

CHAPTER 31

AUTHORITY ASSISTANCE PROGRAMS

Authority

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

Source and Effective Date

R.1995 d. 435, effective July 20, 1995.
See: 27 N.J.R. 2377(a), 27 N.J.R. 3216(a).

Executive Order No. 66(1978) Expiration Date

Chapter 31, Authority Assistance Programs, expires on July 20, 2000.

Chapter Historical Note

Chapter 31, Authority Assistance Programs, Subchapters 1 through 6, 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 was readopted as R.1995 d.435. See: Source and Effective Date. See, also, section annotations.

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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 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.

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 cannot be a substantial user or owner of the project (as defined by the Internal Revenue Code) or be related to the project owner.

(d) 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.

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

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.

(c) There is no minimum size for borrowings under the program, but loan requests of less than \$750,000 should be carefully reviewed by the applicant to assure that participation in the program is cost effective.

(d) Tax-exempt bonds are subject to the terms and conditions of the Internal Revenue Code (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project. The interest income earned is exempt from most Federal and New Jersey State taxes.

(e) Taxable bonds issued through the Authority are not subject to the IRC. Loans may be made to borrowers for various projects and purposes including, but not limited to:

1. Office buildings;
2. Healthcare financings;
3. Warehouses and distribution facilities;
4. Manufacturing projects;

5. Commercial and retail projects;
6. Debt refinancing; and
7. Working capital needs.

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

19:31-1.5 Application procedures

(a) A prospective applicant should consult with the Authority to determine if the project is eligible.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) The Application includes requests for information about:

1. The applicant's business, including financial statements and projections;
2. The project to be undertaken;
3. The officers, directors, partners, owners and stockholders of the applicant;
4. Litigation involving the applicant;
5. Other users of the project, if applicable;
6. Municipal approvals, if applicable;
7. Contractors, subcontractors, architects, engineers, and planners who will work on the project, if known;
8. Equipment to be purchased as part of the project; and
9. The relocation of any part of the applicant's or user's business, if applicable.

(d) Applications are logged in and assigned a number and project officer for review and processing.

(e) Applications are assigned to a bond counsel firm from the Authority's list of designated bond counsel to review the project for eligibility under Federal and State law (see N.J.A.C. 19:31-1.6). At the time of application, applicants may request assignment of one of the designated bond counsel firms, which request may be approved by the Authority at its discretion.

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

19:31-1.6 Bond counsel review and fees

(a) The Authority is represented in bond transactions by bond counsel, a private law firm with particular experience and expertise in this specialized area of law. The bond counsel firm:

1. Reviews Applications to determine eligibility under Federal and State law;
2. Assists the Authority in drafting the necessary resolutions to be adopted concerning projects;
3. Publishes notice of public hearing;
4. Drafts financing documents to be used in the transaction;
5. Prepares certain Federal forms for filing with the IRS relating to bond financing;
6. Delivers an opinion at the settlement of the transaction indicating, among other things:
 - i. The project qualifies for Authority assistance;

ii. The Authority has taken all necessary steps to accomplish the transaction; and

iii. The interest income to be earned on the Authority bonds issued for the project is exempt from most Federal and/or State income taxes.

(b) Bond counsel fees are paid by the applicant usually at the closing of the transaction, and may, subject to certain limitations, be included as a project cost to be financed out of the Authority bond issue.

(c) The borrower also is responsible for paying other professional fees associated with financing the project, including, but not limited to:

1. Printing fees;
2. Real estate commissions;
3. Consulting fees; and
4. Bond purchaser counsel fees.

(d) Applicants may be charged a fee by bond counsel even though the project does not close with Authority bonds.

19:31-1.7 Approval process

(a) Only the Members acting at a duly constituted public meeting can authorize or approve assistance to a project. These public meetings will satisfy the requirements for public hearings in accordance with the IRC. The Authority staff is not empowered to authorize or approve such assistance.

(b) The following approvals are required:

1. A preliminary resolution prepared by bond counsel making certain affirmative findings and determinations concerning the eligibility for assistance.

i. Such official action permits an applicant to begin making expenditures on the project without jeopardizing the tax-free eligibility.

ii. If an applicant makes substantial expenditures on a project prior to such official action, the expenditures may not be eligible for tax-free financing. The applicant should consult with bond counsel for advice as to how the IRC applies to expenditures.

iii. A preliminary approval is not by itself sufficient authorization to permit the issuance of bonds;

2. A final bond resolution prepared by bond counsel authorizing bonds to be issued, subject to the following:

i. Receipt of a written commitment acceptable to the Authority from a bond purchaser;

ii. Substantial agreement among the interested parties as to the form and substance of the financing documents; and

iii. Availability under the State volume cap or carry-forward bond allocation for bond financing in accordance with the IRC; and

3. Approval of the Governor.

(c) Bond counsel may prepare a combination resolution granting both preliminary and final bond approval at a single meeting, if the requirements set forth in (b)1 and 2 above have been met.

(d) The bond closing must occur within a specified period of time, usually not exceeding 90 days from the date of final bond approval.

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

19:31-1.8 Attorney General review

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

19:31-1.9 Post-closing review

The loan agreement executed with the Authority includes certain public purpose covenants and obligations that must be observed by the applicant during the term of the financing. Failure to comply with these covenants and obligations may result in cancellation of the bond by the Authority.

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

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

19:31-2.1 Program description

(a) The Authority is empowered to guarantee a portion of the principal amount of a financing which would increase or maintain employment and/or tax ratables in New Jersey, and which would not be made without the guarantee.

(b) There are two types of guarantees available: Fixed Asset Guarantees and Working Capital Guarantees.

1. Under the Fixed Asset Guarantee program:

i. The Authority may guarantee the lesser of \$1.5 million or 90 percent of the principal amount of the financing;

ii. The financing can either be a conventional loan, or a taxable or tax-exempt bond financing (see N.J.A.C. 19:31-1);

iii. Proceeds of guaranteed conventional loans can be used for the acquisition of land, buildings, machinery and equipment, the expansion of an existing building or the renovation of machinery, equipment, and buildings; and

iv. Use of the proceeds of tax-exempt bond financing is governed by the Internal Revenue Code.

2. Under the Working Capital Guarantee program:

i. The Authority may guarantee the lesser of \$1 million or 90 percent of the principal amount of the financing;

ii. The financing can be either a conventional loan or a taxable bond, as tax-exempt bonds cannot be used to provide working capital; and

iii. The loan proceeds can be used for refinancing of existing debt, purchase of inventory, or operating expenses.

(c) Both the Fixed Asset Guarantee and the Working Capital Guarantee have a maximum term of 10 years for the guarantee, although the financing can be for a longer term.

19:31-2.2 Eligibility standards

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

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

(b) For fixed asset financing guarantees, the applicant will be required to invest at least 10 percent equity into the project.

19:31-2.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project shall be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

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

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

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;

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; and

9. A formal commitment letter from the lender providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(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.

19:31-2.4 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.

19:31-2.5 Approval process

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

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

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

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

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

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

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

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

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

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

19:31-2.6 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).

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

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

(b) Direct loans are available in a maximum amount of \$500,000 for fixed asset financing and \$250,000 for working capital.

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

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

(e) Interest on fixed asset and working capital loans is fixed at a rate no less than five percent or the Federal Discount Rate, whichever is greater, and no more than one percent below the highest Prime Rate as published in the Wall Street Journal, at the time of closing. Factors to be considered when establishing an interest rate may include the project's location-municipality, the industry type, the leveraging of total project cost to public dollars, the employment impact to public dollars, whether the business is new to the State or expanding operations in the State and the increase in the tax ratable value.

(f) The term of a fixed asset or working capital loan is a maximum of 10 years, although the repayment schedule is usually for a shorter time based on the applicant's ability to repay.

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

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

19:31-3.2 Eligibility standards

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

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

(b) For fixed asset loans, the applicant will be required to invest at least 10 percent equity into the project.

(c) The applicant must demonstrate to the Authority that it is unable to obtain conventional, affordable financing on its own or with the availability of an Authority guarantee.

19:31-3.3 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance (Application) concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;
2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;
3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;
4. A current interim statement, if the most recent annual financial statement is more than six months old;
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;

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

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

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

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

19:31-9.8 Approval process

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

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

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

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

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

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

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

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

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

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

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

19:31-9.9 Attorney General review

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

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

19:31-9.10 Fees

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

SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

Authority

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

Source and Effective Date

R.1996 d.470, effective October 7, 1996.
See: 28 N.J.R. 3058(a), 28 N.J.R. 4510(b).

19:31-10.1 Applicability and scope

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

19:31-10.2 Definitions

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

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

"Authority" means the New Jersey Economic Development Authority.

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

"Business" means a corporation, sole proprietorship; partnership; Subchapter S-corporation, cooperative association (including financial, stock or commodities exchanges), or any other business entity through which income flows as a distributive share to its owners; limited liability company; a nonprofit corporation; or any other form of business organization located within or outside New Jersey.

"Business Employment Incentive Agreement" or "Agreement" means the written agreement between the Authority and a business which establishes the terms and conditions of a grant to a project which will result in the creation or relocation of new jobs in New Jersey.

"Cooperative association" means financial, stock or commodities exchanges.

"Department" means the Department of Commerce and Economic Development.

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

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

"Eligible position" means a new position for a full-time employee created by a business or transferred from another state by the business in New Jersey that was not previously subject to the New Jersey Gross Income Tax Act.

"Employment incentive" means the percentage and term of a grant.

"Full-time employee" means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.) and who is certified by the applicant to be employed in a permanent position. "Full time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

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

"New employee" means a full-time employee first employed in an eligible position by a business at the project which is the subject of an Agreement. An out-of-state resident or a resident of New Jersey who is employed outside New Jersey by the business and whose position is relocated to New Jersey after the execution of an Agreement may be classified as a new employee when the position is relocated to New Jersey and the wages are subject to withholdings as provided in the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.); except that such a State resident shall not be classified as a "new employee" unless the wages, prior to the relocation, were subject to income taxes imposed by the state or municipality in which the position was previously located. "New employee" also may include an employee rehired or called back from a bonafide layoff during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years. "New employees" shall not include: any person who was previously employed in New Jersey by the business or by a related person as defined in N.J.S.A. 54:10A-5.5 if the employee is transferred to the business which is the subject of an Agreement unless the employee's position at his or her previous employer is filled by a new employee; a child, grandchild, parent, or spouse of an individual associated with the business who has direct or indirect ownership of at least 15 percent of the profits, capital or value of the business; and any person whose wages are not subject to new withholding as provided in the New Jersey Gross Income Act.

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

"Project" means the relocation and/or expansion of a business in New Jersey that is creating new employment opportunities; the wages of which are subject to the provisions of the New Jersey Gross Income Tax Act (N.J.S.A. 54A:1-1 et seq.).

"Targeted area" means a qualifying municipality as defined in N.J.S.A. 52:27D-178 which designates certain municipalities as "New Jersey Urban Aid Municipalities" based on a formula established by the Department of Community Affairs.

"Withholdings" means the amount withheld by a business from the wages of new employees pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.

19:31-10.3 Eligibility

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

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

- i. Create at least 75 eligible positions in a non-targeted area in the base years; or
- ii. Create at least 25 eligible positions in a targeted area in the base years;

2. In the case of a business which is a landlord or cooperative association, the landlord or cooperative association may apply to the Authority in one consolidated application for a Business Employment Incentive Grant for any project which creates at least 75 eligible positions in a non-targeted area in the base years, or creates at least 25 eligible positions in a targeted area in the base years, and in which the tenants or members of the cooperative association have agreed to assign to the landlord or cooperative association any claim of right that they may have individually to a grant and have agreed to cooperate with the landlord or cooperative association in providing to the Authority all information required for the initial application, the Agreement and annually thereafter any other information which may be required by the Authority.

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

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

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

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

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

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

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

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

19:31-10.4 Amount/term of grant

(a) The amount of the business employment incentive grant in each case shall be not less than 10 percent and not more than 80 percent of the withholdings of the eligible positions for new employees.

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

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

2. The total number of existing employees of the business;

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

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

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

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

7. The location of the project;

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

9. Such factors as presented by a specific applicant.

(c) The term of a grant may be for a period up to 10 years as approved by the Authority. Grant payments shall be issued by the Authority during the next calendar year upon occupancy of the project and achievement of the employment conditions set forth in the Agreement.

(d) Payment of a grant shall be subject to a certified copy of the business's prior year's payroll categorized by existing employees not subject to the grant and new employees subject to the grant. The certification shall identify the number of employees in each category, the base salary of each employee and separately any overtime paid during the grant, the date of hire, and withholding taxes paid for each employee.

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

2. The grant amount shall be limited to the number of eligible positions represented by the business to be created in the base years at the project site unless the Authority at the time of the grant agreement authorizes unlimited creation of additional eligible positions to be included in the grant so long as they qualify as full-time employees. In the event the business creates in excess of the number of eligible positions represented in its application, as provided in the Grant Agreement, the business may in either event be eligible to receive an adjustment in its grant to include the request for consideration of the additional eligible positions.

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

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

(g) A grant received under the Act by a cooperative association may be apportioned to the members of the association in a manner to be determined by the cooperative association.

19:31-10.5 Business expansion or relocation

(a) For businesses that are locating in the State from outside New Jersey, only the new employees subject to withholdings shall be considered as eligible positions for grant purposes.

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

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

3. Grants payments shall be issued by the Authority during the next calendar year upon occupancy of the project and achievement of the employment conditions set forth in the Agreement only if the State Treasurer has certified that the amount of withholdings received in the previous year by the Division from the business equals or exceeds the amount of the grant.

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

(c) If a business is expanding through a merger with a company, prior to which the company was located outside of New Jersey, only the new eligible employees shall be considered when determining a grant.

19:31-10.6 Grant conditions

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

(b) The business shall certify the following annually for the business, project and each new employee for which the grant is made:

1. The total amount of withholdings during the grant year;

2. The annual payroll records of the business detailing each employee and noting:

i. Which employee is in an eligible position for grant purposes;

ii. Any overtime paid to each employee in an eligible position;

iii. The total number of new employees in eligible position; and

iv. The number of existing employees, their salary, withholding and any overtime paid.

(c) The Authority shall be entitled to audit the payroll records of the business at any time during the term of the grant as the Authority deems necessary.

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

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

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

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

1. A copy of its applicable New Jersey tax return showing business income and withholdings. The Authority, may upon request by the business, extend the filing of its New Jersey tax return to the Authority for the purpose of this grant beyond February 1;

2. An annual payroll report indicating:

- i. The eligible positions with social security numbers which were created during the year just ended;

- ii. The new eligible positions with social security numbers created during each subsequent year;

- iii. The positions with social security numbers existing at application;

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

- v. A certification identifying the eligible positions with social security numbers that have been filled by persons who are rehired from a bonafide layoff or transferred from another company;

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

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

19:31-10.7 Application procedures

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

1. The name and address of the business;

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

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

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

5. A complete schedule of all officers, directors, and stockholders owning 15 percent or more of the stock, including resumes and signed, dated personal financial statements;

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

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

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

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

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

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

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

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

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

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

- i. Number of new employees in eligible positions;

- ii. Total employees at commencement of the Agreement between the Authority and landlord or cooperative association;

- iii. Payroll records; and

- iv. Any withholdings during the grant year.

(c) Applications are processed through several layers of staff review, and may then be recommended for consideration and official actions by the members of the Authority at a public meeting. The applicant has no right to have its application presented to the members of the Authority.

19:31-10.8 Evaluation process

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

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

19:31-10.9 Approval process

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

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

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

(d) If there has been no veto, an Agreement shall be issued to the applicant, which contains all terms and conditions of the grant.

(e) When all required documentation is prepared, in form and content satisfactory to the Authority, a Grant Agreement shall be executed.

19:31-10.10 Rescission and withholding of grant payments

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

1. Failure to comply with the requirements of this subchapter or other applicable State laws or rules;

2. Failure to comply with any condition or requirement of the Grant Agreement;

3. Failure to maintain the stipulated employment levels;

4. Submission of false or misleading information, or failure to submit relevant information; or

5. Insolvency, bankruptcy or other conditions which affect the financial integrity of the business.

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

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

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

19:31-10.11 Prevailing wage

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

19:31-10.12 Fees

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

(b) An annual servicing fee shall be paid to the Authority by the business and shall be deducted from the annual grant payment to the business. The servicing fee shall be 1.5 percent of the annual grant disbursement with a floor of \$1,500 annually.

19:31-10.13 Attorney General review

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