

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

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

(b) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of \$2,000,000 for fixed asset financing and \$750,000 for working capital.

1. For the Smart Growth Pre-development Loan Program, the maximum loan amount will be \$1 million.

2. For the Brownfields Redevelopment Loan Program, the maximum loan amount will be \$750,000.

3. The maximum amount of combined total financing under the Smart Growth Pre-development and Brownfield Redevelopment loan program(s) is \$1.0 million.

4. The maximum amount of total financing for the New Jersey Growth Fund Program shall be \$1 million per transaction.

5. For the urban loan product, the maximum loan amount will be \$3 million, not to exceed 50 percent of the total project costs, for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of under \$70 million; and \$5 million for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of over \$70 million.

6. For the Edison Innovation Angel Growth Fund, the Authority may award up to \$250,000 in convertible debt financing to leverage private angel investments, on a two to one angel matching fund requirement, to a business that has generated a minimum of \$250,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, the Authority may award up to \$1 million in convertible debt financing to leverage institutional venture backed investments or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest, on a one to one matching fund requirement, to a business that has generated a minimum of \$500,000 or for the Edison Innovation Angel Growth Fund a minimum of \$250,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, the Authority may award up to \$500,000 in convertible debt financing, on a one to one matching fund requirement, to a business that has generated a minimum of \$2 million in prior 12-month commercial revenues. Except as otherwise provided, the total amount of assistance that a business may receive under the various programs funded by the Edison Innovation Fund, or any similar assistance provided by any other State agency, shall not exceed \$1

million dollars. Notwithstanding the foregoing, any amount received by a business under the Edison Innovation Growth Stars Fund, Edison Innovation Clean Energy Manufacturing Fund, and Edison Innovation Green Growth Fund, shall not be considered in the \$1 million dollar limit.

7. For the Loans to Lenders component of the Fund for Community Economic Development, the maximum loan amount will not exceed \$750,000, except that Loans to Lenders may be used to develop grocery stores and supermarkets with a maximum loan amount of \$3 million, provided that no more than \$4 million will be used for this purpose. For the pre-development assistance component of the Fund for Community Economic Development, the maximum loan amount will not exceed \$50,000 per project.

8. For the Real Estate Impact Fund, the maximum loan amount will be \$3 million, not to exceed 25 percent of the total project costs; and the total amount of public assistance that a developer or business may receive shall not exceed 50 percent of the total project costs.

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

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

(e) Proceeds of Smart Growth Pre-development loans shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs.

(f) Proceeds of Brownfield Redevelopment loans shall be used for financing those remediation costs deemed eligible by the New Jersey Department of Environmental Protection pursuant to the Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Department(s) of Environmental Protection and Treasury, and the New Jersey Commerce and Economic Growth Commission.

(g) Proceeds of urban loans shall be used for fixed asset financing as set forth in (c) above, not to exceed 50 percent of total project costs, in the nine urban centers designated in the New Jersey State Development and Redevelopment Plan (Atlantic City, Camden, East Orange, Elizabeth, Jersey City, New Brunswick, Newark, Paterson and Trenton).

(h) Proceeds of Real Estate Impact Fund loans may be used for eligible project development costs within municipalities qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) or within Fort Monmouth or as part of New Jersey university/college sponsored projects that

include public-private partnerships that promote emerging technologies or industries.

(i) The Authority shall determine the term, and fixed and/or variable rates of interest, including interest rate floors, to be charged for each loan product through consideration and official action of the Members at a public hearing. The applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate or at a variable interest rate.

1. Fixed Rate Interest: Interest on fixed asset or working capital loans will be fixed at the time of closing, with a floor that shall be indexed to a nationally recognized financial index, such as the five-year United States Treasury Bond of like term, plus or minus any additional basis points to be determined by the Authority. During the term of any loan, a scheduled rate reset shall not result in an increase of more than five percentage points greater than the original calculated interest rate.

2. Variable Rate Interest: Interest on fixed asset and working capital loans will be set with a floor that shall be indexed to a nationally recognized rate, such as the Prime Rate as published in the Wall Street Journal at the time of closing, plus or minus any basis points to be determined by the Authority. The interest rate will be variable, adjusted on the first business day of each calendar quarter in accordance with the relationship of the original calculated interest rate. The maximum increase in the variable interest rate during the term of the loan will be no more than five percentage points greater than the original calculated interest rate.

3. For fixed and variable rate loans, factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:

- i. An applicant's creditworthiness;
- ii. Amortization schedules;
- iii. The quality of collateral; and
- iv. The number of full-time jobs created or maintained in New Jersey provided the Authority's exposure may not exceed \$65,000 per job created or maintained.

4. For loans offered under the Edison Innovation Fund, the criteria for determining the rate of interest and additional basis points above the floor previously established by the Board may include the eligibility standards contained in N.J.A.C. 19:31-3.2(f).

5. In addition to any interest charged on an Edison Innovation Angel Growth Fund loan, an Edison Innovation VC Growth Fund loan, and an Edison Innovation Growth Stars Fund loan, the Authority may also require the payment of additional fees and charges, including, but not limited to, warrants, stock, stock options, a percentage of royalties, and a percentage of sales proceeds.

6. The rate of interest for Real Estate Impact Fund loans shall be determined by the economic feasibility and economics pertaining to the return on investment and the ability to attract the required investment; and full repayment shall be due and payable to the Authority at the earlier of the end of the loan term or a liquidity event, on terms and conditions mutually agreed upon based on the structure and merits of the project.

7. The Authority shall provide public notice of the loan terms and interest rates, including interest rate floors, to be charged for all loan products as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

(j) For New Markets Loans:

1. The maximum amount of total financing for a New Markets loan is \$10 million, except for projects that provide extraordinary economic development benefits when the maximum amount of total financing for a New Markets loan is \$25 million.

2. For New Market Loans, the projects must be located within areas designated for smart growth land use development and designated by the New Jersey Development and Redevelopment Plan as in Planning Areas One or Two or in a designated center or endorsed plan. Additionally, projects must be located in communities and census tracts as approved by the Community Development Financial Institutions Fund (CDFI) as described in (j)2i through iii below and must have at least one of the characteristics described in (j)3 below.

- i. A poverty rate of at least 20 percent;
- ii. In the case of a tract not located within a Metropolitan area as defined by the United States Census, where the median income family income for such tract does not exceed 80 percent of the Statewide median family income; or
- iii. In the case of a tract located within a Metropolitan area, where the median family income for such tract does not exceed 80 percent of the greater of Statewide median income or the Metropolitan area median family income.

3. Additionally, New Markets loans must be located in at least one of the following types of designated areas:

- i. CDFI Hot Zone, Empowerment Zone, Renewal Community, HOPE VI Redevelopment area or Small Business Administration HUB Zone;
- ii. A brownfield redevelopment area, locally designated redevelopment area, or New Jersey Urban Enterprise Zone;
- iii. A census tract with an unemployment rate of 1.5 times the national average; or

iv. A census area with a poverty rate greater than 30 percent or with median incomes of less than 60 percent of the area median income.

4. In addition to any interest charges on a New Markets loan, the Authority shall also require the payment of additional fees, including a one-time monitoring fee of \$1,000 and a management fee of five percent of the loan amount, with the exception of non-profit borrowers that will be charged a 3.5 percent management fee.

(k) For Small Businesses, Minorities' and Women's Enterprises loans:

1. Of the financial assistance allocated by the Authority from the funds made available pursuant to the provisions of N.J.S.A. 5:12-181, 50 percent shall be made available to women, and 50 percent shall be made available to minorities and all such funds shall be invested in accordance with the geographic restrictions established by N.J.S.A. 5:12-181;

2. Of the financial assistance allocated by the Authority from sources other than those funds made available pursuant to the provisions of N.J.S.A. 5:12-181, 50 percent shall be made available to small businesses, 25 percent shall be made available to minorities, and 25 percent shall be made available to women;

3. For the purposes of financial assistance provided by the Authority pursuant to this subsection:

i. A small business is a business which has its principal place of business in the State, is independently owned and operated, has 100 or fewer full-time employees, and at least 51 percent of the beneficial ownership of the business is held by persons other than minorities or women and the majority of the management of which is other than minorities or women;

ii. A minority business is a business in which at least 51 percent of the beneficial ownership of the business is held by minorities and the majority of the management are minorities; and

iii. A women's business is a business in which at least 51 percent of the beneficial ownership of the business is held by women, and the majority of the management are women; and

4. Each application for a loan shall be accompanied by any proof of certification by a public entity which certifies that the business is beneficially owned by, and that the majority of the management are, minorities or women.

Amended by R.1992 d.126, effective March 16, 1992.
See: 24 N.J.R. 177(b), 24 N.J.R. 970(b).

Revised (e).

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

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

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

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

Added (g) through (i).

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

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

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

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

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

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

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

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

Rewrote (e).

Amended by R.2002 d.333, effective October 7, 2002.

See: 34 N.J.R. 2412(a), 34 N.J.R. 3531(a).

Rewrote (e).

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 (e).

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Rewrote the section.

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (b), added 4; rewrote (g) and (h).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

In (b), added 4; in (g)1 added iv.

Amended by R.2006 d.242, effective July 3, 2006.

See: 38 N.J.R. 1563(a), 38 N.J.R. 2887(c).

Inserted "at least the first seven years of" in (g)1iv.

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Deleted (b)5 and (g)1iv; deleted the last sentence of (h); and added (l).

Amended by R.2008 d.89, effective April 7, 2008.

See: 39 N.J.R. 5071(a), 40 N.J.R. 1927(b).

In the introductory paragraph of (b), substituted "\$1,250,000" for "\$750,000" and "\$750,000" for "\$500,000"; in the introductory paragraph of (i), substituted "\$1,250,000" for "\$750,000" twice; and in (j), substituted "\$1,250,000" for "\$750,000".

Amended by R.2008 d.90, effective April 7, 2008.

See: 40 N.J.R. 110(a), 40 N.J.R. 1928(b).

Added (b)5 and (b)6; added new (g); recodified former (g) through (l) as (h) through (m); in the introductory paragraph of (h), substituted "(h)1" for "(g)1" and "(h)2" for "(g)2"; added (h)1iv and (h)1v; in (h)2, substituted "(h)1" for "(g)1"; in (h)3, inserted "or Edison Innovation R&D Fund" and "and incentives"; in (i), substituted "amortization may be" for "repayment schedule is usually" and "longer" for "shorter", and inserted "the use of proceeds and"; in (k), substituted "(j)" for "(i)" and "(j)2" for "(i)2"; in (l), substituted "(j) and (k)" for "(i) and (j)"; and in the introductory paragraph of (m)4, substituted "(m)4i" for "(l)4i" and "(m)5" for "(l)5".

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

Rewrote (h); deleted former (i); recodified former (j) through (m) as (i) through (l); in (j), substituted "(i)" for "(j)" and "(i)2" for "(j)2"; in (k), substituted "(i) and (j)" for "(j) and (k)"; deleted (l)2 and (l)3 and recodified former (l)4 through (l)6 as (l)2 through (l)4; in the introductory paragraph of (l)2, substituted "Loans" for "loans", "in" for "is" following "Two or", "tracts" for "tracks", "(l)2i" for "(m)4i" and "(l)3" for "(m)5".

Amended by R.2008 d.294, effective October 6, 2008.

See: 40 N.J.R. 3980(a), 40 N.J.R. 5845(c).

Rewrote (b)5.

Amended by R.2009 d.139, effective April 20, 2009.

See: 41 N.J.R. 394(a), 41 N.J.R. 1891(a).

Added (b)7.

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Added new (h)3ii; and recodified former (h)3ii through (h)3ix as (h)3iii through (h)3x.

Amended by R.2010 d.285, effective December 6, 2010.

See: 42 N.J.R. 2019(a), 42 N.J.R. 2969(a).

Added (m).

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

Rewrote (b)6 and (h)1; and in (h)5, substituted "Edison Innovation Angel Growth Fund loan, an Edison Innovation VC Growth Fund loan, and an Edison Innovation Growth Stars Fund loan" for "Edison Innovation R&D Fund loan."

Amended by R.2012 d.101, effective May 21, 2012.

See: 44 N.J.R. 433(a), 44 N.J.R. 1644(a).

In (b)7, substituted "\$750,000" for "\$500,000".

Amended by R.2013 d.036, effective February 19, 2013.

See: 44 N.J.R. 2944(a), 45 N.J.R. 359(b).

In (b)6, substituted "\$1 million" for the second occurrence of "\$500,000" and inserted the last two sentences.

Amended by R.2013 d.082, effective June 3, 2013.

See: 45 N.J.R. 457(a), 45 N.J.R. 1413(b).

In (b)6, inserted "or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest".

Amended by R.2014 d.187, effective December 15, 2014.

See: 46 N.J.R. 1682(a), 46 N.J.R. 2420(a).

In the introductory paragraph of (b), substituted "\$2,000,000" for "\$1,250,000"; rewrote (h)3; deleted former (i) through (k); recodified (l) as new (i); in the introductory paragraph of (i)2, substituted "(i)2i" for "(l)2i" and "(i)3" for "(l)3"; and recodified (m) as new (j).

Amended by R.2015 d.018, effective January 20, 2015.

See: 46 N.J.R. 2107(a), 47 N.J.R. 298(a).

Rewrote the section.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), substituted "that" for "which"; and in (b)6, substituted the second occurrence of "\$250,000" for "\$500,000", and inserted "or for the Edison Innovation Angel Growth Fund a minimum of \$250,000".

19:31-3.2 Eligibility standards

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

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

(b) For Smart Growth Pre-development loans, projects must be located in Planning Areas 1 and 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

(c) For Brownfield Redevelopment Loans, project sites must be the subject of a Municipal Landfill Site Closure, Remediation and Redevelopment Agreement that has been entered into by the applicant with the New Jersey Departments of Environmental Protection and the Treasury.

(d) For Edison Innovation Fund loans, projects will be considered eligible if they have the following characteristics:

1. A commercially available product that meets the Authority's programmatic requirements in revenue thresholds, that is, for the Edison Innovation Angel Growth Fund, a minimum \$250,000 in prior 12-month commercial revenues;

for the Edison Innovation VC Growth Fund, a minimum \$500,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, a minimum of \$2 million in prior 12-month commercial revenues;

2. A meaningful and defined market and customer base for the technology;

3. A management team possessing appropriate skill sets, capacity and financial resources and willingness to strengthen management through other means such as advisory or consultant services;

4. A meaningful customer base, partners, strategic alliances and professional relationships;

5. An ability to leverage the Authority's resources by evidence of other fund raising and need for future capital requirements;

6. A clear record of specific operational and research milestones achieved to date and proposed schedule and means to achieve future milestones; and

7. A current and complete business plan including a detailed financial model.

(e) For Edison Innovation Fund loans, a business shall not be eligible as follows:

1. A business that has received assistance under the Edison Innovation Fund from the Authority or similar assistance provided by any other State agency, shall not be eligible for the Edison Innovation Angel Growth Fund.

2. A business shall not be eligible for assistance under the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, or the Edison Innovation Growth Stars Fund, if the business has received assistance under the New Jersey Board of Public Utilities' Edison Clean Energy Manufacturing Fund and/or the Edison Innovation Green Growth Fund.

Amended by R.2004 d.346, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a).

Added (d) and (e).

Amended by R.2005 d.274, effective August 15, 2005.

See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

In (e) substituted "," for "and" following "Commerce", added "and Tourism" following "Growth"; added (f).

Amended by R.2005 d.319, effective September 19, 2005.

See: 37 N.J.R. 2153(a), 37 N.J.R. 3722(a).

Added (g) and (h).

Amended by R.2006 d.369, effective October 16, 2006.

See: 38 N.J.R. 3001(a), 38 N.J.R. 4503(a).

Deleted (g) and (h).

Amended by R.2008 d.271, effective September 15, 2008.

See: 40 N.J.R. 2659(a), 40 N.J.R. 5247(a).

In the introductory paragraph of (f), substituted "Edison Innovation" for "New Jersey Growth".

Amended by R.2011 d.195, effective July 18, 2011.

See: 43 N.J.R. 955(a), 43 N.J.R. 1602(b).

Rewrote (f)1; in (f)6, inserted "and" at the end; in (f)7, substituted a period for "; and" at the end; deleted (f)8 and (f)9; and added (g).

Amended by R.2013 d.036, effective February 19, 2013.

See: 44 N.J.R. 2944(a), 45 N.J.R. 359(b).

Rewrote (g)2.

amounts withheld by a business from stock options or from stock options, money, or other payments given to a full-time employee pursuant to the termination of employment of the full-time employee. Withholdings shall include amounts withheld by a business from money or other payments given to a full-time employee pursuant to a bonus for commencing employment or for services rendered by the full-time employee.

Amended by R.2015 d.014, effective January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Added definitions, "Aviation district", "Commitment period", "Complex of buildings", "Deep poverty pocket", "Disaster recovery project", "Distressed municipality", "Eligibility period", "Garden State Growth Zone" or "growth zone", "Highlands development credit receiving area or redevelopment area", "Incentive agreement", "Incentive effective date", "Industrial premises", "Major rail station", "Mega project", "Minimum environmental and sustainability standards", "Moderate-income housing", "Municipal Revitalization Index", "Non-industrial premises", "Other eligible area", "Port district", "Priority area", "Project", "Qualified incubator facility", "SDA district", "SDA municipality", "Square feet", "Square feet of gross leasable area" or "gross leasable area", "Substantial environmental remediation", "Targeted industry", "Technology startup company", "Tourism destination project", "Transit oriented development", "Urban transit hub", "Urban transit hub municipality", and "Withholdings"; rewrote definitions "Business", "Capital investment", "Full-time employee", "Qualified business facility", "Qualified incentive area" and "Retained full-time job"; substituted definition, "Eligible position" or "full-time job" for definition "Eligible position"; and deleted definitions, "Commitment duration", "Public transit facility", and "Tax credit term".

Amended by R.2015 d.132, effective August 17, 2015.
See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.
See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

Added definition "Non-gaming business"; and rewrote definition "Retained full-time job".

Amended by R.2016 d.045, effective May 16, 2016.
See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

In definition "Business", inserted the last sentence; and rewrote definition "Eligible position" or "full-time job".

Amended by R.2016 d.059, effective June 6, 2016.
See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In definition "Qualified incentive area", rewrote paragraph 2ii; and in definitions "Qualified incubator facility" and "Technology startup company", inserted the last sentence.

Amended by R.2017 d.010, effective January 3, 2017.
See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In definition "Mega project", in paragraph 3, deleted "or" from the end, in paragraph 4, inserted a comma following ")" and following "63", and substituted "; or" for a period at the end, and added paragraph 5; and in definition "Retained full-time job", substituted "as set forth in N.J.A.C. 19:31-18.4(d)" for "provided that the position is included in the order of date of hire and is not the basis for any other incentive award".

19:31-18.3 Eligibility criteria

(a) In order to be considered for a Grow New Jersey tax credit, the chief executive officer of a business shall demonstrate at the time of application that the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to or greater than, the applicable capital investment required in (a)1 below at which it will retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable number in (a)2 below.

1. For all projects approved after September 18, 2013, the effective date of P.L. 2013, c. 161, the minimum capital investment required shall be reduced by one-third (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties:

i. For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development premises for continued similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$20.00 per square feet of gross leasable area;

ii. For the new construction of an industrial, warehousing, logistics, or research and development premises for similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$60.00 per square feet of gross leasable area;

iii. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$40.00 per square feet of gross leasable area;

iv. For the new construction of a premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$120.00 per square feet of gross leasable area. For purposes of this subparagraph, non-industrial premises shall include vacant industrial premises that are unleased and unoccupied; and

v. The minimum capital investment shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion, and have the same minimum investment per square feet of gross leasable area. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. Notwithstanding that buildings in a complex of buildings may have different minimum capital investment requirements, the capital investment in a complex of buildings shall be aggregated for purposes of qualifying as a mega project or for an award pursuant to N.J.A.C. 19:31-18.8(h). The following are examples:

(1) A complex of buildings consists of building A and building B, which are both on the same block but separated by other buildings. Both buildings are existing office buildings that will be rehabilitated. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

(2) A complex of buildings will consist of building A and building B, which will be adjacent to each other but have separate entrances. Building A is an existing office building that will be rehabilitated; building B will be a newly constructed office

building. The business will have to make a minimum capital investment at building A and a separate minimum capital investment at building B.

(3) A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot. Both buildings are existing industrial buildings that will be rehabilitated for continued industrial use. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

2. The minimum number of new or retained full-time jobs required shall be reduced by one-quarter (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

i. For a business that is a technology startup company or a manufacturing company, a minimum of 10 new or 25 retained full-time jobs.

ii. For a business engaged primarily in a targeted industry other than a technology startup company or a manufacturing company, a minimum of 25 new or 35 retained full-time jobs.

iii. For any other business, a minimum of 35 new or 50 retained full-time jobs.

iv. The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings. Notwithstanding the preceding sentence, if a complex of buildings includes one or more buildings located in a Garden State Growth Zone or a county for which the minimum number of new or retained full-time jobs is reduced, the business shall meet the minimum job requirement by locating no less than the reduced minimum number of new or reduced full-time jobs at the buildings in the Garden State Growth Zone or one of the counties for which the minimum capital investment required is reduced. The following are examples:

(1) The complex of buildings for a manufacturing company consists of three buildings located in one municipality and one building located in a different municipality. The company will have three new jobs at each building. Neither municipality is a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the minimum full-time jobs, 10 new or 25 retained full-time jobs may be met in the aggregate across all four buildings. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 12 new full-time jobs.

(2) The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have four new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the reduced minimum full-time jobs, eight new or 19 retained full-time jobs, has been met in the aggregate at the buildings in municipality A. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 10 new full-time jobs.

(3) The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have three new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has not met the minimum full-time jobs because the number of jobs in the aggregate at the buildings in municipality A is six, which is less than the reduced minimum full-time jobs, eight new or 19 retained full-time jobs.

3. The business shall also demonstrate to the Authority that:

i. The qualified business facility shall be constructed in accordance with the minimum environmental and sustainability standards;

ii. The proposed capital investment and the resultant retention and creation of full-time jobs will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to the State, as calculated pursuant to N.J.A.C. 19:31-18.7(c) prior to taking into account the value of the requested tax credit, and shall be based on the benefits generated during the first 20 years following the completion of the project, except that:

(1) For a mega project or a project located in a Garden State Growth Zone, the determination shall be based on the benefits generated during a period of up to 30 years following the completion of the project; and

(2) For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c.

43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefit determination shall be based on the benefits generated during a period of up to 35 years following completion of the project, and shall equal at least 100 percent of the requested tax credit allocation;

iii. The award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, consistent with the following, as applicable:

(1) Except as determined by the Authority in its sole discretion based on extraordinary circumstances, including, but not limited to, geographic or regulatory constraints of a project, the business shall provide a full economic analysis of the in-State and out-of-State alternatives under consideration by the business to support that it demonstrates a material factor.

(2) Except for (a)3iii(4) below, the award of tax credits shall not be considered a material factor in the creation or retention of full-time jobs filled by employees providing professional services, as defined in N.J.S.A. 14A:17-3(1), and their direct administrative support staff, unless as of the date of the business's application, the full-time job is filled by an employee whose primary business office is located outside of the State. Direct administrative support staff shall not include employees in information technology, human resources, or employee relations positions.

(3) If, in a Garden State Growth Zone, the site was acquired or leased prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site.

(4) In satisfaction of this requirement, with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, the award of tax credits will be a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A.

5:12-219) and regulated by the Casino Reinvestment Development Authority; and

iv. For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility will have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

(1) Having a capital investment in excess of \$50,000,000, excluding any capital investment for site acquisition, at which more than 250 full-time employees of a business are created or retained; and

(2) Demonstrating to the satisfaction of the Authority a combination of two or more of:

(A) Positive financial benefit to the District;

(B) A net increase in visitors to the District;

(C) An increase in marketing dollars spent on the District; or

(D) The addition of unique amenities or services to the existing project or District.

(b) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(c) A business shall be treated as owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

(d) Pursuant to P.L. 2013, c. 161, a business may apply for tax credits under the program for more than one project pursuant to one or more applications. Notwithstanding this subsection, the Authority may, in its sole discretion, consider two or more applications as one application based on factors including, but not limited to, the location of the qualified business facilities, the types of jobs proposed, and the business's financing and operational plans.

Amended by R.2015 d.014, effective January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.
See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.
See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a)3iii, substituted "; and" for a period at the end, and added (a)3iv.
Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

In (a)1iii, deleted "and" from the end; in (a)1iv, substituted "; and" for a period; added (a)1v and (a)2iv; in (a)2iii, substituted a period for a semicolon; and rewrote (a)3iii.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)1v, inserted the second sentence; in the introductory paragraph of (a)3iii, substituted ", consistent with the following, as applicable" for a period at the end; added (a)3iii(2); recodified former (a)3iii(2) through (3) as (a)3iii(3) through (4); and in (d), inserted the second sentence.

19:31-18.4 Restrictions

(a) The Authority, pursuant to P.L. 2013, c. 161, shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the Business Retention and Relocation Assistance Act, P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.), the Business Employment Incentive Program Act, P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.), or any other program administered by the Authority unless:

1. The business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-245). In the instance of the business terminating an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, the Authority shall recapture all or part of any award, provided that such permitted recapture may be calculated to recognize the period of time that the business was in compliance prior to termination and such recapture amount may be paid after approval by the Authority of the business's application for a tax credit incentive award under P.L. 2013, c. 161, but the recapture amount must be paid before the Authority shall execute the incentive agreement, which shall be executed within 18 months following the date of approval of the business's application;

2. The capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives; or

3. The incentives pursuant to the Business Retention and Relocation Assistance Grant (BRRAG) Program Sales and Use Tax Exemption, sections 19 through 22 of P.L. 2004, c. 65 (N.J.S.A. 34:1B-185 through 188) are awarded simultaneously with the Grow New Jersey Tax credit.

(b) A project that consists solely of point-of-final-purchase retail facilities, excluding catalog distribution centers, shall not be eligible for a grant of tax credits. If a project consists 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 of tax credits. For a qualified business facility that is a mixed-use project that includes retail facilities and that is located in a Garden State Growth Zone or the Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, retail facilities in an amount up to 7.5 percent of the mixed-use project may be included in the mixed-use project application for a grant of tax credits along with the non-retail facilities and that application may include in the aggregate the pro-rata number of full-time employees employed by any number of tenants or other occupants of the included retail facilities. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the

warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by a full-service supermarket or grocery store, located in a Garden State Growth Zone that qualified under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), or catalog distribution centers shall not be considered point-of-final-purchase retail facilities.

(c) For a qualified incubator facility, the maximum number of positions and full-time jobs employed by businesses that are not technology startup companies that are included in the calculation of the total tax credit amount shall not exceed twice the number of positions and full-time jobs employed by technology startup companies. No position or full-time job employed by the operator or a technology startup company may be included in the application as a retained position or full-time job.

(d) For the purposes of the certifications and annual reports required pursuant to the incentive agreement and set forth in N.J.A.C. 19:31-18.7(f) and 18.11(a), if a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs. To the extent an eligible retained full-time job that was the basis of the award no longer exists, the business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award. If a qualified business facility comprises a complex of buildings with different factors affecting the tax credit calculation, the business shall meet the employment requirements related to the retained full-time jobs at each building before receiving benefits for new full-time jobs at any building. The business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, regardless of the location of such position, provided that the position is included in the order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new eligible position filled by a full-time employee or the tax credit for the retained full-time job that no longer exists. The following are examples:

1. A project is approved for 38 new full-time jobs and 53 retained full-time jobs. The business submits a certification that it created 38 new full-time jobs and retained 50 full-time jobs. Because three eligible positions that were the basis of the award no longer exist, three of the new eligible positions shall be included as retained full-time jobs. The jobs in the certification shall be considered as 35 new full-time jobs and 53 retained full-time jobs for the term of the grant. If, in an annual report, retained full-time jobs fall to 45, the jobs in the annual report shall be

the geographical boundaries of the South Jersey Port District, an increase of \$1,500 per year;

15. For a project located within an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6), and which is located within a quarter mile of at least one United States highway and at least two New Jersey State highways, an increase of \$1,500 per year;

16. For a project that generates solar energy on site for use within the project of an amount that equals at least 50 percent of the project's annual electric supply service needs, an increase of \$250.00 per year; and

17. For a qualified business facility in a vacant commercial building or campus having over 1,000,000 square feet of office or laboratory space available for occupancy for a period of over one year that the Authority designates, as listed on the Authority's website at www.njeda.com, an increase of \$1,000 per year.

(d) The gross amount of the tax credit for an eligible business for each new or retained full-time job shall be the sum of the base amount as set forth pursuant to (b) above and the various additional bonus amounts for which the business is eligible pursuant to (c) above, subject to the following limitations:

1. For a mega project or a project in a Garden State Growth Zone, the gross amount for each new or retained full-time job shall not exceed \$15,000 per year;

2. For a qualified business facility located within an urban transit hub municipality, the gross amount for each new or retained full-time job shall not exceed \$12,000 per year;

3. For a qualified business facility in a distressed municipality the gross amount for each new or retained full-time job shall not exceed \$11,000 per year;

4. For a qualified business facility in other priority areas, the gross amount for each new or retained full-time job shall not exceed \$10,500 per year;

5. For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$6,000 per year; and

6. For a disaster recovery project, the gross amount for each new or retained full-time job shall not exceed \$2,000 per year.

(e) After the determination by the Authority of the gross amount of tax credits for which a business is eligible pursuant to (d) above, the final total tax credit amount shall be calculated as follows:

1. For each new full-time job, the business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and

2. For each retained full-time job, the business shall be allowed tax credits equaling the lesser of 50 percent of the gross amount of tax credits for each retained full-time job, or one-tenth of the capital investment, which will be the lesser of actual capital investment or the business's proposed amount approved at application, divided by the number of retained and new full-time jobs per year over the grant term of ten years, unless the jobs are part of a mega project that is the United States headquarters of an automobile manufacturer located within a priority area or a qualified business facility in a Garden State Growth Zone, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job, or unless the new qualified business facility would replace a facility that has been wholly or substantially damaged as a result of a Federally declared disaster, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job. The per retained full-time job tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) into the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g), provided that in no event shall the gross amount of tax credits per retained full-time job exceed the gross amount calculated at the approval of the application. Based on this per retained full-time job calculation, any reduction in the number of retained full-time jobs shall proportionately reduce the amount of tax credits for that year.

(f) For each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed:

1. Thirty-five million dollars (\$35,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority;

2. Thirty million dollars (\$30,000,000) and provides a net positive economic benefit to the State with respect to a mega project or a qualified business facility in a Garden State Growth Zone;

3. Ten million dollars (\$10,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in an urban transit hub municipality;

4. Eight million dollars (\$8,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in a distressed municipality;

5. Four million dollars (\$4,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other priority areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility; and

6. Two-and-a-half million dollars (\$2,500,000) and provides a net positive economic benefit to the State with respect to a qualified business facility in other eligible areas, but not more than 90 percent of the withholdings of the business's employees from the qualified business facility.

(g) Under (f) above, with the exception of a project located within a Garden State Growth Zone which qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, that divides the total capital investment of the project by the total number of full-time jobs at that project, for each application for tax credits in excess of \$4,000,000 annually, the amount of tax credits available to be applied by the business annually shall be the lesser of the maximum amount under the applicable paragraph or an amount determined by the Authority necessary to complete the project, with such determination made by the Authority's utilization of a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations, as applicable; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the Authority, including, but not limited to, factors affecting the decision of the business to relocate, the Authority shall independently verify and confirm the amount necessary to complete the project.

(h) Notwithstanding anything to the contrary in (a) through (g) above, for a project located within a Garden State Growth Zone that qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the total tax credit shall be:

1. For a project that creates or retains 35 or more full-time jobs new to the municipality and makes a capital investment of at least \$5,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$2,000,000 each year of the grant term;

2. For a project that creates or retains 70 or more full-time jobs new to the municipality and makes a capital investment of at least \$10,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$3,000,000 each year of the grant term;

3. For a project that creates or retains 100 or more full-time jobs new to the municipality and makes a capital investment of at least \$15,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$4,000,000 each year of the grant term;

4. For a project that creates or retains 150 or more full-time jobs new to the municipality and makes a capital investment of at least \$20,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs at that project divided by 10 years but not greater than \$5,000,000 each year of the grant term; or

5. For a project that creates or retains 250 or more full-time jobs new to the municipality and makes a capital investment of at least \$30,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i. The total tax credit amount for a qualifying project in a Garden State Growth Zone as calculated pursuant to (a) through (g) above; or

ii. The total capital investment of the project divided by the total number of full-time jobs as defined for this program at that project divided by 10 years.

6. For projects approved under this subsection, the per full-time employee tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to

N.J.A.C. 19:31-18.7(g) into the lesser of the amount of capital investment in the certification accepted by the Authority pursuant to N.J.A.C. 19:31-18.7(g) or the award of tax credits approved by the Board pursuant to N.J.A.C. 19:31-18.7(d). Based on this per full-time employee calculation and provided the business continues to meet the minimum number of employees required in subparagraphs (a), (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-246), any reduction in the number of employees shall proportionately reduce the amount of tax credits for that year, that is, the number of full-time employees will be multiplied by the per full-time employee calculation done at certification.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (c)15, deleted "and" from the end; in (c)16, substituted "and" for a period; added (c)17; rewrote (e)2, (f)1, and (g); in the introductory paragraphs of (h)1 through (h)5, inserted "new to the municipality"; and added (h)6.

Amended by R.2016 d.045, effective May 16, 2016.

See: 47 N.J.R. 3104(a), 48 N.J.R. 103(a), 48 N.J.R. 858(a).

Rewrote (a).

Amended by R.2016 d.059, effective June 6, 2016.

See: 47 N.J.R. 2341(a), 48 N.J.R. 977(b).

In the introductory paragraph of (c), inserted "provided that (c)5, 6, 8, and 10 below shall not apply to a qualified incubator facility".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted the last sentence.

19:31-18.9 Tax credit amount; application and allocation of the tax credit

(a) For each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter.

(b) The business may apply the credit against the tax liability otherwise due 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. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

(c) The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter.

The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period during which it was transferred or in any of the next three successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

(d) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the Director may require.

(e) In connection with a regional distribution facility of foodstuffs, the business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this subsection, leasing shall include subleasing and tenants shall include subtenants.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (c) and (d).

19:31-18.10 Incentive agreement

(a) All approved applicants shall execute an approval letter and an incentive agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of an incentive agreement.

(b) The incentive agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer of the Authority:

1. A detailed description of the proposed project, which will result in job creation or retention, and the number of new or retained full-time jobs that are approved for tax credits;

2. The eligibility period of the tax credits, including the first year for which the tax credits may be claimed;

3. A requirement that the applicant maintain the project at a location in New Jersey for the commitment period,

with at least the minimum number of full-time employees as required by the program, which shall include consideration of bonus award(s) and net positive economic benefit test pursuant to N.J.A.C. 19:31-18.3(a)3ii and the amount of tax credits previously received by the business during the eligibility period, and a provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with the requirements in this paragraph for the commitment duration. Such recapture may include interest on the recapture amount at the rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties and all costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. If all or part of any tax credits awarded is subject to recapture, the Authority will pursue recapture from the business and not from a tax credit transfer certificate purchaser. Tax credit transfer certificate purchasers shall be subject to all other limitations and conditions that apply to the use of the tax credits by the business, including, but not limited to, reduction and forfeiture provisions and the requirement of a letter of compliance for the relevant tax period;

4. Personnel information that will enable the Authority to administer the program;

5. A requirement that the certifications relating to the amount of eligible capital investment and number of employees with supporting evidence, satisfactory to the Authority shall be submitted by the business in accordance with N.J.A.C. 19:31-18.7(f);

6. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

7. Certifications by the business, including the following: the State's financial support will yield a net positive economic benefit to the State;

8. Requirements on maintaining the existence of the business and not relocating the project;

9. Annual reporting requirements for the number of full-time employees for which the tax credits are to be made;

10. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

11. Audit of the payroll records, as deemed necessary by the Authority;

12. Indemnification and insurance requirements;

13. Limitations on the grant of tax credits;

14. A provision which permits the Authority to amend the agreement;

15. Default and remedies; and

16. Reporting requirements.

(c) The incentive agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 2011, c. 149.

Amended by R.2015 d.014, effective January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Section was "Project agreement". Rewrote the section.
Amended by R.2015 d.132, effective August 17, 2015.
See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).
Rewrote (b)3.

19:31-18.11 Reporting requirements and annual reports

(a) After notification pursuant to N.J.A.C. 19:31-18.7(g), the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

1. The number of full-time employees and new or retained full-time positions employed at the qualified business facility, the list of affiliates that contributed to the full-time employees at the qualified business facility, the number of full-time employees in its Statewide workforce as defined in N.J.A.C. 19:31-18.15(a), the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, 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. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in N.J.A.C. 19:31-18.4(d); and

2. For an organization operating a qualified incubator facility that applied on behalf of businesses or positions, the number of full-time employees or positions in the space restricted for use by technology company startup companies and the number of full-time employees or positions outside of the space restricted for use by technology company startup companies. The annual report shall demonstrate that at least 50 percent of the qualified business incubator remains restricted for such use and that any company in the restricted space continues to qualify as a technology startup company.