. Amounts received as grants from the Office of Customized Training pursuant to N.J.S.A. 34:15D-1 et seq. shall be excluded from the calculation.

(g) A grant received under the Act by a partnership, Subchapter S-corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, Subchapter S-corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

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

Substantially amended (c); in (d), deleted "existing" following "categorized by", and substituted "salary of each employee" for "base salary of each employee and separately any overtime paid during the grant"; in (d)1 and (d)2, substituted "new employees" for "eligible positions"; and in (d)2 substituted "are filled by new employees" for "qualify as full-time" and deleted "in either event" following "the business may". 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), added "or not less than 10 percent and not more than 50 percent of the estimated tax of a partner in an eligible position" at the end; in (d)2, deleted a former first sentence; and in (e), inserted "or 50 percent of the estimated tax" following "withholdings". Amended by R.2004 d.94, effective March 1, 2004.  
See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote (a); added new (b); recodified (b) through (f) as (c) through (g); deleted former (g); and amended new (c), (d), (e) and (f).

### 19:31-10.5 Business expansion or relocation

(a) For businesses that are locating in the State from outside New Jersey, only new employees in eligible positions created in the base years and thereafter may be considered for grant purposes.

1. Upon Authority Board approval, the business's payroll/number of employees shall be registered, including the number of existing employees in New Jersey. Upon occupancy of the project, the business shall have until the end of the base years to achieve the number of employees as represented at application. Only those new employees in eligible positions shall be considered when determining a grant.

2. The business may receive a grant for the new employees in eligible positions represented at application and any additional new employees in eligible positions that are created during the base years and thereafter.

3. Grant payments shall be issued by the Authority subject to annual appropriation from the General Fund to the Authority or upon issuance of a bond, the proceeds of which are intended for grant payments beginning the next calendar year following achievement of the employment conditions and other conditions set forth in the Agreement and annually thereafter only if the State Treasurer has certified that the amount of withholdings received in the previous year by the Division from the business equals or exceeds in the amount of the grant.

(b) For businesses expanding in New Jersey through relocation from an existing site to a new location or expansion at its existing location, only those new employees in eligible positions to be created in the base years and thereafter may be considered when determining a grant. Grant payments shall be issued during the next calendar year upon occupancy of the project and achievement of the employment conditions set forth in the Agreement.

(c) If a business is expanding through a merger or consolidation with one or more companies, only the eligible positions created or transferred from outside New Jersey after board approval and the official date of the merger or consolidation shall be considered when determining a grant.

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

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

In (a), substituted "new employees in eligible positions created in the base years and thereafter may be considered" for "the new employees subject to withholding shall be considered as eligible positions"; in (a)1, substituted "Authority Board approval" for "application to the Authority" and inserted "new" in the third sentence; in (a)2, inserted "new employees in"; substantially amended (a)3; in (b), inserted "new employees"; and in (c), deleted "eligible" following "only the new".

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 ", including the number of existing employees in New Jersey" at the end of the first sentence in 1, and inserted "or estimated taxes of partners" following "withholdings" and inserted ", partnership or cooperative association" following "business" in 3; and rewrote (c).

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

In (a)3, inserted "or upon issuance of a bond, the proceeds of which are intended for grant payments" preceding "beginning the next calendar year".

### 19:31-10.6 Grant conditions

(a) The business shall maintain the project and the required minimum number of eligible positions in New Jersey for at least 1.5 times the number of years of the term of the grant. Businesses which are tenants applying individually to the program may be restricted by the term of their lease.

(b) The business shall create and maintain a net increase of employees at the project from the date of the commencement of the grant term and for at least 1.5 times the number of years of the term of the grant. Any reductions in the employment level of the noneligible employees that existed prior to approval of the grant, must be deducted from the amount of new employees in eligible positions for each year of the grant term.

(c) By March 1st of the year after the grant year in which the business commences the grant term, the business shall submit an annual payroll report containing one section for new employees in eligible positions whose income is not subject to the New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. and one section for all other new employees in eligible positions and indicating the following information for the business and the project for the grant year in which the business commenced the grant term:

1. The total amount of withholdings during the grant year for each new employee in an eligible position;
2. The eligible positions which were created during the preceding grant year;
3. The names of each new employee in an eligible position;
4. The date of hire of each new employee in an eligible position;
5. The actual salary of each new employee in an eligible position, or if the new employee is a partner of an eligible partnership, the amount of estimated taxes paid by the partner;

6. The amount of withholdings of each new employee in an eligible position;

7. The termination date, if applicable, of each new employee in an eligible position;

8. The social security numbers of each new employee in an eligible position;

9. A certification stating that no new employees are related persons of the owners of the business; and

10. A certification identifying the eligible positions that have been filled by persons who are rehired from a bona fide layoff or transferred from another company.

(d) The Authority shall be entitled to audit the payroll records of the business, to require the business to submit detailed payroll reports and to make adjustments as necessary to the amount of any future grant payment at any time during the term of the grant as the Authority deems necessary.

(e) If the business receiving a grant should generate significant new employment beyond the base years that was not originally anticipated at application, the Authority may amend the agreement to increase the annual grant percentage or term amount to reflect said increased employment.

(f) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the grant agreement for any two consecutive years, the Authority may terminate the agreement.

(g) If the business does not maintain operations at the project location or another location approved by the Authority for at least 1.5 times the term of the grant, the Authority may recapture all or part of the grant in its discretion.

(h) As a condition for its continuation in the grant program, no later than March 1 of the year following the first grant year, every business which is awarded a grant from the Business Employment Incentive Program shall submit to the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within six months after the date of the application.

(i) As a condition of its continuation in the grant program no later than March 1 of each year, for the preceding grant year, every business which is awarded a grant from the Business Employment Incentive Program shall submit to the Authority:

1. A copy of its applicable New Jersey and Federal tax returns showing business income and withholdings and a copy of the New Jersey partnership return for eligible

partnerships including Schedule NJK-1, within 30 days of filing;

2. A certification form containing one section for new employees in eligible positions whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq. and one section for all other new employees in eligible positions and indicating:

i. The total amount of withholdings for new employees in eligible positions for the grant year;

ii. The total amount of new employees in eligible positions for the grant year;

iii. The total amount of new employees in eligible positions who were terminated in the grant year; and

iv. A statement that no new employees are related persons of the owners of the business;

3. A certification stating the amount, date received and provider for any grant received under State law, including the Business Relocation Assistance Grant;

4. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award;

5. A copy of the business's W-3 form for the reporting year; and

6. For each new employee in an eligible position whose income is not subject to New Jersey gross income tax pursuant to N.J.S.A. 54A:1-1 et seq., a copy of the W-2 form.

(j) Should any business which is awarded a grant under the Act fail to submit to the Authority a copy of its annual certification or submit its annual certification without the information required by the time periods specified in (g) and (g)1 above, any grant payment to be received by any such business shall be forfeited for the applicable reporting year unless the Chief Executive Officer of the Authority determines that there are extenuating circumstances excusing the timely filing required herein. For purposes of this subsection (h), "extenuating circumstances" means the destruction of the business's payroll records due to a fire, earthquake, flood, acts of terrorism, infestation, or the complete loss of the business's computer records.

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

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

In (g)2i through iii and v, deleted "with social security numbers" following "eligible positions"; in (g)2i, substituted "base years" for "years just ended"; and in (g)2ii, inserted "from the base years.

Amended by R.2004 d.94, effective March 1, 2004.

See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

Rewrote the section.

### 19:31-10.7 Application procedures

(a) A business shall apply to the Authority for a grant on a form prescribed by the Authority which requires the following:

1. The name and address of the business;

2. A history and description of the applicant's business;

3. A detailed description of the proposed project, including the location and type of activity which the business will be engaged in at the project site;

4. A detailed breakdown of the total project cost indicating sources and uses of any financial assistance for the project;

5. A complete schedule of all officers, directors and stockholders owning 15 percent or more of the stock;

6. Annual financial statements for the two most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

7. A current interim statement, if the most recent annual financial statement is more than six months old;

8. The estimate of eligible positions to be created during the base years and thereafter;

9. An estimate of total withholdings to be generated from these new positions;

10. A certification stating the amount, date received and provider of any grant received under State law, including the Business Relocation Assistance Grant;

11. If the business is awaiting a grant award notification for any grant offered under State law, the business shall submit a certification identifying the grant provider and the anticipated amount and date of award;

12. Whether the business is located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan;

13. Whether the business is located in a brownfield site, defined as the first occupants of the site after issuance of a new no-further action letter;

14. Whether the business is located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan;

15. Whether the business is located within one-half mile of a rail station or bus hub; or whether the business has created or subscribed to an ongoing transportation program for mass transit as defined by New Jersey Transit;

16. Whether the business is located in an area designated by the locality as an "area in need of redevelopment";

17. Whether the project is linked with housing production or renovation (market or affordable) utilizing at least 25 percent of the total buildable area of the site;

18. Whether the business is located within five miles of and is working cooperatively with a public or nonprofit university on research and development;

19. Whether the business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes; and

20. Any additional information deemed necessary to evaluate a specific application.

(b) A landlord shall file the information set forth in (a) above, in addition to the following:

1. A copy of the assignment by each tenant to forego any claim of right it may have to a grant; and

2. A copy of the agreement between the landlord and tenants which establishes the tenants agreed to cooperation to annually submit to the Authority its:

- i. Number of new employees in eligible positions;
- ii. Total employees at commencement of the Agreement between the Authority and landlord;
- iii. Payroll records; and
- iv. Any withholdings during the grant year.

(c) A business shall submit on a form prescribed by the Authority a detailed payroll report indicating all employment positions of the business and the employees who filled those positions located in New Jersey that ceased to exist or to be located in New Jersey within three months of the date of the application.

(d) If the applicant meets all of the program criteria set forth in the rules, the grant shall be recommended for consideration and official actions by the members of the Authority at a public meeting. The applicant has no right to have its application presented to the members of the Authority for consideration.

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

In (a)5, deleted “, including resumes and signed, dated personal financial statements” following “more of the stock”.

Amended by R.2004 d.94, effective March 1, 2004.  
See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).

In (a), inserted new 12 through 19 and recodified existing 12 as 20; rewrote (b); inserted new (c); recodified and amended existing (c) as (d).

#### 19:31-10.8 Evaluation process

(a) When all of the required information is received, the Authority staff shall review the materials to determine what percentage and term of grant, if any, the applicant would be eligible to receive based on the eligible positions for new employees. This evaluation shall be based on an evaluation of the application and an analysis of historic and projected financial statements and a comparison to industry peers (primary emphasis will be placed on the record of profitability and financial stability for the past two years and projections of profitability and financial stability over the term of the grant) solely for the purpose of potential disqualification, debarment, and conflict of interest, providing a grant to an applicant shall constitute “financial assistance” under N.J.A.C. 19:30-2.2(a), and the terms and conditions of N.J.A.C. 19:30-2 shall apply to an applicant for a grant.

(b) If a positive determination is made, the requested business employment incentive grant request shall be presented to the members of the Authority for approval.

#### 19:31-10.9 Approval process

(a) Only the members of the Authority can approve a business employment incentive grant.

(b) When the members of the Authority approve a request, the minutes of the meeting at which such approval occurs shall be submitted to the Governor.

(c) The members’ approval shall become effective 10 working days after the Governor’s receipt of the minutes, provided no gubernatorial veto of the action has occurred.

(d) If there has been no veto, a Commitment Letter shall be issued to the applicant, which contains all terms and conditions of the grant. The business must execute and return the Commitment Letter within 30 days. Failure to execute and return the Commitment Letter to the Authority within 30 days will result in rescission of the grant. The Chief Executive Officer of the Authority may, at his or her discretion, extend the expiration date of a Commitment Letter upon request by the business.

(e) When all required documentation as outlined in the Commitment Letter is submitted by the business, in form and content satisfactory to the Authority, a Grant Agreement shall be prepared by the Authority and forwarded to the business for execution.

(f) If the business does not execute and return the Grant Agreement within 60 days from the date of issuance, the grant shall be rescinded.

(g) If the business does not commence the project within one year from the date of approval by the Members of the Authority, the grant shall be rescinded. The Chief Executive Officer of the Authority may, at his or her discretion, extend

the expiration date of the grant upon request by the business.

Amended by R.2004 d.94, effective March 1, 2004.  
See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).  
Rewrote (d) and (e); inserted new (f) and (g).

#### 19:31-10.10 Rescission and withholding of grant payments

(a) The Authority, in addition to any other remedies available pursuant to law, may withhold, reduce or terminate payment of a grant or any portion thereof due to a business. The circumstances under which this may occur include the following:

1. Failure to comply with the requirements of this subchapter or other applicable State laws or rules;
2. Failure to comply with any condition or requirement of the Grant Agreement;
3. Failure to maintain the stipulated employment levels;
4. Submission of false or misleading information, or failure to submit relevant information; or
5. Insolvency, bankruptcy or other conditions which affect the financial integrity of the business.

(b) The Authority shall provide written notice to the business of its intent to withhold, reduce or terminate the grant. The business may request in writing reconsideration of the Authority's decision. The determination to withhold, reduce or terminate a grant is solely within the Authority's discretion.

(c) In the event a grant is to be terminated, the business shall immediately refund the total amount due as determined by the Authority. Refunds shall be made payable to the State of New Jersey for deposit in the Property Tax Relief Fund and mailed to the:

Business Employment Incentive Program  
Division of Taxation  
CN 248  
Trenton, NJ 08625

#### 19:31-10.11 Prevailing wage

Projects that receive grants from this program shall be exempt from the Authority's prevailing wage requirements for the purposes of that grant and its determination. If the company should apply to the Authority for any other form of financial assistance, the prevailing wage requirement shall be applied.

#### 19:31-10.12 Fees

(a) A non-refundable application fee of \$500.00 shall accompany every application for grant assistance.

(b) An annual servicing fee shall be paid to the Authority by the business and shall be deducted from the annual grant payment to the business. The servicing fee shall be 1.5 percent of the annual grant disbursement with a floor of \$500.00 and an annual cap of \$10,000.

(c) A nonrefundable Commitment Letter extension fee of \$750.00 shall be paid for every extension of a Commitment Letter expiration date beyond the initial expiration date.

(d) A nonrefundable fee of \$750.00 shall be paid for each request for any changes, additions or modifications to the grant.

(e) A nonrefundable fee of \$750.00 shall be paid for any extension to the expiration date of a grant.

Amended by R.1998 d.150, effective March 16, 1998.  
See: 29 N.J.R. 5236(a), 30 N.J.R. 1053(b).

In (b), decreased the floor from \$1,500 to \$500.  
Amended by R.2001 d.242, effective July 16, 2001.  
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (b), inserted "and an annual cap of \$10,000" following "\$500.00".  
Amended by R.2004 d.94, effective March 1, 2004.  
See: 35 N.J.R. 5047(a), 35 N.J.R. 5369(a), 36 N.J.R. 1198(b).  
Added (c) though (e).

#### 19:31-10.13 Attorney General review

All documents, including the application, for the program are subject to review by the Attorney General's office.

### SUBCHAPTER 11. PETROLEUM UNDERGROUND STORAGE TANK REMEDICATION, UPGRADE AND CLOSURE FUND

#### 19:31-11.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1997, c.235 (N.J.S.A. 58:10A-37.1 et seq.) and P.L. 2003, c.148, which pertain to the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund. The former Act established the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund, a special revolving fund for the purpose of financing remediation due to the discharge of petroleum from a petroleum underground storage tank or for the costs of upgrade and closure of a regulated tank.

Amended by R.2004 d.347, effective September 20, 2004.  
See: 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Inserted "and P.L. 2003, c.148" preceding "; which pertain" and substituted "The former Act" for "This Act" at the beginning of the second sentence.