

CHAPTER 31

AUTHORITY ASSISTANCE PROGRAMS

Authority

N.J.S.A. 34:1B-1 et seq.

Source and Effective Date

R.2005 d.274, effective July 22, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Chapter Expiration Date

Chapter 31, Authority Assistance Programs, expires on July 22, 2010.

Chapter Historical Note

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

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

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

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

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

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

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

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

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

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and Providing for the Financing Thereof through the New Jersey Economic Development Authority, P.L.2001, c.401 were repealed by R.2005 d.274, effective August 15, 2005.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

Subchapter 4, Downtown Beautification Program, was repealed by R.2009 d.38, effective January 20, 2009.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

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

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SUBCHAPTER 1. BOND FINANCING PROGRAM

19:31-1.1 Program description

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

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

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

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

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

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

19:31-1.2 Bond purchaser

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

(b) A bond purchaser shall be:

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

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

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

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

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

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

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

19:31-1.3 Bond financing

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

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

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

19:31-1.4 Eligibility standards

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

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

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

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

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person; and

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-3.4 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of

the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

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

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

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

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

19:31-3.5 Approval process

(a) Only the Members can approve a direct loan, either directly or through delegation.

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

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

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

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

2. With the exception of the New Jersey Growth Fund and the Edison Innovation R&D Fund, usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as a collateral assignee.

3. With the exception of the New Jersey Growth Fund and the Edison Innovation R&D Fund, personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

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

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

Amended by R.1995 d.435, effective August 21, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).
Amended by R.2005 d.274, effective August 15, 2005.
See: 37 N.J.R. 1714(a), 37 N.J.R. 3058(a).

Rewrote (a) and (d)2 and 3.

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

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

In (d)2 and (d)3, inserted "and the Edison Innovation R&D Fund".

19:31-3.6 Attorney General review

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

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

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

SUBCHAPTERS 4 THROUGH 6. (RESERVED)

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.

"Eligible project" means a project which has been approved by the Authority to receive financial assistance from the Local Development Financing Fund.

"Eligible project costs" means the costs of planning, developing, executing and making operative, an industrial or commercial redevelopment project. Eligible project costs include:

1. The cost of purchasing, leasing, condemning, or otherwise acquiring land or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;
2. The cost incurred for, or in connection with, or incidental to, acquiring and managing the land, property or interest;

3. The cost incurred for, or in connection with, the relocating and moving of persons displaced by acquisition;

4. The cost of development or redevelopment, including:

i. The comprehensive renovation or rehabilitation of the land, property or interest;

ii. The cost of equipment and fixtures which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project;

iii. The cost of energy conservation improvements designed to encourage the efficient use of energy resources, including renewable and alternative energy resources and cogenerating facilities; and

iv. The disposition of land or other property for these purposes.

5. The cost of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. The cost of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project; and

7. The cost incurred or incidental cost including, but not limited to:

- i. Administrative, appraisal and economic analysis;
- ii. Engineering service;
- iii. Planning service;
- iv. Design service;
- v. Architectural service;
- vi. Surveying service; and
- vii. Other professional service.

"Financial assistance" means, but is not limited to, loans, loan guarantees, grants, secondary mortgages, and equity participation provided by the fund.

"Fund" means the Local Development Financing Fund.

"Municipality" means a New Jersey municipality qualifying for aid pursuant to the State formula for State aid to municipalities (see N.J.S.A. 52:27D-178) for services and to offset property taxes.

"Project" means an industrial or commercial enterprise within a municipality that would not be undertaken in its intended scope but for the assistance provided for under the Act and these rules.

"Sponsor" means the governing body of a municipality or, with the approval of the government of the municipality, a

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 following minimum criteria:

1. The threshold criteria of eligibility in which the applicant meets the definition of technology business or biotechnology business, and satisfies the standards in N.J.A.C. 19:31-12.3;

2. The actual potential scientific and technological viability of the applicant's business product(s), service(s) and/or process(es) as demonstrated by its:

- i. Uniqueness of concept;
- ii. Creditability/plausibility of concept; and
- iii. Scientific/technological resources of the applicant;

3. The degree to which the innovation of the applicant's product(s), service(s) and/or process(es) created in New Jersey offers a competitive advantage to the business and enhances and diversifies the State of New Jersey's capacity and competitiveness in the business' field;

4. The degree to which the proposed financial assistance will result in growth in permanent full-time employment;

5. The short-term financial resources of the applicant or the inability of the applicant to access capital; and

6. The degree to which the proposed financial assistance demonstrates the prospect of a significant positive change in net income or loss;

(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, 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. Returning companies are not required to satisfy the definition of "new or expanding."

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.

19:31-12.6 Approval process

(a) Only the members of the Authority can deny an applicant's eligibility in the program.

(b) When the members deny a request, the minutes at which such denial 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 information about the project developed after the June 30 submission deadline. Only that information which clarifies the application filed shall be considered. In the event the company is reconsidered as eligible, its application shall be presented at the next available Board meeting.

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".

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 State fiscal year 2005 and each State fiscal year thereafter, \$5,000,000 shall be allocated for the surrender of transferable tax benefits exclusively among the eligible companies that operate within the boundaries of the innovations zones during State fiscal year 2005, and \$10,000,000 shall be so allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones during fiscal year 2006 and for each State fiscal year thereafter. 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 \$10 million.
- 2. Businesses with less than \$250,000 in tax benefits will be authorized to sell all of their benefits in the current year.
- 3. 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. In each successive year in which a selling business reapplies to the program, the applicant will also be authorized to sell at least 50 percent of the amount sold in the prior year, with a minimum of \$250,000. This portion of the allocation will be in addition to the first \$250,000 in benefits pursuant to the first sentence of this paragraph.

4. After the dollars are set aside in the amounts provided in (a)2 and 3 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:

$$\frac{\text{Fiscal Year Dollar Authorization—}}{\text{Total Minimum Tax Benefits Authorized}} \div \frac{\text{Total Tax Benefits Requested to be Transferred—}}{\text{Total Minimum Tax Benefits Authorized}}$$

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.

5. 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 allocations are made to these companies, any available balance of the additional \$5 million in benefits in State fiscal year 2005, or of the additional \$10 million in benefits in State fiscal year 2006 and for each State fiscal year thereafter, shall be apportioned among eligible companies in innovation zones with unmet eligible benefits. The formula to be followed for that apportionment is as follows:

- i. An allocation factor shall be calculated by dividing the balance of the additional funds authorized for innovation zones by the amount of the unmet eligible benefits for companies in the zones.
- ii. Each innovation zone company's unmet eligible benefits will be multiplied by the allocation factor as detailed in (a)5i above to arrive at the enhanced allocation.
- iii. The eligible companies in innovation zones with remaining unmet eligible benefits shall participate in the allocation of the remaining pool for State fiscal year 2005 of \$55,000,000 and \$50,000,000 for each State fiscal year thereafter.

(b) In the event the authorized minimums exceed the authorized annual cap, applicants shall be allocated benefits with priority given to those applicants with less than \$250,000 of tax benefits and to businesses with more than \$250,000 in tax benefits that are reaplying to the program pursuant to (a)3 above.

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".