

“Applicant” means a developer proposing to enter into a redevelopment incentive grant agreement and may include a non-profit organization to which a developer has assigned its ability to apply for a redevelopment incentive grant.

“Authority” means the New Jersey Economic Development Authority established under section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Aviation district” means the area within a one-mile radius of the outermost boundary of the “Atlantic City International Airport,” established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

“Cash on cash yield” means total revenues less operating expenses divided by eligible project costs.

“Deep poverty pocket” means a population census tract having a poverty level of 20 percent or more, according to the 2010 U.S. Census, and which is located within the incentive area.

“Developer” means any person who enters or proposes to enter into a redevelopment incentive grant agreement or an approval letter pursuant to the provisions of the Economic Redevelopment and Growth (ERG) Program, or its successors or assigns, including, but not limited to, a lender that has been approved by the Authority and the State Treasurer and that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

“Developer contributed capital” means equity contributed by the developer.

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

“Disaster recovery project” means a redevelopment project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster, and which is located within the incentive area.

“Distressed municipality” means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act, P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

“Eligibility period” means 10 years for qualified residential projects that receive tax credits or, for all other redevelopment projects, the period of time specified in a redevelopment incentive grant agreement for the payment of reimbursements to a developer, which period shall not exceed 20 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

“Eligible revenue” means any of the incremental revenues set forth in section 6 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489f), except in the case of a Garden State Growth Zone, in which such property tax increment and any other incremental revenues are calculated as those incremental revenues that would have existed notwithstanding the provisions of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161.

“Equity” means cash, development fees, costs for project feasibility incurred within the 12 months prior to application, Federal or local grants, Federal tax credits, property value less any mortgages, and any other investment by the developer in the project deemed acceptable by the Authority in its sole discretion. Property value shall equal either the purchase price, provided the property was purchased pursuant to an arm’s length transaction within 12 months of application, or the value as determined by a current appraisal acceptable to the Authority.

“Fiscal impact analysis” means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State. For the purposes of determining if the applicant fulfills the net positive economic benefit requirement, the analysis needs to demonstrate that the project’s net positive economic benefit equals at least 110 percent of the amount of grant assistance, for the period equal to 75 percent of the useful life of the project not to exceed 20 years. The analysis will be an econometric model that uses project data provided by the developer, including, but not limited to: full-time employees at the qualified business facility in new and retained jobs, amount of capital investment, type of project, occupancy characteristics, and location; and by using this information, shall generate an estimate of direct and indirect economic benefits, including without limitation, non-financial community revitalization objectives including, but not limited to, objectives memorialized in a municipal master plan or plan for an area in need of redevelopment or rehabilitation, or the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project, as deemed reasonable by the Authority, and projected eligible revenues. This information may be supplemented by the use of industry accepted estimates, that is, U.S. Department of Commerce Regional Input-Output Modeling System data, when specific data is not available.

“Full-time employee at the qualified business facility” means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

“Garden State Growth Zone” or “growth zone” means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita

Income and Individuals, and Families Below Poverty Level by City: 2009).

“Highlands development credit receiving area or redevelopment area” means an area located within an incentive area and designated by the Highlands Council for the receipt of Highlands Development Credits under the Highlands Transfer Development Rights Program authorized under section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

“Incentive grant” means reimbursement of all or a portion of the project financing gap of a redevelopment project.

“Infrastructure improvements in the public right-of-way” mean public structures or improvements located in the public right-of-way that are located within a project area or that constitute an ancillary infrastructure project and may include, but not be limited to, signalization and new interchanges, public parking structures, and pedestrian, bicycle-oriented, and mass transit improvements; and public utilities such as water, sewer, electric, and gas, either of which are dedicated to or owned by a governmental body or agency upon completion, or any required payment in lieu of such structures, improvements, or projects or any costs of remediation associated with such structures, improvements, or projects, and that are determined by the Authority, in consultation with applicable State agencies, to be consistent with and in furtherance of State public infrastructure objectives and initiatives.

“Internal rate of return” means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment.

“Local incentive grant” means a grant made pursuant to a redevelopment incentive grant agreement between a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, and which is subject to review by the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs.

“Low-income housing” means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

“Major rail station” means a railroad station located within a qualified incentive area, which provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

“Minimum environmental and sustainability standards” means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132

(N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

“Moderate-income housing” means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

“Municipal redeveloper” means a municipal government or a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3) that is an applicant for a redevelopment incentive grant agreement.

“Municipal Revitalization Index” means the 2007 index by the Office for Planning Advocacy, within the Department of State, measuring or ranking municipal distress.

“Project area” or “redevelopment project area” means land or lands located within the incentive area under common ownership or control, which shall be located in a qualifying economic redevelopment and growth grant incentive area, including, but not limited to, control through a redevelopment agreement with a municipality pursuant to N.J.S.A. 40A:12A-1 et seq., or as otherwise established by a municipality or a redevelopment agreement executed by a State entity to implement a redevelopment project.

“Project cost” means the costs incurred in connection with the redevelopment project by the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, for a specific investment or improvement, including the costs relating to receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13), lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus costs not directly related to construction, of an amount not to exceed 20 percent of the total costs, capitalized interest paid to third parties, and the cost of infrastructure improvements, including ancillary infrastructure projects, and, for projects located in a Garden State Growth Zone only, the cost of infrastructure improvements including any ancillary infrastructure project and the amount by which total project cost exceeds the cost of an alternative location for the redevelopment project, but excluding any particular costs for which the project has

received Federal, State, or local funding. For purposes of this definition, as determined by the Authority, certain Federal tax credit programs that involve significant private investment, including, but not limited to, the Low Income Housing Tax Credit administered by the New Jersey Housing and Mortgage Financing Agency, will not be considered Federal funding.

“Project financing gap” means the part of the project costs that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital or equity or other contributed capital or equity, which shall not be less than 20 percent of the eligible project cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of-way, subject to review by the State Treasurer, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis, and except for final point of sale retail businesses, including, but not limited to, retail, educational, hospital, and hotel projects, the amount by which total project costs exceed the cost of a viable alternative location for the out-of-State redevelopment project in the event the business’s chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of leaving the State and that the project would not occur, but for the provision of the incentive grant under the program. When calculating the project financing gap, the factors set forth at N.J.A.C. 19:31-4.6(a)4, including, but not limited to, internal rate of return on developer’s contributed capital, net profit margin, and cash on cash yield will be considered. The project financing gap may be increased by the cost of capital necessary to raise an amount of current capital sufficient to complete the project when combined with all other sources of capital in recognition that the incremental eligible revenues will be reimbursed over an estimated period of years.

“Qualified incubator facility” means a commercial building located within an incentive area: which contains 100,000 or more square feet of office, laboratory, or industrial space; which is located near, and presents opportunities for collaboration as demonstrated by a written agreement with, a research institution, teaching hospital, college, or university; and within which, at least 75 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

“Qualified residential project” means a redevelopment project for which a developer must submit a temporary certificate of occupancy by July 28, 2015, that is predominantly residential and includes multi-family residential units for purchase or lease, or dormitory units for purchase or lease, having a total project cost of at least \$17,500,000, if the project is located in any municipality with a population greater

than 200,000 according to the latest Federal decennial census, or having a total project cost of at least \$10,000,000 if the project is located in any municipality with a population less than 200,000 according to the latest Federal decennial census, or is a disaster recovery project, or having a total project cost of \$5,000,000 if the project is in a Garden State Growth Zone.

“Qualifying economic redevelopment and growth grant incentive area” or “incentive area” means an aviation district, a port district, a distressed municipality, or an area:

1. Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or

2. Located within:

i. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);

ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4);

iii. A regional growth area, a town, a village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

iv. The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a highlands development credit receiving area or redevelopment area;

v. A Garden State Growth Zone;

vi. Land approved for closure under any Federal Base Closure and Realignment Commission action; or

vii. Only the following portions of the areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive). This subparagraph shall only apply if Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within:

(1) A designated center under the State Development and Redevelopment Plan;

(2) A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts rules to revise this definition as it pertains to State-wide planning areas;

(3) Any 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 40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-14);

(4) Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided such expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals;

(5) The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a highlands development credit receiving area or redevelopment area; or

(6) Any area on which an existing tourism destination project is located.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in the Highlands Water Protection and Planning Act, P.L. 2004, c. 120 (N.J.S.A. 13:20-1 et seq.).

"Redevelopment incentive grant agreement" means an agreement between the State Treasurer, the Authority, and a developer, or a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, under which, in exchange for the proceeds of an incentive grant, the developer agrees to perform any work or undertaking necessary for a redevelopment project, including the clearance, development, or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, residential, or public structures or improvements within a qualifying economic redevelopment and growth grant incentive area or a transit village.

"Redevelopment project" or "project" means a specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, leased, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved, undertaken by a developer, owner, or tenant, or both within a project area and any ancillary infrastructure project including infrastructure improvements in the public right-of-way, as set forth in an application to be made to the Authority. The use of the term "redevelopment project" in sections 3 through 18 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489c et seq.) shall not be limited to only redevelopment projects located in areas 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) but shall also include any work or undertaking in accordance with the Redevelopment Area Bond Financing Law, sections 1 through 10 of P.L. 2001, c. 310 (N.J.S.A. 40A:12A-64 et seq.) or other applicable law, pursuant to a redevelopment plan adopted by a State entity, or as described in the resolution adopted by a public entity created by State law with the power to adopt a redevelopment plan or otherwise determine the location, type, and character of a redevelopment project or part of a redevelopment project on land owned or controlled by it or within its jurisdiction, including, but not limited to, the New Jersey Meadowlands Commission established pursuant to P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), the New Jersey Sports and Exposition Authority established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), and the Fort Monmouth Economic Revitalization Authority created pursuant to P.L. 2010, c. 51 (N.J.S.A. 52:27I-18 et seq.).

"Retained job" means a position that currently exists in New Jersey and is filled by a current employee but which, as certified by the business's chief executive officer, is at risk of being lost to another state or country.

"Revenue increment base" means the amounts of all eligible revenues from sources within the redevelopment project area in the calendar year preceding the year in which the redevelopment incentive grant agreement is executed, as certified by the State Treasurer for State revenues.

"SDA district" means an "SDA district" as defined in section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situate.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

"Square feet of gross leasable area" or "gross leasable area" means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Technology startup company" means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product,

process, or service that the business intends to move to commercialization.

"Tourism destination project" means a redevelopment project that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance.

"Transit project" means a redevelopment project located within a one-half-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-4.7(e)4, a bus station platform is a terminal as listed on the EDA's website at www.njeda.com.

"Transit village" means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its economic development and revitalization goals and designated by the New Jersey Department of Transportation as a transit village.

"Urban transit hub" means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), or all light rail stations and property located within a one-mile radius of the mid-point of the platform area of such a rail, bus, or ferry station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

"Vacant commercial building" means any commercial building or complex of commercial buildings having over 400,000 square feet of office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied at the time of application to the Authority or is negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), or any unleased and unoccupied commercial building in a Garden State Growth Zone having over 35,000 square feet of office, laboratory, or industrial space, or over 200,000 square feet of office, laboratory, or industrial space in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties available for occupancy for a period of over one year.

"Vacant health facility project" means a redevelopment project where a health facility, as defined by section 2 of P.L. 1971, c. 136 (N.J.S.A. 26:2H-2), currently exists and is considered vacant. A health facility shall be considered vacant if at least 70 percent of that facility has not been open

to the public or utilized to serve any patients at the time of application to the Authority.

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote definition "Qualifying economic redevelopment and growth grant incentive area".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In definition "Fiscal impact analysis", inserted ", for the period equal to 75 percent of the useful life of the project not to exceed 20 years"; and added definition "Full-time employee at the qualified business facility".

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

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

Rewrote definitions "Ancillary infrastructure project", "Developer", "Eligible revenue", "Fiscal impact analysis", "Infrastructure improvements in the public right-of-way", "Project area" or "redevelopment project area", "Project financing gap", and "Redevelopment project" or "project"; added definitions "Aviation district", "Deep poverty pocket", "Developer contributed capital", "Disaster recovery project", "Distressed municipality", "Eligibility period", "Garden State Growth Zone" or "growth zone", "Highlands development credit receiving area or redevelopment area", "Low-income housing", "Major rail station", "Minimum environmental and sustainability standards", "Moderate-income housing", "Municipal Revitalization Index", "Project cost", "Qualified incubator facility", "Qualified residential project", "Qualifying economic redevelopment and growth grant incentive area" or "incentive area", "Qualifying economic redevelopment and growth grant incentive area" or "incentive area", "SDA district", "SDA municipality", "Square feet", "Square feet of gross leasable area" or "gross leasable area", "Technology startup company", "Tourism destination project", "Transit project", "Urban transit hub", "Vacant commercial building", and "Vacant health facility project"; in definition "Applicant", and may include "and may include a non-profit organization to which a developer has assigned its ability to apply for a redevelopment incentive grant"; in definition "Redevelopment incentive grant agreement", inserted a comma following "Authority" and "development", and inserted "or a transit village"; and deleted definitions "Eligible project costs", "Net profit margin", "Qualifying economic redevelopment and growth grant incentive area" or "incentive area", and "Soft costs".

19:31-4.3 Eligibility criteria

(a) In order to be eligible for a State or local incentive grant the following must apply:

1. The redevelopment project must be located in a qualifying economic redevelopment and growth grant incentive area, provided, however, that a State incentive grant shall not be given for a project in an incentive area that qualifies as such solely by virtue of being a transit village;
2. The developer must not have commenced any construction at the site of a proposed redevelopment project prior to submitting an application, except as set forth in (a)2i or ii below. For purposes of this paragraph, construction shall have commenced if the project has received site plan approval and started site preparation or utility installation.

- i. In the event construction has commenced on a proposed redevelopment project, the project may be eligible if the Authority, at its sole discretion, determines that the project would not be completed otherwise; or

ii. In the event the project is to be undertaken in phases, a developer may apply for phases for which construction has not yet commenced, subject to N.J.A.C. 19:31-4.6(a)2;

3. For any State incentive grant project consisting of newly-constructed residential units, the developer shall be required, pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-304), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan;

4. A project financing gap exists; and

5. For a State incentive grant, except for a qualified residential project, pursuant to a fiscal impact analysis, the overall public assistance provided to the project will result in net benefits to the State.

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 introductory paragraph of (a); in (a)2ii, updated the N.J.A.C. reference; and rewrote (a)5.

19:31-4.4 Application submission requirements for State incentive grants

(a) A developer that submits an application to the Authority for a State incentive grant shall indicate on the application whether it is also applying for a local incentive grant. In each instance where an applicant indicates that it is also applying for a local incentive grant, the EDA shall forward a copy of the application to the municipality wherein the redevelopment project is to be located so that the local incentive grant may be reviewed and approved by municipal ordinance. A developer or municipal redeveloper that submits an application for a local incentive grant shall indicate on the application whether it is also applying for a State incentive grant.

(b) A developer seeking a State incentive grant shall submit to the Authority the following information in its application:

1. The name of the business;
2. The contact information of the business;
3. Prospective future address of the business (if different);
4. The type of the business;
5. Principal products and services and three-digit North American Industry Classification System number;

6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. An anticipated construction schedule;
9. Estimated project costs, including any State or local grant funding to the project, and proposed terms of financing, including projected internal rate of return on developer's contributed capital, net margin, return on investment, and cash on cash yield;
10. Estimates of the revenue increment base and projection of the eligible revenues for the project, and the assumptions upon which those estimates are made;
11. For qualified residential projects, a certification that it meets the requirements of N.J.A.C. 19:31-4.3(a)3;
12. Estimated costs to the municipality resulting from the project;
13. A written certification by the chief executive officer, or equivalent officer for North American operations, stating:
 - i. That the business applying for the program is not in default with any other program administered by the State of New Jersey; and
 - ii. That he or she has reviewed the application information submitted and that the representations contained therein are accurate;
14. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
15. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101;
16. A list of all development subsidies, as defined by The Development Subsidy Job Goals Accountability Act, P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.), that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;
17. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated upon the local tax map;
18. A list and status of all required State and Federal government permits that have been issued for the redevelopment project, or will be required to be issued pending resolution of financing issues, as well as of all local planning and zoning board approvals, that are required for the redevelopment project;
19. A description of how the project addresses the factors contained in N.J.A.C. 19:31-4.7(b);

20. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction, as listed on the EDA website at www.njeda.com;

21. A copy of a letter of support from the governing body of the municipality in which the proposed redevelopment project or ancillary infrastructure project or infrastructure improvement in the right-of-way is located; and

22. Any other necessary and relevant information as determined by the applicant or the Authority for a specific application.

(c) Any developer shall be allowed to assign their ability to apply for a State incentive grant to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone. The non-profit organization may make an application on behalf of a developer that meets the requirements for the incentive grant, or a group of non-qualifying developers, such that these will be considered a unified project for the purposes of the incentives provided under this subchapter. In addition to the information required pursuant to (b) above, the non-profit organization shall be required to submit:

1. Evidence of the assignment to apply for the tax credit from the developer or the group of non-qualifying developers;
2. The name of the non-profit organization;
3. The contact information of the non-profit organization;
4. The New Jersey employer identification number;
5. The Federal employer identification number; and
6. The mission statement of the non-profit organization.

(d) A developer who has already applied for an incentive grant award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such grant, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for an incentive grant award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions established pursuant to P.L. 2013, c. 161, except that projects with costs exceeding \$200,000,000 shall not be eligible for revised percentage caps under subsection d. of section 19 of P.L. 2013, c. 161.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (b)13.

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

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

Rewrote (b)9, (b)11, (b)20, and (b)21; in (b)19, updated the N.J.A.C. reference; and added (c) and (d).

19:31-4.5 Fees

(a) A developer applying for benefits under this program shall submit a one-time non-refundable application fee of \$5,000, with payment in the form of a check, payable to the "New Jersey Economic Development Authority."

(b) In addition to the application fee in (a) above, a developer shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) For a qualified residential project that receives tax credits, a non-refundable fee of .5 percent of the approved incentive grant or tax credit, not to exceed \$300,000, shall be charged by the Authority prior to the approval of the tax credit. For all other incentive grants, a non-refundable fee of .5 percent of the approved incentive grant, not to exceed \$500,000, shall be charged by the Authority prior to the approval of the incentive grant. The fee shall be refunded if the Authority does not approve the incentive grant or tax credit.

(d) For a qualified residential project that receives tax credits, a non-refundable fee of .5 percent of the tax credit, not to exceed \$300,000, shall be charged upon the receipt of the tax credit certificate. For all other incentive grants, a non-refundable fee of .5 percent of the incentive grant, not to exceed \$500,000, shall be charged upon execution of the incentive grant agreement.

(e) For a qualified residential project that receives tax credits, a developer shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual report. The annual review fee shall be \$2,500 per year.

(f) For a qualified residential project that receives tax credits, upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-4.10 or permission to pledge a tax credit transfer certificate purchase agreement as collateral, a developer shall pay to the Authority a fee of \$2,500.

(g) Upon application to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive agreement and in the incentive grants payable thereunder, a developer shall pay to the Authority a fee of \$2,500.

(h) A non-refundable fee of \$5,000 shall be paid for each request for any administrative changes, additions, or modifications; and a non-refundable fee of \$25,000 shall be paid for any major changes, additions, or modifications, such as those requiring extensive staff time and Board approval.

(i) A non-refundable fee of \$1,000 shall be paid for the first six-month extension to the date by which evidence must

be submitted to demonstrate compliance with the conditions set forth in commitment letter pursuant to N.J.A.C. 19:31-4.8(a); and a non-refundable fee of \$2,500 shall be paid for the second extension to that date.

(j) A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee of \$5,000 for terminations that do not require extensive staff time and Board approval; and a non-refundable fee of \$25,000 for terminations that require extensive staff time or Board approval.

New Rule, R.2015 d.014, effective January 20, 2015.

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

Former N.J.A.C. 19:31-4.5, Financing gap and fiscal impact analysis, recodified to N.J.A.C. 19:31-4.6.

19:31-4.6 Financing gap and fiscal impact analysis

(a) The Authority, in consultation with the State Treasurer, shall review the proposed project costs and evaluate and validate the project financing gap estimated by each developer applying for a State incentive grant, as follows:

1. The Authority will evaluate proposed project costs against reasonable costs as noticed on the EDA website at www.njeda.com for the standard of review, which shall include, but not be limited to, construction, tenant fit out, consultants, rental rates, rates of return and vacancy allowances;

2. For a redevelopment project involving rehabilitation or improvement of an existing building(s), the costs of land acquisition and rehabilitation shall not exceed 100 percent of the replacement cost for new construction, exclusive of any environmental remediation costs. When evaluating a redevelopment project involving rehabilitation or improvement of existing building(s), if a developer spends more than 50 percent of the total cost of acquisition of the building(s) on such rehabilitation or improvement, then the cost of acquisition shall be included in the eligible project costs. With respect to the Authority's evaluation of a redevelopment project pursuant to the requirements of N.J.A.C. 19:31-4.3(a)2i, a developer's future expenditures will have to be at least 50 percent of the project costs previously expended as of its application date in order for the Authority to include the costs expended prior to the application date to be included in the project costs;

3. For large, multi-phased projects that are built sequentially over time, the EDA shall only evaluate and validate the project financing gap on phases of the project with funding commitments;

4. The project financing gap analysis shall include, but not be limited to, an evaluation of the project costs, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, internal rate of return on developer's contributed capital, net profit margin, return on investment, and cash on cash yield in comparison to market

ranges for such items, as noticed on the EDA website at www.njeda.com or, in the Authority's sole discretion, in comparison to alternative financing structures for a comparable project available to the developer or its tenants; and

5. Except for final point of sale retail businesses, including, but not limited to, retail, educational, hospital, or hotel projects, the project financing gap will include the amount by which the total project cost exceeds the cost of a viable alternative location for the out-of-State redevelopment project in the event the business's chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of leaving the State or not being located in the State and that the project would not occur but for the provision of the incentive grant under the program. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the Authority may revoke any award of an incentive grant in its entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to.

(b) The Authority, in consultation with the State Treasurer, shall undertake the fiscal impact analysis by determining whether the overall public assistance provided to the proposed project, except with regard to a qualified residential project, will result in net positive economic benefits equaling 110 percent of the amount of grant assistance, to the State for a period equal to 75 percent of the useful life of the project not to exceed 20 years.

(c) In determining whether the project meets the net positive economic benefits analysis, the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the developer, taxes paid directly or generated indirectly by new or retained jobs, and peripheral economic growth caused by the project including, without limitation, both direct and indirect economic benefits and non-financial community revitalization objectives, to be determined by the Authority in its sole discretion, including, but not limited to, objectives memorialized in a municipal master plan or plan for an area in need of redevelopment or rehabilitation, or the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) For the calculation of new revenues in predominantly retail projects in the net positive economic benefits analysis, the following weighting criteria shall be used:

1. When a project is proximate to a neighboring state jurisdiction (that is, Pennsylvania, Delaware, New York) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided

by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

2. When a project is a destination entertainment and retail facility (that is, a project which contains unique retail establishments, entertainment and/or sports venues) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

3. For projects which are significantly retail in nature, but do not meet either (d)1 or 2 above:

- i. Ongoing State sales tax revenue will be calculated at 0 percent value;
- ii. One-time construction related taxes will be calculated at 100 percent value; and
- iii. Ongoing other tax revenues, for example, corporation business taxes and gross income taxes, will be calculated at 66 percent value.

(e) The State Treasurer will approve or disapprove the redevelopment project costs, the financing gap, and the net positive economic benefits.

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (b), inserted "equaling 110 percent of the amount of grant assistance,".

Recodified from N.J.A.C. 19:31-4.5 and amended by R.2015 d.014, effective January 20, 2015.

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

In the introductory paragraph of (a) and in (b), deleted "redevelopment" following "proposed"; in (a)2, deleted "eligible" preceding the fourth occurrence of "project"; in (a)3, deleted "and" at the end; rewrote (a)4 and (c); added (a)5; and in (b), inserted ", except with regard to a qualified residential project." Former N.J.A.C. 19:31-4.6, Approval of application for State incentive grant, recodified to N.J.A.C. 19:31-4.7.

19:31-4.7 Approval of application for State incentive grant

(a) The Authority and the State Treasurer may, except in the case of a qualified residential project, approve an application only if they make a finding that the State revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for the portion of the project financing gap allocable to the State incentive grant. This finding may be made by an estimation based upon the professional judgment of the Chief Executive Officer of the Authority and the State Treasurer.

(b) In deciding whether or not to recommend entering into a redevelopment incentive agreement, the Chief Executive Officer shall consider the following factors prior to approval:

1. The economic feasibility of the redevelopment project;
2. The extent of economic and related social distress in the municipality and the area to be affected by the

redevelopment project or the level of site specific distress to include dilapidated conditions, brownfields designation, environmental contamination, pattern of vacancy, abandonment, or under utilization of the property, rate of foreclosures, or other site conditions as determined by the Authority;

3. The degree to which the redevelopment project will advance State, regional and local development and planning strategies;

4. The likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred as provided in the redevelopment incentive grant agreement, provided, however, that any tax revenue generated by a redevelopment project that is a disaster recovery project shall be considered new tax revenue, even if the same or more tax revenue was generated at or on the site prior to the disaster;

5. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

6. The need of the redevelopment incentive grant agreement to the viability of the redevelopment project or the promotion of the use of public transportation; and

7. The degree to which the redevelopment project enhances and promotes job creation and economic development or the promotion of the use of public transportation.

(c) The decision whether or not to approve an application and enter into a redevelopment incentive grant is solely within the discretion of the Authority and the State Treasurer, provided they both agree to enter into an agreement.

(d) Except for a local redevelopment incentive grant agreement with a municipal redeveloper or with the developer of a redevelopment project solely with respect to the cost of infrastructure improvements in the public right-of-way, including any ancillary infrastructure project in the public right-of-way, in no event shall the base amount of the combined reimbursements under the redevelopment incentive grant agreements with the State and municipality exceed 20 percent of the total project cost, except in a Garden State Growth Zone, which shall not exceed 30 percent. The maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 30 percent of the total project cost, except for projects located in a Garden State Growth Zone, in which case the maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 40 percent of the total project cost.

(e) The Authority, pursuant to section 19 of P.L. 2013, c. 161 may increase the amount of the reimbursement under the

redevelopment incentive grant agreement with the State by up to 10 percent of the total project cost if the project is:

1. Located in a distressed municipality that lacks adequate access to nutritious food in the judgment of the Chief Executive Officer of the Authority and will include either a supermarket or grocery store with a minimum of 15,000 square feet of selling space devoted to the sale of consumable products or a prepared food establishment selling only nutritious ready-to-serve meals;
2. Located in a distressed municipality that lacks adequate access to health care and health services in the judgment of the Chief Executive Officer of the Authority and will include a health care and health services center with a minimum of 10,000 square feet of space devoted to the provision of health care and health services;
3. Located in a distressed municipality that has a business located therein that is required to respond to a request for proposal to fulfill a contract with the Federal government as set forth in subsection d. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244);
4. A transit project;
5. A qualified residential project in which at least 10 percent of the residential units are constructed as, and reserved for, moderate income housing;
6. Located in a highlands development credit receiving area or redevelopment area;
7. Located in a Garden State Growth Zone;
8. A disaster recovery project;
9. An aviation project;
10. A tourism destination project; or
11. A project involving the substantial rehabilitation or renovation of more than 51 percent of an existing structure or structures.

Recodified from N.J.A.C. 19:31-4.6 and 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. Former N.J.A.C. 19:31-4.7, State incentive grant agreement, recodified to N.J.A.C. 19:31-4.8.

19:31-4.8 State incentive grant agreement

(a) Except for qualified residential projects that receive tax credits, upon approval of the application by the Authority and the State Treasurer, the Authority and the developer will execute a commitment letter providing information specific to the grant amount and containing conditions that must be met prior to receiving the grant. Upon a receipt of evidence from the developer that it has control of the redevelopment project site and offers of financing, which may be conditioned upon execution of the grant agreement, and that it has met any other conditions set forth in the commitment letter, the Authority and the State Treasurer may enter into a State

redevelopment incentive grant agreement with a developer for the reimbursement of incremental State revenues directly realized from businesses operating on the redevelopment project premises.

(b) Except for qualified residential projects that receive tax credits, the Chief Executive Officer of the Authority, in consultation with the State Treasurer, shall negotiate the terms and conditions of any State redevelopment incentive agreement. The State redevelopment incentive grant agreement shall include, but not be limited to, the following terms and conditions as determined by the Authority:

1. The eligibility period, the maximum amount of project cost, the maximum percentage reimbursement amount, the maximum aggregate dollar amount of the incentive grant to be awarded the developer, the maximum annual percentage of reimbursement, the particular tax or taxes to be utilized from those listed in N.J.A.C. 19:31-4.10(a), the order in which multiple taxes will be applied to determine the incentive grant amount, and, for a project receiving an incentive grant in excess of \$50 million, the amount of the negotiated repayment to the State, which may include, but not be limited, to cash, equity, and warrants and shall be up to the amount of the maximum aggregate dollar amount of the reimbursement. If the actual project costs are less than the project costs set forth in the application, the percentage reimbursement amount will be based on the actual project costs. For the purposes of determining the amount and timing of any repayment due for projects receiving an incentive grant in excess of \$50 million, the Authority shall consider such factors as the financial structure of the project, risk of the project, developer returns, magnitude of State support, as well as the returns of various types of revenue generating projects, that is, retail, commercial, and/or hotel. If the project does not produce the anticipated amount of incremental taxes in a given year, the developer shall only receive the approved percentage of actual tax revenue created. No portion of revenues pledged pursuant to P.L. 2013, c. 161 shall be subject to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof in the grant agreement;

2. All payments shall be made annually and subject to annual appropriation and availability of funds;

3. In the absence of extenuating circumstances, the reimbursement schedule, which will indicate the annual percentage amount of reimbursement provided that it not exceed:
 - i. Seventy-five percent of the annual incremental State revenues; or
 - ii. Eighty-five percent of the projected annual incremental revenues in a Garden State Growth Zone.

4. Representations that the developer is in good standing, that the project complies with all applicable law, and

specifically, that the project will comply with the Authority's prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), and the project does not and will not violate any environmental law;

5. The frequency of payments and eligibility period, which shall not exceed 20 years, during which that tax credit shall be granted;

6. Description of the occupancy permit or other event evidencing project completion that begins the eligibility period and whether the project will be undertaken in phases;

7. The requirement that the developer submit, prior to the first disbursement of funds under the agreement, satisfactory evidence of actual project costs, as certified by a certified public accountant, evidence of a temporary certificate of occupancy, or other event evidencing project completion that begins the eligibility period indicated in the incentive agreement, and, if applicable, evidence that the municipality is in substantial compliance with the requirements under N.J.A.C. 19:31-4.3(a)3. In the event the project cost or square footage of the project are reduced below the amount of project cost or square footage of the project in the approval of the incentive grant, the Authority may reevaluate the fiscal impact analysis and financing gap analysis and reduce the size of the grant accordingly;

8. Annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance against established milestones for calculating any necessary repayments pursuant to (b)1 above;

9. Representations that the developer will comply with the green building standards pursuant to N.J.A.C. 19:31-4.4(b)20;

10. To the extent the taxes of such businesses are to be reimbursed, covenant that the developer will notify all businesses operating on the redevelopment project premises that certain incremental taxes are to be reimbursed under the agreement. The developer shall also covenant that the developer shall obtain information about such businesses as is necessary for the State to ascertain the incremental tax revenue. Such information may include, but not be limited to, name, address, taxpayer identification number, change in business ownership and any other information that may be required by the State. The developer shall also acknowledge that the State will not provide to the developer information about individual taxes paid by businesses located at the redevelopment project;

11. Acknowledgement that if the developer has entered into a Brownfield Reimbursement Agreement for the redevelopment project premises, to the extent that the same eligible revenues are identified in both the Brownfields Reimbursement Agreement and the incentive grant, then the incentive grant will not commence until the reimburse-

ment has terminated or otherwise as subject to review of the Division of Taxation;

12. Indemnification and insurance requirements;

13. Events, if any, that would trigger forfeiture of the grant;

14. Default and remedies;

15. Reporting requirements, as required pursuant to N.J.S.A. 52:27D-489f, and other reporting requirements that may be required by law or agreement, such as an annual report and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.); and

16. Requirement to demonstrate that the project continues to be eligible for any increase of reimbursement pursuant to N.J.A.C. 19:31-4.7(e).

(c) Agreement that a fee of \$5,000 annually will be paid to the Division of Taxation and all other administrative costs associated with the incentive grant shall be assessed to the developer and retained by the State Treasurer from the annual incentive grant payments.

Recodified from N.J.A.C. 19:31-4.7 and 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. Former N.J.A.C. 19:31-4.8, Incremental revenue sources, recodified to N.J.A.C. 19:31-4.10.

19:31-4.9 Tax credits for qualified residential projects

(a) In the case of a qualified residential project, if the Authority determines that the estimated amount of incremental revenues pledged towards the State portion of an incentive grant is inadequate to fully fund the amount of the State portion of the incentive grant, then in lieu of an incentive grant based on such incremental revenue, the developer shall be awarded tax credits equal to the full amount of the incentive grant, which shall be taken over a 10-year period, at the rate of one-tenth of the total amount for each tax accounting or privilege period of the developer. For (a)1 through 4 below, not more than \$40,000,000 of credits shall be awarded to any qualified residential project in a deep poverty pocket or distressed municipality and not more than \$20,000,000 of credits shall be awarded to any other qualified residential project. The value of all credits approved by the Authority pursuant to this subsection shall not exceed \$600,000,000, of which:

1. \$250,000,000 shall be restricted to qualified residential projects within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties, of which, \$175,000,000 of credits shall be restricted to qualified residential projects in a Garden State Growth Zone located within the aforementioned counties, and \$75,000,000 of credits shall be restricted to qualified residential projects in municipalities with a 2007 Municipal Revitalization Index of 400 or higher as of the date of

enactment of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161;

2. \$250,000,000 shall be restricted to qualified residential projects located in:

i. Urban transit hubs that are commuter rail in nature that otherwise do not qualify under (a)1 above;

ii. A Garden State Growth Zone not located in a county mentioned in (a)1 above;

iii. Disaster recovery projects that otherwise do not qualify under (a)1 above; or

iv. SDA municipalities located in Hudson County that were awarded State Aid in State Fiscal Year 2013 through the Transitional Aid to Localities program and otherwise do not qualify under (a)1 above;

3. \$75,000,000 shall be restricted to qualified residential projects in distressed municipalities, deep poverty pockets, highlands development credit receiving areas or redevelopment areas, otherwise not qualifying pursuant to (a)1 or 2 above; and

4. \$25,000,000 shall be restricted to qualified residential projects that are located within a qualifying economic redevelopment and growth grant incentive area otherwise not qualifying under (a)1, 2, or 3 above.

(b) In developing a recommendation for allocating tax credits to qualified residential projects, the Chief Executive Officer of the Authority shall take into account, together with the factors set forth at N.J.A.C. 19:31-4.7(b):

1. An evaluation of the residential developer's pro forma analysis;

2. Input from the municipality in which the project is located;

3. Whether the project furthers specific State or municipal planning and development objectives, or both;

4. Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both; and

5. Whether the project contributes to the recovery of areas affected by Superstorm Sandy.

(c) Upon receipt of a recommendation from the Authority staff on the qualified residential facility application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, and promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant.

Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and the requirement that the minimum environmental and sustainability standards, are incorporated into the proposed project including the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment required for the tax credits.

2. In the approval letter to the developer, the Authority shall set a date by which its approval will expire.

(d) Within one year following the date of Board approval by the Authority, each approved developer of a qualified residential facility that has been approved for tax credits shall submit progress information indicating that the developer has site plan approval, financing for, and site control of the qualified business facility or qualified residential project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.

(e) No later than July 28, 2015, each approved developer of a qualified residential facility that has been approved for tax credits shall submit evidence of a temporary certificate of occupancy.

(f) Upon completion of the capital investment and receipt of the occupancy permit or other event evidencing project completion indicated in the approval letter, the developer shall submit a certification of an independent certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the developer has satisfied the conditions relating to the capital investment requirements.

1. Once accepted by the Authority, the certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified residential facility, and in no event will the amount of tax credits exceed the maximum percentage amount of allowed tax credits approved by the Board for the developer's capital investment in a qualified residential project.

2. The certification under this subsection shall be submitted to the Authority no later than 12 months after the submission to the Authority of a temporary certificate of occupancy.

(g) Once the Authority accepts the certification of the developer that it has satisfied the capital investment requirements of the program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the developer and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

(h) After notification, either the developer, the owner of the project, or a tax credit transferee shall furnish to the Authority an annual report in a format as may be determined by the Authority, which shall contain the following information:

1. A certification indicating whether or not the party submitting the report is aware of any condition, event, or act that would cause the business not to be in compliance with the approval, the Act, or this subchapter;

2. Documentary evidence that a deed restriction has been recorded against each residential component of the qualified residential project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;

3. Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by an MAI appraiser or governmental official; and

4. Additional reporting requirements as may be contained in the tax credit certificate.

(i) Failure to submit a copy of the annual report, or submission of the annual report without the information required in (g) above, will result in forfeiture of any annual tax credits to be received by the developer or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the developer or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

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

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

1. The starting date of the tax period and the commitment duration;
2. The amount of the tax credits;
3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;

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

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

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

New Rule, R.2015 d.014, effective January 20, 2015.

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

Former N.J.A.C. 19:31-4.9, Pledge and assignment of grant amount, recodified to N.J.A.C. 19:31-4.11.

19:31-4.10 Incremental revenue sources

(a) Except for projects receiving an increase in the amount of reimbursement under N.J.A.C. 19:31-4.7(b)4, in accordance with a State redevelopment incentive grant agreement beginning upon the receipt of occupancy permits for any portion of the redevelopment project or upon such other event evidencing project completion as set forth in the incentive grant agreement, the State Treasurer will pay to the developer up to an average of 75 percent of the projected annual incremental revenues, or an average of 85 percent of the projected annual incremental revenues in a Garden State Growth Zone, directly realized from businesses operating on or at the site of the redevelopment project from the following taxes:

1. The Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.);

2. The tax imposed on marine insurance companies pursuant to N.J.S.A. 54:16-1 et seq.;

3. The tax imposed on insurers generally, pursuant to P.L. 1945, c. 132 (N.J.S.A. 54:18A-1 et seq.);

4. The public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed on sewerage and water corporations pursuant to P.L. 1940, c. 5 (N.J.S.A. 54:30A-49 et seq.);

5. The tariffs and charges imposed by electric, natural gas, telecommunications, water and sewage utilities, and cable television companies under the jurisdiction of the New Jersey Board of Public Utilities, or comparable entity, except for those tariffs, fees, or taxes related to societal benefits charges assessed pursuant to section 12 of P.L. 1999, c. 23 (N.J.S.A. 48:3-60), any charges paid for compliance with the Global Warming Response Act, P.L. 2007, c. 112 (N.J.S.A. 26:2C-37 et seq.), transitional energy facility assessment unit taxes paid pursuant to section 67 of P.L. 1997, c. 162 (N.J.S.A. 48:2-21.34), and the sales and use taxes on public utility and cable television services and commodities;

6. The tax derived from net profits from business, a distributive share of partnership income, or a pro rata share of S corporation income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.;

7. The tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.);

8. The tax imposed pursuant to P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) from the purchase of furniture, fixtures, and equipment, or materials for the remediation of, or the construction of new structures at the site of a redevelopment project. For the purpose of computing the sales and use tax on the purchase of materials used for remediation, construction of new structures, or the construction of new residences at the site of the project, it shall be presumed by the Director of the Division of Taxation, in lieu of an exact accounting from the developer, suppliers, contractors, subcontractors, and other parties connected with the project, that the tax equals one percent of the developer's contract price for such remediation or construction or such other percentage, not to exceed three percent, that may be agreed to by the director upon the presentation of clear and convincing evidence that the tax on materials is greater than one percent of the contract price for the remediation or construction;

9. The hotel and motel occupancy fee imposed pursuant to section 1 of P.L. 2003, c. 114 (N.J.S.A. 54:32D-1); or

10. The portion of the fee imposed pursuant to section 3 of P.L. 1968, c. 49 (N.J.S.A. 46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" ("New Jersey Affordable Housing Trust Fund") pursuant to section 4 of P.L. 1968, c. 49 (N.J.S.A. 46:15-8).

(b) The Director of the Division of Taxation may retain up to 20 percent of certain State incremental tax revenues, such as the corporate business tax and sales and use tax, for adjustment as necessary, which shall be returned to the developer after such time as the statute of limitations has expired for the specific tax withheld. No portion of revenues pledged pursuant to P.L. 2013, c. 161 shall be subject to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof in the grant agreement.

(c) Incremental revenue shall be calculated as the difference between the amount collected in any fiscal year from any eligible revenue source included in the State incentive grant agreement, less the revenue increment base for that eligible revenue.

Recodified from N.J.A.C. 19:31-4.8 and 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. Former N.J.A.C. 19:31-4.10, Affirmative action and prevailing wage, recodified to N.J.A.C. 19:31-4.12.

19:31-4.11 Pledge, assignment, transfer, or sale of grant amount

(a) A developer may, upon notice to and consent of the Authority and the State Treasurer, which consent shall not be unreasonably withheld, pledge, assign, transfer, or sell any or all of its right, title, and interest in and to such agreements and in the incentive grants payable thereunder, and the right to receive same, along with the rights and remedies provided to the developer under such agreement. Any such assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Any pledge of incentive grants made by the developer shall be valid and binding from the time when the pledge is made and filed in the records of the Authority. The incentive grants so pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. Neither the redevelopment incentive grant agreement nor any other instrument by which a pledge under this section is created need be filed or recorded except with the Authority.

(b) A developer may apply to the Director of the Division of Taxation and the Chief Executive Officer of the Authority for a tax credit transfer certificate, if the developer is awarded a tax credit pursuant to N.J.A.C. 19:31-4.8(d), covering one or more years, in lieu of the developer being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$100,000 of tax credits, provided that one transfer consisting of any remainder that is less than \$100,000 may be made in each tax period in an amount less than \$100,000, to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the developer shall include a statement waiving the developer's right to claim that amount of the credit against the taxes that the developer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this subsection shall not be exchanged for consideration received by the developer of less than 75 percent of the transferred credit amount, as determined at present value. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the developer who originally applied for and was allowed the credit.

Recodified from N.J.A.C. 19:31-4.9 and 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 "Pledge and assignment of grant amount". Inserted designation (a); in (a), substituted ", assign, transfer, or sell any or all of its right, title," for "and assign as security for any loan or bond any or all of its right, title"; and added (b). Former N.J.A.C. 19:31-4.11, Severability, recodified to N.J.A.C. 19:31-4.14.

19:31-4.12 Affirmative action and prevailing wage

The Authority's affirmative action requirements P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to State incentive grant projects undertaken in connection with financial assistance received under the Economic Redevelopment and Growth Program; and, for a State incentive grant solely for infrastructure improvements in the public right-of-way or any ancillary infrastructure project, regardless of whether the work or improvements are part of a larger redevelopment project, only to the work relating to the infrastructure improvements in the public right-of-way or the ancillary infrastructure project for which the incentive grant is issued.

Recodified from N.J.A.C. 19:31-4.10 and 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.

19:31-4.13 Appeals

(a) The Board's action on applications shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the

appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

New Rule, R.2015 d.014, effective January 20, 2015.

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

19:31-4.14 Severability

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

Recodified from N.J.A.C. 19:31-4.11 by R.2015 d.014, effective January 20, 2015.

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

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. MAIN STREET BUSINESS ASSISTANCE PROGRAM

19:31-6.1 Applicability and scope

The New Jersey Economic Development Authority is promulgating these rules to implement the Main Street Business Assistance Program Act, P.L. 2008, c. 117 (the "Act"). The Act established the Main Street Business Assistance Program to provide guarantees and loans to small and mid-size businesses and not-for-profit organizations on an expedited basis to stimulate the economy.

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

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

Deleted "for a period not to exceed two years from the date of enactment" following "basis".

19:31-6.2 Terms of financial assistance

(a) Under the Main Street Business Assistance Program, the Authority may provide direct loan, loan participation and/or guarantee products and line of credit guarantee products.

1. For the direct loan and loan participation product, the maximum amount will be \$1 million per total transaction for fixed assets and \$750,000 per transaction for working capital, not to exceed 25 percent of total transaction;

2. For the loan guarantee product, the maximum guarantee will be \$2 million per transaction for fixed assets and \$1.5 million per transaction for working capital, not to exceed 50 percent of total transaction; and

3. For the line of credit product, the maximum amount will be \$500,000, not to exceed 50 percent of the total transaction.

(b) The combination of direct loan, loan participation, loan guarantee and line of credit guarantee shall not exceed the lesser of \$2 million or 50 percent of total bank commitment.

(c) The Authority shall provide public notice of the rate of interest to be charged for the Main Street Business Assistance Program as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

(d) For purposes of (a)1 and 2 above, the term shall not exceed five years; and for (a)3 above, the term shall be up to two years based on the term of bank line of credit.

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

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

In (a)3, substituted "\$500,000" for "\$250,000".

19:31-6.3 Eligibility criteria

(a) Under the Main Street Business Assistance Program, preference for assistance will be given to:

1. A business which has operated continuously for at least the two years preceding the filing of an application; and

2. A project which may:

- i. Maintain employment;
- ii. Create or maintain tax ratables;
- iii. Be located in an economically distressed area; or

iv. Represent an important economic sector of the State.

19:31-6.4 Application requirements

(a) A business seeking to participate in the direct loan, loan participation and guarantee and line of credit products shall comply with the Authority's application procedures as set forth in N.J.A.C. 19:31-2.3.

(b) Authority staff will undertake the evaluation process set forth at N.J.A.C. 19:31-2.4. The Chief Executive Officer shall review and may approve applications, which will be processed in the order in which completed applications are received.

19:31-6.5 Affirmative action and prevailing wage

The Authority's affirmative action requirements P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to projects undertaken in connection with financial assistance received under the Main Street Business Assistance Program.

SUBCHAPTER 7. LOCAL DEVELOPMENT FINANCING FUND
19:31-7.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement "The New Jersey Local Development Financing Fund Act" (P.L. 1983, c. 190). This Act established the Local Development Financing Fund, a special depository fund for the purpose of providing financial assistance to certain commercial and industrial projects in certain municipalities who sponsor these projects.

19:31-7.2 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 Local Development Financing Fund Act (P.L. 1983, c.190) as amended and supplemented.

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

(e) The tax credits are not refundable and shall not result in a refund in the event that they do not equal or exceed a business's tax liability.

(f) The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the business does not take more than one-tenth of its approved credit amount in any tax period and the value of all credits approved by the Authority against tax liabilities pursuant to P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.), in any fiscal year, shall not exceed \$150,000,000.

(g) The amount of credit for any tax period ending eight years after the effective date of P.L. 2007, c. 346 (N.J.S.A. 34:1B-207) (January 13, 2008) during which the documentation of a business' credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year eligibility period shall remain available to it.

Amended by R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Rewrote the introductory paragraph of (a); in (a)2, inserted "or condominium's"; rewrote (b); deleted former (c); recodified former (d) through (h) as (c) through (g); and rewrote (c).

Amended by R.2012 d.044, effective February 21, 2012.
See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote (f).

Amended by R.2012 d.118, effective June 18, 2012.
See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In the introductory paragraph of (a), inserted "the lesser of the amount which satisfies the net benefit test pursuant to N.J.A.C. 19:31-9.7(c), or either"; in the introductory paragraph of (b), inserted "beginning with the tax period in which the business is first certified by the Authority as having met the investment capital and employment qualifications,"; and rewrote (g).

19:31-9.10 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity

of the transferee. The total amount transferred for any single tax period shall be at least \$1 million in tax credits. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business' right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

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

(c) In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-9.5(a).

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

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

New Rule, R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

Former N.J.A.C. 19:31-9.10, Reduction and forfeiture of tax credits, recodified to N.J.A.C. 19:31-9.12.

Repeal and New Rule, R.2012 d.044, effective February 21, 2012.
See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).
Section was "Application for tax credit transfer certificate".

19:31-9.11 Cap on total credits

The value of all credits approved by the Authority shall not exceed \$1,500,000,000 of which the Authority may approve up to \$150,000,000 in credits in the aggregate for residential developers making capital investments in qualified residential projects, provided that for each qualified residential facility, the residential developer shall be allowed tax credits of no more than 35 percent of its capital investment. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the \$150,000,000 cap be exceeded for allocation to qualified residential projects, as is deemed reasonable, justified and appropriate.

New Rule, R.2010 d.177, effective August 16, 2010.
See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).
Former N.J.A.C. 19:31-9.11, Reporting requirements, recodified to N.J.A.C. 19:31-9.14.
Amended by R.2012 d.044, effective February 21, 2012.
See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).
Substituted "35" for "20".

19:31-9.12 Reduction and forfeiture of tax credits

(a) Unless excepted pursuant to (a)2 below, the amount of the annual credit otherwise available shall be reduced by 20 percent for that tax period if:

1. Fewer than 200 full-time employees at the qualified business facility or, if the applicant is a tenant and has qualified under N.J.A.C. 19:31-9.3(a)2iii, fewer than 200 full-time employees in the aggregate are employed in new full-time positions in any tax period.

i. This reduction will remain for each subsequent tax period until the first period for which documentation demonstrating the restoration of the 200 full-time employees employed in new full-time positions at the qualified business facility has been reviewed and approved by the Authority.

ii. Once documentation restoring the 200 full-time employees employed in new full-time positions has been approved, for the current tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

2. For businesses applying before January 1, 2010, there shall be no reduction if a business relocates to an urban transit hub from another location or locations in the same municipality.

(b) If, in any tax period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under

N.J.A.C. 19:31-9.7(e), then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the 250 full-time employees at the qualified business facility.

(c) If, in any tax period, the number of full-time employees employed by the business at the qualified business facility drops below 250 or the number of full-time employees, who are not the subject of intra-State job transfers, pursuant to N.J.A.C. 19:31-9.3(g)1, employed by the business at any other business facility in the State, whether or not located in an urban transit hub within an eligible municipality, drops by more than 20 percent from the number of full-time employees in its workforce in the last tax accounting or privilege period prior to the credit amount approval under N.J.A.C. 19:31-9.7(e), then the business shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 250 or an increase above the 20 percent reduction has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(d) If in any year in which the residential components of the qualified residential project no longer constitutes the preponderance thereof as it existed at the time of certification of the tax credit amount, the residential developer or his assignee shall forfeit its annual credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating that the qualified residential project consists of the preponderance of residential units as existed at the time of certification of the tax credit amount has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed. Additions of commercial space to the project shall not be considered in this determination.

Recodified from N.J.A.C. 19:31-9.10 and amended by R.2010 d.177, effective August 16, 2010.

See: 42 N.J.R. 907(a), 42 N.J.R. 1902(a).

In the introductory paragraph of (a), substituted "available" for "determined pursuant to final calculation of the award of tax credits"; rewrote the introductory paragraph of (a)1, and (b) and (d); and in (a)2, substituted "For businesses applying before January 1, 2010, there" for "There". Former N.J.A.C. 19:31-9.12, Events of default, repealed.
Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

In (b), substituted "N.J.A.C. 19:31-9.7(e)" for "this section"; and rewrote (c) and (d).

works as an intern, as a temporary employee, or in a temporary position.

“Full-time employee working in this State” means a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

“Greater New Brunswick innovation zone” means the innovation zone bounded as follows: in the north by Route 287 to Stelton Road to Metlars Lane to Route 18, in the east by Route 1, in the south by Suydam Road/Claremont Road/Finnegan’s Lane, and in the west by the Millstone River and Raritan River, which includes parts of North Brunswick, New Brunswick, Piscataway and Franklin Township and Rutgers University’s Livingston campus.

“Innovation zone” means any of the three zones located in the northern, central and southern portions of New Jersey designated by the Authority as the Newark innovation zone, North/New Brunswick innovation zone and Camden innovation zone, respectively.

“License” means an agreement that states therein that it is granting an exclusive license that authorizes the applicant to control aspects of the development of the protected proprietary intellectual property. License shall not include an agreement, such as an exclusive distribution agreement or similar business arrangement that is not registered with the U.S. Federal Government, such as the U.S. Patent and Trademark Office, that does not grant the applicant control of the protected proprietary intellectual property.

“Net operating loss” means the excess of the deductions over the gross income used in computing entire net income in a specific year without regard to the net operating loss carryover to that year and the dividend exclusion, as provided in N.J.S.A. 54:10A-4(k)(6)(C).

“New or expanding” means a technology or biotechnology company that:

1. On June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L. 1997, c. 334 (N.J.S.A. 34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate, has fewer than 225 employees in the United States of America;
2. On June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for less than three years, has at least five full-time employees working in this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for more than three years but less than five years, and has at least 10 full-time employees working in

this State if the company has been incorporated or formed, irrespective of corporate structure or tax status, for more than five years; and

3. On the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in paragraph 2 above.

In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.

“Newark innovation zone” means the innovation zone in the northern part of the State bounded as follows: in the north by Interstate 280, in the east by McCarter Highway (Route 21) and the Pennsylvania Railroad, in the south by Market Street to South Orange Avenue, and in the west by Bergen Street.

“Program” means the Technology Business Tax Certificate Transfer Program.

“Protected proprietary intellectual property” means intellectual property that is the technology of the applicant’s primary business as a technology or biotechnology business that is also protected via a patent pending, patent awaiting approval, approved patent, or registered copyright.

“Research and development tax credits” means a tax credit against corporation business tax liabilities for taxpayers who have performed qualified research activities in New Jersey, calculated in the manner as the Federal tax credit for increasing research activities. The credit is based on qualified expenditures in New Jersey beginning on or after January 1, 1994. It provides a credit of 10 percent of the excess qualified research expenses over a base amount plus 10 percent of the basic research payments. Taxpayers must complete New Jersey Division of Taxation—Corporate Business Tax Form 306 to claim their credit. The amount of credit claimed for any single tax year cannot exceed 50 percent of that year’s tax liability prior to the consideration of this credit and it cannot reduce the tax liability below the statutory minimum, as set forth in N.J.S.A. 54:10A-5.24.

“Selling business” means a new or expanding technology and/or biotechnology business that has unused net operating loss carryover and/or unused research and development tax credits which it wishes to “sell.”

“Technology business” means an emerging corporation, that has a headquarters or base of operations located in New Jersey, that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following:

highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. Examples of activities satisfying this definition include: the designing and developing of computing hardware and software; the research, development, production, or provision of materials with engineered properties created through the company's development of specialized processing and synthesis technology and the research, development, production or provision of 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.

"Unused net operating loss carryover" means net operating loss for any tax year as defined in N.J.S.A. 54:10A-4(k)(6)(B).

"Unused research and development tax credits" means the amount of tax credit otherwise allowable which cannot be applied because it would reduce the tax liability below 50 percent of the liability prior to consideration of the credit or it reduces the tax below the statutory minimum, as provided in N.J.S.A. 54:10A-5.24(b).

Amended by R.2003 d.297, effective July 21, 2003.

See: 35 N.J.R. 1655(a), 35 N.J.R. 3393(a).

Added "New applicant", "Re-certification applicant", "Returning applicant".

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

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

Added "Camden innovation zone", "Innovation zone", "Newark innovation zone" and "North/New Brunswick innovation zone" definitions.

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In definition "Biotechnology business", substituted "corporation" for "company" and inserted "that owns, has filed for, or has a license to use protected, proprietary intellectual property"; in definition "New or expanding", added the last sentence; and rewrote definition "Technology business".

Amended by R.2008 d.164, effective June 16, 2008.

See: 40 N.J.R. 1630(a), 40 N.J.R. 3748(a).

Rewrote definition "New or expanding".

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In definition "Allowable expenditures", substituted "business" for "company" and inserted "and" preceding "research"; rewrote definitions "Biotechnology business", "New or expanding" and "Unused net operating loss carryover"; in definition "Camden innovation zone", substituted "Bridge" for "bridge"; added definitions "Financial statements", "Full-time employee", "Greater New Brunswick innovation zone", "License" and "Protected proprietary intellectual property"; and deleted definitions "New applicant", "North/New Brunswick innovation zone", "Re-certification applicant" and "Returning applicant".

Amended by R.2012 d.119, effective June 18, 2012.

See: 44 N.J.R. 665(a), 44 N.J.R. 1794(a).

Added definition "Full-time employee working in this State"; and in paragraph 2 of definition "New or expanding", inserted "or formed, irrespective of corporate structure or tax status," three times.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

Rewrote definitions "Full-time employee", "License", and "Protected proprietary intellectual property".

19:31-12.3 Eligibility

(a) A business shall be eligible to apply to the program if the Authority finds that the business:

1. Meets the definition of a technology or biotechnology business;
2. Has unused amounts of research and development tax credits and/or unused net operating loss carryover; and
3. Meets the definition of new or expanding.

(b) No application shall be approved in which the business:

1. Has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements;
2. Is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliated corporations, as filed for Federal income tax purposes, that in aggregate has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements; or
3. Filed its application, such that the Authority received the application after June 30 of the program cycle year.

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)3, inserted "or no" following "negative net".

Amended by R.2003 d.443, effective November 3, 2003.

See: 35 N.J.R. 3466(a), 35 N.J.R. 5162(a).

In (a)4, inserted last sentence.

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In (a)2, inserted "and" at the end; rewrote (a)3; deleted (a)4; and added (b) and (c).

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a)3, deleted " provided that returning applicants are not required to meet this condition of eligibility"; in (b)1, inserted "operating" and "or"; deleted former (b)2; recodified former (b)3 as (b)2; in (b)2, inserted "operating" twice; and deleted (c).

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

In (b)1, deleted "or" from the end; in (b)2, substituted " ; or" for a period at the end; and added (b)3.

19:31-12.4 Application to the program

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable \$2,500 application fee. Complete applications must be received by June 30 for each State fiscal year.

(b) In order for the Department of Treasury, Division of Taxation to issue a certificate, each application submitted to the program shall include: a selling business application which includes the information set forth in (c) below; a

spending certification form attesting to having spent the proceeds of the prior year's sale of tax benefits in accordance with the definition of allowable expenditures; a Buying Business Information Sheet which identifies the buying business name, address, telephone number, the estimated value of benefits to be transferred in an amount equal to at least 80 percent of the surrendered tax benefit and from whom and a business certification; an agreement between the buying and selling business defining the terms of the sale of the certificate; and the Tax Benefit Identification Form which summarizes the accumulated net operating losses and research and development credits authorized to be sold and the value intended to be sold. For determination of eligibility for the program, the initial application package shall also include a selling business application and a spending certification form.

(c) In addition to the material specified in (b) above, a completed application shall include, but is not limited to:

1. A description of the nature of the business conducted by the company;
2. A company business plan;
3. Financial statements for the two most recent full years of operation;
4. A list of all affiliates and subsidiaries as reflected on the consolidated financial statements of the applicant and the number and location of all employees of such corporation(s);
5. A list of all entities and affiliated groups of corporations that directly or indirectly own or control 50 percent or greater of the selling business, the number and location of all employees of such corporation(s), and the two most recent full years of financial statements for each;
6. A list of all entities that form a consolidated group of affiliated corporations, as filed for Federal income tax purposes, the number and location of all employees of such corporation(s), and financial statements for the two most recent full years of operation;
7. A representation as to the location of the applicant's primary place of business in an Innovation Zone;
8. A description of the applicant's technology or biotechnology business which shall demonstrate that such business is the primary business of the applicant and that the applicant meets the other criteria of the definition of technology or biotechnology business. Where applicable, documentation of protected proprietary intellectual property must be provided;
9. A list of all full-time employees employed in this State, including Social Security number for each, address on record with the applicant for each employee, whether the employee has submitted a Certificate of Non-residence for an exemption from the New Jersey Gross Income Tax, whether any employee is pursuing a higher education degree, if so known to the applicant, whether any employee

is related, as defined in Section 152(d)(2) of the Internal Revenue Code, to any other employee, shareholder, or investor if so known to the applicant, and copies of most recent year's Federal and New Jersey W-3 forms for applicant, parent company, and all related entities, or documentation from a professional employer organization summarizing W-2 forms issued on behalf of the applicant, parent company, and all related entities in New Jersey and in the United States for the calendar year prior to the year in which the company files its application and at the time of the application;

10. The employment offer letter, resume, and job description for every employee hired in the current year;

11. A list of 100 percent of ownership of the applicant by percentage;

12. A copy of the certificate of incorporation/formation for the applicant and its earliest predecessor entity; and

13. Any other supplemental information required by the Authority.

(d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the Authority's Board of Directors at its scheduled public meeting.

(e) The Division of Taxation, Department of the Treasury separately reviews applicants and may make recommendations regarding program eligibility.

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), rewrote the second sentence.

Amended by R.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (a), deleted "July 28, 1999 for consideration in State FY 00 and by" preceding "June 30"; in (c)3, inserted "and/or tax returns for the same periods" at the end of the paragraph.

Amended by R.2002 d.254, effective August 5, 2002.
See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (c), substituted "three" for "two" in 3, rewrote 4 and 5, deleted former 10 and 11, recodified former 12 as 10 and deleted "and projected two years", and recodified former 13 as 11.

Amended by R.2003 d.297, effective July 21, 2003.
See: 35 N.J.R. 1655(a), 35 N.J.R. 3393(a).

Rewrote (a).

Amended by R.2006 d.284, effective August 7, 2006.
See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In (a)1 and (a)2, substituted "\$1,500" for "\$1,000"; rewrote (a)3; and rewrote (c).

Amended by R.2008 d.164, effective June 16, 2008.
See: 40 N.J.R. 1630(a), 40 N.J.R. 3748(a).

In the introductory paragraph of (a), inserted ", including new, recertification and returning applications," and "\$2,500", and deleted "as outlined in (a)1 through (a)3 below" following "fee"; and deleted (a)1 through (a)3.

Amended by R.2010 d.206, effective October 4, 2010.
See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a), deleted ", including new, recertification and returning applications," following "program"; in (b), inserted "in an amount equal to at least 80 percent of the surrendered tax benefit"; rewrote (c)3; deleted former (c)4 and (c)5; recodified former (c)6 through (c)8 as (c)4 through (c)6; in (c)6, inserted "financial statements for" preceding "the two most" and substituted "operation" for "financial statements for each"; deleted former (c)9 through (c)12; recodified former (c)13 as (c)7; in

(c)7, deleted "or a state-sponsored incubator site" following "Zone"; added new (c)8 through (c)11; deleted (c)14; and recodified former (c)15 as (c)12.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

Rewrote (c)4 and (c)9; in (c)5 and (c)6, substituted "entities" for "corporations"; added new (c)10; recodified former (c)10 through (c)12 as (c)11 through (c)13; in (c)11, deleted "percent" following "ownership"; rewrote (c)12; and in (e), inserted "the".

19:31-12.5 Evaluation process

(a) When all of the required information is received, the Authority shall perform its own review based on the standards set forth in N.J.A.C. 19:31-12.3.

(b) After completing its review under (a) above, a preliminary determination shall be made by the Authority as to the merits of the request and its adherence to the statutory requirements of the program. Upon this determination, the applicant will receive notification of preliminary approval that will state the conditions that must be met before the Authority will issue final approval. The notification of preliminary approval will state that the Authority will forward the application to the Division of Taxation only upon receipt of the following:

1. A Buying Business Information Sheet which identifies the buyer, the amount of tax benefits to be sold and the selling price;

2. A Tax Benefit Identification Form on which the applicant lists the amount of tax benefits they wish to sell and the years that the Net Operating Loss's and/or Research and Development tax credits were incurred;

3. A Private Financial Assistance Form specifying how the applicant will expend the private financial assistance for allowable expenditures for the operations of the company;

4. An executed form of the standard selling agreement, with the Private Financial Assistance Form attached as an exhibit; and

5. If the applicant was authorized to sell and did sell tax benefits in the prior year, a spending certification that attests that the applicant spent the proceeds of the prior year's sale of tax benefits in accordance with the prior year's Private Financial Assistance Form.

(c) After approval of the tax benefit by the Division of Taxation as evidenced by the issuance of a tax certificate which will be sent to the Authority, the Authority will issue final approval of the grant only upon the receipt of a certificate from the applicant, dated the date of the closing of the sale of the tax benefit certificate that states, among other matters, the number of employees employed on that date by the applicant in the United States of America and in New Jersey, and that as of the date of the certificate, the company is operating as a new or expanding emerging biotechnology or technology business and has no current intention to cease

operating as a new or expanding emerging biotechnology or technology business.

Amended by R.2002 d.254, effective August 5, 2002.

See: 34 N.J.R. 1603(a), 34 N.J.R. 2800(b).

In (a), rewrote 4 and 5i.

Amended by R.2002 d.334, effective October 7, 2002.

See: 34 N.J.R. 2414(a), 34 N.J.R. 3531(b).

Rewrote (b) and (c).

Amended by R.2003 d.443, effective November 3, 2003.

See: 35 N.J.R. 3466(a), 35 N.J.R. 5162(a).

Rewrote (c).

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

Rewrote (a)4 through (a)6.

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

In (a), substituted "the standards set forth in N.J.A.C. 19:31-12.3." for "the following minimum criteria."; deleted (a)1 through (a)6; and in (c), inserted "the number of employees employed on that date by the applicant in the United States of America and in New Jersey, and" and deleted the last sentence.

19:31-12.6 Approval process

(a) All applications for eligibility in the program shall be presented to the members of the Authority for approval or denial.

(b) When the members approve or deny a request, the minutes at which such determination occurs are submitted to the Governor.

(c) The members' action is effective 10 working days after the Governor's receipt of the minutes, provided no veto has been issued.

(d) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. The Authority cannot consider any new evidence or information about the project other than evidence or information that would demonstrate that the applicant met all of the application criteria by the June 30 deadline. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his/her finding(s) and recommendation(s) on the merits of the appeal; and

3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final decision on the appeal.

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.2001 d.242, effective July 16, 2001.
See: 33 N.J.R. 1567(a), 33 N.J.R. 2495(b).

In (d), rewrote the first sentence.

Amended by R.2006 d.284, effective August 7, 2006.
See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In the third sentence of (d), inserted "which" and substituted "considered" for "reconsidered".

Amended by R.2010 d.206, effective October 4, 2010.
See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Rewrote (a); in (b), inserted "approve or" and substituted "determination" for "denial"; rewrote the introductory paragraph of (d); and added (d)1 through (d)3.

19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide no more than \$60,000,000 of tax benefits over each State fiscal year. Of the \$60,000,000 of transferable tax benefits authorized for each State fiscal year \$10,000,000 shall be allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones, except as provided in (a)2ii below. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of \$15,000,000.

2. The Authority shall allocate the \$10,000,000 designated for eligible companies in innovation zones as follows:

i. For eligible companies in innovation zones, each company is eligible for an allocation of the lesser of \$250,000 or the value of their eligible benefits. After these allocations are made to these companies from the \$10,000,000 innovation zone allocation, any remaining balance of the \$10,000,000 shall be apportioned among eligible companies in innovation zones with unmet eligible benefits on a pro rata basis;

ii. If, in any State fiscal year, there is an unused portion of the \$10,000,000 allocated exclusively for companies in innovation zones, that portion shall be available for that State fiscal year for the surrender of transferable tax benefits by new and/or expanding emerging technology and biotechnology businesses that do not operate within the boundaries of an innovation zone; and

iii. The eligible companies in innovation zones with remaining unmet eligible benefits shall participate in the allocation of the remaining pool as set forth in (a)3 below.

3. The Authority shall allocate the remaining tax benefits as follows:

i. Businesses with less than \$250,000 in tax benefits will be authorized to sell all of their benefits in the current year;

ii. Businesses with more than \$250,000 in tax benefits will be authorized to sell at least \$250,000 of their benefits in the current year; and

iii. If the total amount of benefits authorized under (a)2 and 3i and ii above exceeds \$60,000,000, each applicant shall receive a lesser amount on an apportioned basis, otherwise after the dollars are set aside in the amounts provided in (a)2 and 3i and ii above, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than \$250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

Numerator of Fiscal Year Dollar Authorization
less Total Minimum Tax Benefits Authorized over
denominator of Total Tax Benefits Requested to be
Transferred less Total Minimum Tax Benefits
Authorized.

The total minimum tax benefits authorized is the amount authorized for businesses with less than \$250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than \$250,000 of tax benefits. The total tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.

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), deleted "\$50,000,000 of tax benefits over State fiscal year 2000 and" following "provide" in the introductory paragraph.
Amended by R.2005 d.274, effective August 15, 2005.

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

In (a), rewrote the introductory paragraph and added new 4, recodified 4 as 5.

Administrative correction.

See: 37 N.J.R. 3724(a).

Amended by R.2006 d.284, effective August 7, 2006.

See: 38 N.J.R. 1801(a), 38 N.J.R. 3184(c).

In the introductory paragraph of (a), deleted "\$10 million shall be so allocated for eligible companies that operate within the boundaries of the innovation zones in each respective State fiscal year thereafter" from the end of the second sentence; in (a)3, inserted "also" in the second sentence, and added the last sentence; and in (b), substituted "applicants" for "applications".

Amended by R.2010 d.206, effective October 4, 2010.

See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

Rewrote the section.

Amended by R.2013 d.099, effective August 5, 2013.

See: 45 N.J.R. 1098(a), 45 N.J.R. 1921(b).

In (a)1, substituted "\$15,000,000" for "\$15 million"; in the introductory paragraph of (a)2, and in (a)2i and (a)2ii, substituted

“\$10,000,000” for “\$10 million” throughout; and in (a)3iii, substituted “\$60,000,000” for “\$60 million”.

19:31-12.8 Recapture of tax benefits

(a) Unless excepted pursuant to (b) below, if a selling business fails to use the private financial assistance received for the surrender of tax benefits as required by this subchapter or fails to maintain a headquarters or a base of operation in the State during the five years following receipt of the private financial assistance, the seller shall forfeit and remit the face value of the tax credit certificate received for the surrender of tax benefits to the Department of Treasury in accordance with the provisions below.

(b) The forfeiture requirement in (a) above pertaining to the failure to maintain a headquarters or a base of operation in this State shall not be applicable if the failure is due to the liquidation of the new or expanding emerging technology or biotechnology business.

(c) In the event a selling business fails to maintain a headquarters or base of operation in the State during the five years following the receipt of the private financial assistance, the Authority will allow the selling business to retain 20 percent of the face value of the tax credit certificate for each full year the business remained in New Jersey providing the business forfeits and remits to the Department of Treasury 20 percent per year on a cumulative basis for each year the business had remaining on the five year requirement to maintain a headquarters or base of operation in New Jersey.

Examples:

Move within one year of disbursement, recapture percentage equal to 100 percent of the face value of the tax credit certificate

Move within two years of disbursement, recapture percentage equal to 80 percent of the face value of the tax credit certificate

Move within three years of disbursement, recapture percentage equal to 60 percent of the face value of the tax credit certificate

Move within four years of the disbursement, recapture percentage equal to 40 percent of the face value of the tax credit certificate

Move within five years of the disbursement, recapture percentage equal to 20 percent of the face value of the tax credit certificate

(d) In the event a selling business fails to use the tax benefits or cash benefits as required by the Act, the Authority shall require the selling business to remit to the Department of Treasury 100 percent of the amount of the unallowable expenditures.

New Rule, R.2010 d.206, effective October 4, 2010.
See: 42 N.J.R. 1348(a), 42 N.J.R. 2322(b).

SUBCHAPTER 13. ENERGY SALES TAX EXEMPTION PROGRAM

19:31-13.1 Applicability and scope

The rules in this subchapter were promulgated by the New Jersey Commerce, Economic Growth and Tourism Commission (the “Commission”) to implement P.L. 2004, c.65 (the “Act”), and specifically, section 23 of the Act (N.J.S.A.

Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-209).

“Authority” means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4 et seq.).

“Aviation district” means the area within a one-mile radius of the outermost boundary of the “Atlantic City International Airport,” established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

“Board” means the Board of the New Jersey Economic Development Authority.

“Business” means an applicant proposing to own or lease premises, or that has acquired the premises within 24 months prior to project application, in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is a partnership, an S corporation, or a limited liability company or a non-profit corporation. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. In connection with a regional distribution facility of foodstuffs, the business entity or entities that own or lease such facility shall qualify as a business regardless of the type of the business entity or entities that own or lease such facility; the ownership or leasing of such facility by more than one business entity; or the ownership of the business entity or entities that own or lease such facility. Such ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. Such members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. For the purposes of a regional distribution facility of foodstuffs, leasing shall include subleasing and tenants shall include subtenants. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

“Capital investment” in a qualified business facility means expenses by a business or any affiliate of the business incurred after application for: site acquisition, if purchased within 24 months prior to project application or thereafter; site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; obtaining and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property in a building, structure, facility, or improvement to real property, including associated soft costs; and receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13); or any of the preceding. Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. In a Garden State Growth Zone, the following qualify as a capital investment: any and all redevelopment and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the Authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord if pertaining primarily to the premises of the qualified business facility, and, if pertaining generally to the qualified business facility being acquired or leased, shall be allocated to the premises of the qualified business facility on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility. The capital investment described in this definition

may include site acquisition and any capital investment made or acquired within 24 months prior to the date of application, so long as the amount of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the qualified business facility being acquired or leased on the basis of the gross leasable area of such premises in relation to the total gross leasable area in the qualified business facility made or acquired prior to the date of application.

“Commitment period” means the period of time that is 1.5 times the eligibility period.

“Complex of buildings” means buildings that are part of the same financing plan and operational plan.

“Deep poverty pocket” means a population census tract having a poverty level of 20 percent or more, and which is located within the qualified incentive area.

“Disaster recovery project” means a project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster which, after utilizing all disaster funds available from Federal, State, county, and local funding sources, demonstrates to the satisfaction of the Authority that access to additional funding authorized pursuant to the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161, is necessary to complete such redevelopment project, and which is located within the qualified incentive area.

“Distressed municipality” means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

“Eligibility period” means the period in which a business may claim a tax credit under the Grow New Jersey Assistance Program, beginning with the tax period in which the Authority accepts certification of the business that it has met the capital investment and employment requirements of the Grow New Jersey Assistance Program and extending thereafter for a term of not more than 10 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

“Eligible position” or “full-time job” means a full-time position in a business in this State that the business has filled with a full-time employee. To be eligible as an eligible position or full-time job, the employee must have his or her primary office at the qualified business facility and must spend at least 80 percent of his or her time at the qualified

business facility, or spend any other period of time generally accepted by custom or practice as full-time employment at the qualified business facility, as determined by the Authority.

“Full-time employee” means a person: who is employed by a business 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, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) 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 wages are 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 resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner of a business 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 provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law. With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal: the requirement that employee health benefits are to be provided shall be deemed to be satisfied if such benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent; 35 hours of employment per week at a qualified business facility shall constitute one “full-time employee,” regardless of whether or not the hours of work were performed by one or more persons. For any project located 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 any project located 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) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, the Authority shall accept a standard of service generally accepted by custom or practice as full-time employment in a supermarket, grocery store, or other like retail industry. “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the business.

“Garden State Growth Zone” or “growth zone” means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009).

“Grow New Jersey tax credit transferee” or “tax credit transferee” means if the business transfers its tax credits, pursuant to N.J.A.C. 19:31-18.13, the purchaser of the tax credits, including any subsequent purchasers of the tax credits.

“Highlands development credit receiving area or redevelopment area” means an area located within a qualified incentive area and designated by the Highlands Council for the receipt of Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

“Incentive agreement” means the contract between the business and the Authority, which sets forth the terms and conditions under which the business shall be eligible to receive the incentives authorized pursuant to the Program.

“Incentive effective date” means the date the Authority issues a tax credit based on documentation submitted by a business pursuant to paragraph (1) of subsection b. of section 6 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-247).

“Industrial premises” means premises in which at least 51 percent of the square footage is used for the assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts, including, but not limited to, factories or as a warehouse if the business uses the warehouse as part of the chain of distribution for products assembled, processed, and/or manufactured by the business at the qualified business facility; for the breaking or demolishing of finished or partially finished products; or for the production of oil or gas or the generation or transformation of electricity.

“Major rail station” means a railroad station located within a qualified incentive area that provides access to the public to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

“Mega project” means:

1. A qualified business facility located in a port district housing a business in the logistics, manufacturing, energy, defense, or maritime industries, either:

i. Having a capital investment in excess of \$20,000,000, and at which more than 250 full-time employees of such business are created or retained; or

ii. At which more than 1,000 full-time employees of such business are created or retained;

2. A qualified business facility located in an aviation district housing a business in the aviation industry, in a Garden State Growth Zone, or in a priority area housing the United States headquarters and related facilities of an automobile manufacturer, either:

i. Having a capital investment in excess of \$20,000,000, and at which more than 250 full-time employees of such business are created or retained; or

ii. At which more than 1,000 full-time employees of such business are created or retained; or

3. A qualified business facility located in an urban transit hub housing a business of any kind, having a capital investment in excess of \$50,000,000, and at which more than 250 full-time employees of a business are created or retained.

“Minimum environmental and sustainability standards” means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

“Moderate-income housing” means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

“Municipal Revitalization Index” means the 2007 index by the Office for Planning Advocacy within the Department of State measuring or ranking municipal districts.

“New full-time job” means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

“Non-industrial premises” means premises that at least 51 percent of the square footage is not an industrial premise, including, but not limited to, office space.

“Other eligible area” means the portions of the qualified incentive area that are not located within a distressed municipality, or the priority area.

“Partnership” means an entity classified as a partnership for Federal income tax purposes.

“Port district” means the portions of a qualified incentive area that are located within: the port district of the Port Authority of New York and New Jersey, as defined in Article

II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to The South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

“Priority area” means the portions of the qualified incentive area that are not located within a distressed municipality and which: are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey’s State Strategic Plan and adopts regulations to revise this definition; intersect with portions of a deep poverty pocket, a port district, or were Federally owned land approved for closure under a Federal Base Realignment Closing Commission action; are the proposed site of a disaster recovery project, a qualified incubator facility, a highlands development credit receiving area or redevelopment area, a tourism destination project, or transit oriented development; or contain a vacant commercial building having over 400,000 square feet of office, laboratory, or industrial space available for occupancy for a period of over one year; or a site that has been negatively impacted by the approval of a “qualified business facility,” as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

“Professional employer organization” means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

“Program” means the Grow New Jersey Assistance Program established pursuant to P.L. 2011, c. 149 and provided in this subchapter.

“Project” means the capital investment and the employment commitment at a qualified business facility pursuant to the incentive agreement.

“Qualified business facility” means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business that is not engaged in final point of sale retail business at that location, which shall not include a university research hospital, unless the building, complex of buildings, or structural components of buildings, and all machinery and equipment located within a qualified incentive area, are used in connection with the operation of: a final point of sale retail business located in a Garden State Growth Zone that will include a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by either a full service supermarket or grocery store; or a tourism destination project located 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).

“Qualified incentive area” means an aviation district, a port district, a distressed municipality, urban transit hub municipality, or an area:

1. Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or

2. Located within:

i. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);

ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4);

iii. A regional growth area, a town, a village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

iv. The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a highlands development credit receiving area or redevelopment area;

v. A Garden State Growth Zone;

vi. Land approved for closure under any Federal Base Closure and Realignment Commission action; or

vii. Areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) only if such areas are located within:

(1) A designated center under the State Development and Redevelopment Plan;

(2) A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey’s State Strategic Plan and adopts rules to revise this definition as it pertains to State-wide planning areas;

(3) Any 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 40A:12A-6) or in need of rehabilitation pursuant to section 14 of P.L. 1992, 40 c. 79 (N.J.S.A. 40A:12A-14);

(4) Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided such expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals;

(5) The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a highlands development credit receiving area or redevelopment area; or

(6) Any area on which an existing tourism destination project is located.

“Qualified incentive area” shall not include any property located within the preservation area of the Highlands Region as defined in the Highlands Water Protection and Planning Act, P.L. 2004, c. 120 (N.J.S.A. 13:20-1 et seq.).

“Qualified incubator facility” means a commercial building located within a qualified incentive area: that contains 100,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with a research institution, teaching hospital, college, or university, which is evidenced by a written agreement that demonstrates this collaboration; and within which, at least 75 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

“Retained full-time job” means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being either lost to another state or country or eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. 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.), “retained full-time job” shall include any employee previously employed in New Jersey and transferred to the new location in the 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.). For the purposes of the certifications and annual reports required pursuant to the incentive agreement, N.J.S.A. 34:1B-245.e or 247.b(2), to the extent an eligible position that was the basis of the award no longer exists, a 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.

“SDA district” means an “SDA district” as defined in section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

“SDA municipality” means a municipality in which an SDA district is situate.

“Soft costs” means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.

“Square feet” means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

“Square feet of gross leasable area” or “gross leasable area” means rentable area of the building as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant’s pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

“Substantial environmental remediation” means the completion of the necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the capital investment in a qualified business facility.

“Targeted industry” means any industry identified from time to time by the Authority including initially, a transportation, manufacturing, defense, energy, logistics, life sciences, technology, health, and finance business, but excluding a primarily warehouse, distribution, or fulfillment center business.

“Technology startup company” means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which the business intends to move to commercialization.

“Tourism destination project” means a qualified business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the qualified incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance.

“Transit oriented development” means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit

Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-8.8(c)4, a bus station platform is a terminal as listed on the EDA's website at www.njeda.com.

"Urban transit hub" means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208) and also located within a qualified incentive area.

"Urban transit hub municipality" means a municipality that qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-17 178 et seq.), or that has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation that is taxable and that which is tax exempt.

"Withholdings" means the amount withheld by a business from the wages of full-time employees or estimated taxes paid by, or on behalf of, partners that are full-time 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 full-time 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. Withholdings shall not include 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".

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. 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 premises for continued industrial use by the business, a minimum investment of \$20.00 per square feet of gross leasable area;

ii. For the new construction of an industrial premises for industrial use by the business, 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 non-industrial premises for continued non-industrial use by the business, a minimum investment of \$40.00 per square feet of gross leasable area; and

iv. For the new construction of a non-industrial premises for non-industrial use by the business, 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.

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;

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. Except as provided in (b) below, 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. If the site was acquired within 24 months prior to project application, the business shall provide 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. 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.), 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.).

(b) The Authority may determine as eligible for tax credits any business that is required to respond to a request for proposals and to fulfill a contract with the Federal government although the business's chief executive officer or

equivalent officer for North American operations has not demonstrated to the Authority that the award of tax credits will be a material factor in the business's decision to retain the minimum number of retained full-time jobs, as otherwise required by (a)2 above. The Authority may, in its discretion, consider the economic benefit of the retained jobs servicing the contract in conducting the net benefit analysis required by (a)3i above. For the purposes of this subsection, "retained full-time jobs" includes jobs that are at risk of being eliminated. Applications to the Authority for eligibility pursuant to this subsection shall be completed by December 31, 2013. Submission of a proposal to the Federal government prior to Authority approval shall not disqualify a business from the program.

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

(d) 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.

(e) 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.

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.

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. In a Garden State Growth Zone or the Atlantic City 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, up to 7.5 percent of retail facilities included in a mixed use project shall be eligible for a grant of tax credits along with the non-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.

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

Added new (a); deleted former (a) through (c) and (e) through (i); recodified former (d) as (b); and rewrote (b).

19:31-18.5 Application submission requirements

(a) Each application to the Authority made by a business shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

- i. The name of the business;
- ii. The contact information of the business;
- iii. The prospective future address of the business (if different);
- iv. The type of the business;

v. The principal products and services and three-digit North American Industry Classification System number;

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of employees in New Jersey;

ix. The total list of New Jersey operations;

x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

xv. Any other necessary and relevant information as determined by the Authority for a specific application;

2. Project information shall include the following:

i. An overall description of the proposed project;

ii. A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility, and financial information demonstrating ability to complete the capital investment;

iii. The estimated value of the capital investment;

iv. Supporting evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic

benefit pursuant to N.J.A.C. 19:31-18.3(a)3ii, taking into account the criteria listed at N.J.A.C. 19:31-18.7(c). In determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer for North American operations, shall submit a certification indicating that:

(1) Any existing full-time jobs are at risk of leaving the State or being eliminated;

(2) Any projected creation or retention, as applicable, of new full-time jobs would not occur but for the provision of tax credits under the program; and

(3) The business's chief executive officer, or equivalent officer for North American operations, has reviewed the information submitted to the Authority and that the representations contained therein are accurate provided, however, that in satisfaction of (a)2iv(1) and (2) above, the certification with respect to a project 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.), shall indicate that the provision of tax credits under the program is 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, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.). If the site was acquired within 24 months prior to project application, the business shall provide 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. The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

v. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

vi. Identification of the site of the proposed qualified business facility, including the block and lot of the site as indicated upon the local tax map. For purposes of determining geographical location, the qualified business facility shall be considered in the geographical location if at least 51 percent of the square footage of the building or buildings is in the geographical location;

vii. A project schedule that identifies projected move dates for the proposed qualified business facility;

viii. A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

ix. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the business, as well as all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist;

x. The total number of anticipated new and retained full-time jobs in New Jersey and occupy the qualified business facility and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity; and

xi. Any other necessary and relevant information as determined by the Authority for a specific application; and

3. Employee information shall include the following:

i. A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility;

ii. The average annual wage and benefit rates of full-time employees and new and retained full-time jobs at the qualified business facility;

iii. Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy such as the tax credits, pursuant to P.L. 2007, c. 200; and

iv. Any other necessary and relevant information as determined by the Authority for a specific application.

(b) The business applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-18.6(a).

(c) A business shall be allowed to assign their ability to apply for the tax credit under this subchapter to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone, as determined by the Authority. In addition to the information required pursuant to (a) above, the non-profit organization shall be required to submit:

1. Evidence of the assignment to apply for the tax credit from the developer or the group of non-qualifying developers;
2. The name of the non-profit organization;
3. The contact information of the non-profit organization;
4. The New Jersey employer identification number;
5. The Federal employer identification number; and
6. The mission statement of the non-profit organization.

(d) A business that has already applied for a tax credit incentive award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such tax credits, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

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.

19:31-18.6 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee, with payment in the form of a check, payable to the "New Jersey Economic Development Authority." The application fee shall be as follows:

1. For projects with total tax credits of \$10,000,000 or less and 100 or fewer new and retained full-time jobs, the fee to be charged at application shall be \$1,000;
2. For projects with total tax credits of \$10,000,000 or less and more than 100 new and retained jobs, the fee to be charged at application shall be \$2,500; and
3. For projects with total tax credits in excess of \$10,000,000, the fee to be charged at application shall be \$5,000.

(b) In addition to the application fee in (a) above, a business shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee of .5 percent of the approved tax credit shall be charged by the Authority as follows:

1. For each project with tax credits of \$1,000,000 or less annually, the fee shall not exceed \$50,000 and shall be charged upon execution of the incentive grant agreement;
2. For each project with tax credits of \$1,000,000 to \$4,000,000 annually, the fee shall not exceed \$200,000 and

shall be charged upon execution of the incentive grant agreement; and

3. For each project with tax credits in excess of \$4,000,000 annually, the fee shall not exceed \$500,000 and shall be charged prior to the approval of the tax credit. The fee shall be refunded if the Authority does not approve the tax credit.

(d) For each project with tax credits of \$1,000,000 or less annually, a non-refundable fee of .5 percent of the tax credit, not to exceed \$50,000, shall be paid prior to the receipt of the tax credit certificate. For each project with tax credits in excess of \$1,000,000 annually, a non-refundable fee of .5 percent of the tax credit, not to exceed \$500,000, shall be paid prior to the receipt of the tax credit certificate.

(e) A business shall pay to the Authority an annual servicing fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report. For each project with tax credits of \$1,000,000 or less annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$20,000 per year; and for each project with tax credits in excess of \$1,000,000 annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$75,000 per year.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-18.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee of \$2,500.

(g) For each project with total tax credits of \$5,000,000, a non-refundable fee of \$2,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of \$5,000,000, a non-refundable fee of \$5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee of \$1,000 shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a non-refundable fee of \$2,500 shall be paid for the second such six-month extension.

(i) A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement

authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee of \$5,000 for terminations that do not require extensive staff time and Board approval; and a non-refundable fee of \$25,000 for terminations that require extensive staff time or Board approval.

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.

19:31-18.7 Review of application and certification of project completion

(a) A business seeking an approval of tax credits for a qualified business facility shall apply for tax credits prior to July 1, 2019, except as set forth at N.J.A.C. 19:31-18.3(b) and except for businesses seeking a credit for a mega project, which shall apply by September 18, 2017, four years after the effective date of P.L. 2013, c. 161.

(b) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the re-submission of the entire application, if incomplete. In order to be deemed complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

(c) In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-18.3(a)3ii and as certified by the chief executive officer pursuant to N.J.A.C. 19:31-18.5(a)2iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes paid directly or generated indirectly by new or retained employees, and peripheral economic growth caused by the business's relocation, provided that such determination shall be limited to the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority. For a project located in a Garden State Growth Zone, the Authority may award bonuses in its net positive economic benefit calculation including, but not limited to, full payment of taxes for a qualified business facility that receives a tax abatement pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et

seq. With regard to 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 benefits test may utilize the value of those property taxes subject to the provisions of section 24 of P.L. 2013, c. 161 and incremental sales and excise taxes that are derived from activities within the area and which are rebated or retained by the municipality pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.) or any other law providing for such rebate or retention.

(d) Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, and the maximum amount of tax credits to be granted and, shall promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State job transfers, after staff's review of the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third-party consultants, the cost which will be paid by the applicant, the Board shall make a separate determination to verify and confirm by way of making a factual finding by separate vote that the jobs are at risk of leaving the State, and as to the date or dates at which the Authority expects that those jobs would actually leave the State, or, with respect to projects located 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.), that the provision of tax credits under the program is a material factor in the business's decision to make a capital investment and locate 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.). The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and requirements regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter and incentive agreement, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the Grow New Jersey tax credits.

2. In the approval letter to the business, the Authority shall set a date by which its approval will expire.

(e) Within 12 months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, committed financing for and site control of the qualified business facility. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within 12 months of the date of application approval, or if progress as indicated has not been achieved.

(f) Upon completion of the capital investment and employment requirements of the program, the business shall submit certifications of a certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements with supporting evidence satisfactory to the Authority.

1. The amount of the capital investment in the certification that has been approved by the Authority shall not be increased regardless of additional capital investment in the qualified business facility, provided, however, that in no event will the amount of capital investment exceed the amount of capital investment previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional jobs located at the qualified business facility, and, except as set forth in N.J.A.C. 19:31-18.11(e), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent 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. In the event the number of new and/or retained full-time jobs is reduced below the number of new and/or retained full-time jobs in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

3. Absent extenuating circumstances and the written approval of the Authority, the certification with respect to capital investment and employment shall be submitted

within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline, however, in no event, shall the incentive effective date occur later than four years following the date of approval of an application by the Authority.

4. The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

(g) Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met, within 90 days of the submission of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications under (f) above, provided it shall not exceed the maximum amount determined by the Board under (d) above. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance issued by the Authority.

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.

19:31-18.8 Determination of grant amount; bonus award

(a) The total amount of tax credit for an eligible business shall be for each new or retained full-time job as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period; however, except as set forth in N.J.A.C. 19:31-18.11(e), the total tax credit amount credited annually to the business shall not exceed the maximum amount determined by the Board under N.J.A.C. 19:31-18.7(d) and the amount calculated pursuant to N.J.A.C. 19:31-18.7(g), divided by the number of years in the eligibility period.

(b) The base amount of the tax credit for each new or retained full-time job shall be as follows:

1. For a qualified business facility located within an urban transit hub municipality or Garden State Growth Zone or is a mega project, \$5,000 per year;
2. For a qualified business facility located within a distressed municipality but not qualifying under (b)1 above, \$4,000 per year;
3. For a project in a priority area, \$3,000 per year; and
4. For a project in other eligible areas, \$500.00 per year.

(c) In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased if the qualified business facility meets any of the following priority criteria or other additional or replacement criteria determined by the Authority from time to time in response to evolving economic or market conditions:

1. For a qualified business facility located in a deep poverty pocket or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development, an increase of \$1,500 per year;

2. For a qualified business facility located in a qualified incubator facility, an increase of \$500.00 per year;

3. For a qualified business facility located in a mixed-use development that incorporates sufficient moderate income housing on site that is made available to accommodate a minimum of 20 percent of the full-time employees of the business, an increase of \$500.00 per year;

4. For a qualified business facility located within a transit-oriented development, an increase of \$2,000 per year;

5. For a qualified business facility, other than a mega project or a project in a Garden State Growth Zone, at which the capital investment in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of \$1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount required for eligibility by 20 percent, with a maximum increase of \$3,000 per year;

6. For a business with new full-time jobs and retained full-time jobs at the project with a median average salary in excess of the existing median average salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a Garden State Growth Zone, a business that employs full-time jobs at the project with a median average salary in excess of the median average salary for full-time workers residing in the Garden State Growth Zone, an increase of \$250.00 per year during the commitment period for each 35 percent by which the project's average salary levels exceeds the county or Garden State Growth Zone average salary, with a maximum increase of \$1,500 per year;

7. For a business with large numbers of new full-time jobs and retained full-time jobs during the commitment period, the increases shall be in accordance with the following schedule:

i. If the number of new full-time jobs and retained full-time jobs is between 251 and 400, \$500.00 per year;

ii. If the number of new full-time jobs and retained full-time jobs is between 401 and 600, \$750.00 per year;

iii. If the number of new full-time jobs and retained full-time jobs is between 601 and 800, \$1,000 per year;

iv. If the number of new full-time jobs and retained full-time jobs is between 801 and 1,000, \$1,250 per year;

v. If the number of new full-time jobs and retained full-time jobs is in excess of 1,000, \$1,500 per year;

8. For a business in a targeted industry, an increase of \$500.00 per year;

9. For a qualified business facility exceeding the Leadership in Energy and Environmental Design's "Silver" rating standards or completes substantial environmental remediation, an additional increase of \$250.00 per year;

10. For a mega project or a project located within a Garden State Growth Zone at which the capital investment in industrial premises for industrial use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244), an increase of \$1,000 per year for each additional amount of investment, as measured in square feet of measured gross leasable area, that exceeds the minimum amount by 20 percent, with a maximum increase of \$5,000 per year;

11. For a project in which a business retains at least 400 jobs and is located within the municipality in which it was located immediately prior to the filing of the application hereunder and is the United States headquarters of an automobile manufacturer, an increase of \$1,500 per year;

12. For a project located in a municipality in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties with a 2007 Municipality Revitalization Index rank greater than 465, an increase of \$1,000 per year;

13. For a project located within a half-mile of any light rail station constructed after September 18, 2013, the effective date of P.L. 2013, c. 161, an increase of \$1,000 per year;

14. For a marine terminal project in a municipality located outside the Garden State Growth Zone, but within 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; and

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.

(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 50 percent of the gross amount of tax credits for each retained full-time job, 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.

(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.);
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, 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 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 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 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 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 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.

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.

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 that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter.

(d) A business that is a partnership shall not be allowed a credit under this program directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or with the owner's tax period, or that proportion that is allocated by an agreement, if any, among the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by such time and accompanied by such 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.

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 applicant 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;

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.

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 a certified public accountant 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 number of full-time employees in its Statewide workforce, 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 related to the retained full-time jobs before receiving benefits for new full-time jobs; and

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

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

(c) In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

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

(e) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an additional tax credit award representing an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this subsection; provided that the adjustment may not affect other obligations under the incentive agreement to maintain a minimum number of employees. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement, which following review by EDA staff, the Board will determine whether to approve the request.

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.

19:31-18.12 Tax credit certificate

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

1. The starting date of the tax period and the commitment duration;
2. The amount of the tax credits;
3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;
4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;
5. Events that would trigger reduction and forfeiture of tax credit amounts; and
6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

19:31-18.13 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. The total amount transferred for any single tax period shall be at least \$100,000 in tax credits, provided that one transfer consisting of any remainder that is less than \$100,000, may be made in each tax period for less than \$100,000. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and

conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

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

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

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or pursuant to N.J.S.A. 17B:23-5. A transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

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

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

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

In (a), inserted "the" preceding "Treasury", and substituted "\$100,000 in tax credits, provided that one transfer consisting of any remainder that is less than \$100,000, may be made in each tax period for less than \$100,000" for "\$1,000,000 in tax credits".

19:31-18.14 Cap on total credits

The combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 and P.L. 2010, c. 57 (N.J.S.A. 34:1B-207 et seq.) prior to December 31, 2013, shall not exceed \$1,750,000,000, except as may be increased by the Authority as set forth in paragraph (5) of subsection a. of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3).

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.

19:31-18.15 Reduction and forfeiture of tax credits

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

(b) If, in any tax period during the eligibility period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 80 percent of the number of new and retained full-time jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g), then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of full-time employees employed by the business at the qualified business facility to 80 percent of the number of jobs specified in the certification approved by the Authority pursuant to N.J.A.C. 19:31-18.7(g).

(c) The credit amount allowed for a tax period for which documentation of a business's credit amount remains uncertified by the Authority, as of a date three years after the closing date of that period, shall be forfeited, although credit amounts for the remainder of the eligibility period shall remain available to it.

(d) Provided a business complies with all other requirements of the program, the amount of tax credits a business may take in a tax period shall be reduced in proportion to the reduction in the number of new or retained full-time jobs, as indicated in the annual report, below the number of full-time jobs specified in the incentive agreement. For projects for which awards are calculated pursuant to N.J.A.C. 19:31-18.8(h), if the number of new and retained full-time jobs, as indicated in annual report, is reduced below the required number to qualify under a subsection thereof, the tax credits that the business may take shall be rescored under the subsection that corresponds to the number of new and retained full-time jobs reported. Any tax credits that the business could not take because of a reduction under this subsection shall be forfeited.

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.

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

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

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

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

In (a) and (b), deleted "10-year" preceding "eligibility"; and in (a), inserted "by the owner", and substituted "the business" for "tenants".

19:31-18.17 Affirmative action and prevailing wage

The Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to State incentive grant projects undertaken in connection with financial assistance received under the Grow New Jersey Assistance Program.

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

Former N.J.A.C. 19:31-4.17, Severability, recodified to N.J.A.C. 19:31-18.19.

19:31-18.18 Appeals

(a) The Board's action on applications shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

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

19:31-18.19 Severability

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

Recodified from N.J.A.C. 19:31-18.17 by R.2015 d.014, January 20, 2015.
See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM**19:31-19.1 Applicability and scope**

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (Authority) to implement the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14 (the Act). The Act authorizes credits against corporation business and gross income taxes for qualified investments in New Jersey emerging technology businesses to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

19:31-19.2 Definitions

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

"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 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.

"Acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

"Authority" means the New Jersey Economic Development Authority.

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

"Board" means the Board of the New Jersey Economic Development Authority.

"Control" with respect to a corporation means ownership, directly or indirectly, of stock possessing 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control" with respect to a trust means ownership, directly or indirectly, of 80 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 267), other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation, if stock possessing at least 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns, directly, stock possessing at least 80 percent of the voting power of all classes of stock of at least one of the other corporations.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and milli-

meter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

"Eligible technology" means advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"Filling a position in New Jersey" means filling a position with a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

"Full-time employee" means a person who is:

1. Employed by a New Jersey emerging technology business on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.;

2. A partner of a New Jersey emerging technology business and 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 determined by the Authority, 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.;

3. An employee who is a resident of another state, works in New Jersey but whose income or distributive share of income, gain, loss, or deduction, or guaranteed payments, or any combination thereof, is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides; or

4. An employee who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the New Jersey emerging technology business on a permanent basis within a single position and that position requires at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority. Full-time employee shall not include any person who works as an independent contractor or on a consulting basis for the New Jersey emerging technology business; or any person who works as an intern, as a temporary employee, or in a temporary position.

"Information technology" means software publishing, motion picture and video production, television production

and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer-related services, and computer training.

“Investor” means the individual or entity that made the qualified investment.

“License” means an agreement that states therein that the emerging technology business is granting a license that authorizes the investor to control aspects of the development of the New Jersey emerging technology business’s protected proprietary intellectual property. License shall not include an agreement, such as an exclusive distribution agreement or similar business arrangement that is not registered with the U.S. Federal Government, such as the U.S. Patent and Trademark Office, and which does not grant the investor control of the protected proprietary intellectual property.

“Life sciences” means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products, or physical or biological research.

“Marketing rights” means the exclusive right of an entity to sell a product or products that qualifies the originator of that product(s) as a New Jersey emerging technology business.

“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.

“Mobile communications technology” means a technology involving the functionality and reliability of transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but shall not be limited to, smartphones, electronic books and tablets, mp3 players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having to be connected to any physical or fixed link.

“New Jersey emerging technology business” or “emerging technology business” means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State, whose primary business is an eligible technology, and:

1. Has qualified research expenses paid or incurred for research conducted in its most recent fiscal year prior to the qualified investment in this State;
2. Conducts pilot scale manufacturing in this State; or
3. Conducts technology commercialization in this State.

In calculating the number of employees under this definition, employees of any company, except the investor, with control over the New Jersey emerging technology business or in the same controlled group as the New Jersey emerging technology business, shall be included. The company must continue to operate as a New Jersey emerging technology business until the earlier of six months after the qualified investment or the date of the investor’s completed application for the credit pursuant to N.J.A.C. 19:31-19.4.

“Partnership” means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

“Pilot scale manufacturing” means design, construction, and testing of preproduction prototypes and models in an eligible technology other than for commercial sale, excluding sales of prototypes or sales for market testing if total gross receipts, as calculated in the manner provided in section 6 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-6), from such sales of the product, service, or process do not exceed \$1 million.

“Privilege period” means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) or New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

“Production agreement” means, upon completion of pilot scale manufacturing or technology commercialization, the first manufacturing contract of a product that qualifies the producer of that product as a New Jersey emerging technology business that causes the total gross receipts, as calculated in the manner provided in section 6 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-6), from such sales of the product, service, or process to be no less than \$1,000,000.

“Program” means the Angel Investor Tax Credit Program.

“Protected proprietary intellectual property” means intellectual property that is the technology of the entity’s primary business as a New Jersey emerging technology business that is also protected via a patent pending, patent awaiting approval, approved patent, or registered copyright.

“Purchase agreement” means, upon completion of pilot scale manufacturing or technology commercialization, the first acquisition of the product that qualifies the producer of that product as a New Jersey emerging technology business that causes the total gross receipts, as calculated in the manner provided in section 6 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-6), from such sales of the product, service, or process to be no less than \$1,000,000.

“Qualified investment” means the non-refundable transfer of cash to a New Jersey emerging technology business by an investor that is not a related person of the New Jersey

emerging technology business, at the time of the transfer of cash, the transfer of which is in exchange for:

1. Stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), right to use technology, marketing rights, warrants, options, or any assets similar to those included in this definition, including but not limited to, options or rights to acquire any of the assets; or
2. A purchase, production, or research agreement.

For the transfer of cash to be considered non-refundable, the assets received by the investor in the exchange referred to in paragraph 1 above and the agreements entered into by the investor referred to in paragraph 2 above must be held or not expire for at least two calendar years from the date of the exchange, with the exception of initial public offerings (IPOs), mergers and acquisitions, damage awards for the New Jersey emerging technology business's default of an agreement, or other return of initial cash outlay beyond the investor's control.

"Qualified research expenses" means qualified research expenses as defined in section 41 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 41), as in effect on June 30, 1992, in an eligible technology.

"Related person" means:

1. A corporation, partnership, association, or trust controlled by the taxpayer or the investor;
2. An officer, corporation, partnership, association or trust that is in the control of the taxpayer or the investor;
3. A corporation, partnership, association, or trust controlled by an individual, corporation, partnership, association, or trust that is in the control of the taxpayer or the investor; or
4. A member of the same controlled group as the taxpayer or the investor.

"Renewable energy technology" means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and/or sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel, but not powered by a fossil fuel.

"Research agreement" means a contract to methodically study a component of the field that qualifies the entity conducting the methodical study as a New Jersey emerging technology business.

"Right to use technology" means the exclusive right of an entity to utilize a product or products that qualifies the

originator of that product(s) as a New Jersey emerging technology business.

"Tax credit approval year" means the taxpayer's taxable year or privilege period in which the Authority approves the application for tax credits.

"Tax credit vintage year" means the taxpayer's taxable year or privilege period in which the investor made the qualified investment.

"Taxpayer" means the individual filing a tax return pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. or the entity filing a tax return pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) that is eligible to receive a tax credit under the Program. The taxpayer must be the investor except when the qualified investment is made by a partnership or an entity treated as a partnership for tax purposes, in which case, for purposes of the Program, the partnership or entity shall be considered the investor and each partner or member of the entity shall be considered a taxpayer.

"Technology commercialization" means the design, construction, testing, and production for sale of a product in an eligible technology previously in research or pilot scale manufacturing.

19:31-19.3 Eligibility criteria

(a) In order to be considered for tax credits under the Angel Investor Tax Credit Program, an investor shall make a qualified investment in a New Jersey emerging technology business.

(b) The Program applies to privilege periods and taxable years beginning on or after January 1, 2012. For qualified investments made on or before July 1, 2013, an investor must submit a completed application by July 1, 2014. For all other qualified investments, an investor must submit a completed application within one year of the date of the qualified investment.

(c) A credit shall not be allowed pursuant to section 1 of P.L. 1993, c. 175 (N.J.S.A. 54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this subchapter.

(d) Any asset received and any agreement entered into by the investor in connection with the non-refundable transfer of cash that serves as a qualified investment must be an executed document in writing.

19:31-19.4 Application submission requirements

(a) An investor shall submit an application to the Authority; the Authority shall conduct a review of the applications commencing with the completed application bearing the earliest completion date.

(b) A completed application shall include, but not be limited to, the following:

1. Investor information, which shall include the following:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number or Social Security number, as applicable;

(2) The total amount of the qualified investment and amount of requested tax credit;

(3) A description of the qualified investment;

(4) Evidence of qualified investment, including the executed document demonstrating that the qualified investment was made, as required in N.J.A.C. 19:31-19.3(d);

(5) A list of all officers, directors, owners, and/or trustees;

(6) A list of 100 percent of ownership of the investor by percentage or if a publicly traded company, the 10 percent or greater officers, directors, or owners; and

(7) The Federal tax identification number or Social Security number as applicable, for all owners of the investor; and

ii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

2. New Jersey emerging technology business information, which shall include:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number; and

(2) A list of 100 percent of ownership of the business by percentage;

ii. At the time of the qualified investment and at the earliest of six months after the qualified investment or the time of application:

(1) A description of the business, which demonstrates that such business meets the definition of New Jersey emerging technology business;

(2) A list of all employees filling a position in New Jersey, whether any employee is related, as defined in Section 152(d)(2) of the Internal Revenue Code, to any other employee, shareholder, or investor, if so known, and either:

(A) Copies of the most recent year's Federal and New Jersey W-3 forms for the business and all entities other than the investor with control over the

business or in the same controlled group as the business; or

(B) Documentation from a professional employer organization summarizing W-2 forms issued for full-time employees on behalf of the business, and all entities other than the investor with control over the business or in the same controlled group as the business, for the calendar year prior to the year in which the company files its application and at the time of the application; and

iii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39); and

3. Any other supplemental information required by the Authority to decide on the approval of the application or required by the Division of Taxation to administer the credit.

19:31-19.5 Fees

(a) The following fees shall apply to applications for qualified investments of more than \$50,000:

1. A non-refundable application fee of \$1,000 shall accompany every application for tax credits; and

2. A fee of five percent of the approved tax credit amount or \$2,500, whichever is greater, shall be paid to the Authority upon the approval of the tax credit. The application fee of \$1,000, required under (a)1 above, shall be applied toward the approval fee.

(b) A non-refundable application fee of \$500.00 shall accompany every application for tax credits for qualified investments of \$50,000 or less.

19:31-19.6 Tax credit amount; overpayment and carryforward of tax credits

(a) A taxpayer, upon eligibility review and approval of the investor's application by the Authority in consultation with the Director, and upon issuance of a tax credit certificate by the Division of Taxation, shall be allowed a credit against the tax imposed under the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) or New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., in an amount equal to 10 percent of the qualified investment made by the investor in a New Jersey emerging technology business, up to a maximum allowed credit of \$500,000 for the tax credit vintage year for each qualified investment made by the investor.

(b) An investor that is a partnership or an entity treated as a partnership for tax purposes, upon eligibility review and approval, shall not be allowed a credit under this section directly, but the amount of credit of each member or partner taxpayer in respect to a distributive share of partnership income under the New Jersey Gross Income Tax Act,

N.J.S.A. 54A:1-1 et seq. or under the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), shall be determined by allocating to each taxpayer, that proportion of the credit acquired by the partnership or entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership or entity for its taxable year ending within or with the taxpayer's tax credit vintage year. For the purposes of (c) and (d) below, the amount of tax liability that would be otherwise due of a taxpayer is that proportion of the total liability of the taxpayer that the taxpayer's share of the partnership income or gain included in gross income bears to the total gross income of the taxpayer.

(c) The amount of the credit allowed shall be applied against the tax otherwise due under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., for the tax credit approval year after all other credits and payments. If the credit exceeds the amount of tax liability otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.A. 54A:9-7, provided, however, that N.J.S.A. 54A:9-7.f shall not apply. The 15-year carryforward in (e) below is not applicable to a credit claimed under the New Jersey Gross Income Tax Act.

(d) The order of priority in which the credit allowed by this section against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and any other credits allowed by law may be taken, shall be as prescribed by the Director.

(e) Except as provided in (f) below, the amount of tax credit otherwise allowable against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), which cannot be applied for the tax credit approval year against tax liability otherwise due for that tax credit approval year may either be carried over, if necessary, to the 15-tax years following the tax credit approval year or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of N.J.S.A. 54:49-15, provided, however, that section 7 of P.L. 1992, c. 175 (N.J.S.A. 54:49-15.1) shall not apply.

(f) A taxpayer may not carry over any amount of credit allowed against the tax imposed pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) to a tax year during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent tax year, if the tax credit approval year was prior to the year of acquisition, merger, or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the Director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer.

19:31-19.7 Evaluation process; award of tax credits; appeals

(a) The Authority, in consultation with the Director, shall process and evaluate complete applications.

(b) The Authority shall transmit a copy of its decision to the applicant-investor.

(c) If the Authority has approved the application, the Authority shall notify the Division of Taxation of the approval. The Division of Taxation shall then issue the tax credit certificate to the applicant investor.

(d) An applicant investor may appeal the Authority's action by submitting in writing to the Authority, within 20 days from the date of the Authority's action, an explanation as to how the investor or the New Jersey emerging technology business has met the program criteria. Appeals will be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal;

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal; and

3. The Board shall consider the hearing officer's recommendation(s) and, based on that review, shall issue a final decision on the appeal.

19:31-19.8 Cap on total credits

(a) The amount of credits approved by the Authority, in consultation with the Director, pursuant to P.L. 2013, c. 14 (N.J.S.A. 54A:4-13), shall not exceed a cumulative total of \$25 million in any calendar year to apply against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and the tax imposed pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

(b) If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, under (a) above, then any complete applications for which no tax credits have been allowed for that reason may be approved by the Authority and allowed, in the order in which their applications were completed, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits are not in excess of the amount of credits available.