

N.J.A.C. 19:31-1.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > 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.

History

HISTORY:

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

See: 32 New Jersey Register 1705(a), 32 New Jersey Register 2602(c).

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

N.J.A.C. 19:31-1.2

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§ 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.

History

HISTORY:

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

See: 29 New Jersey Register 1485(b), 29 New Jersey Register 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).

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§ 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.

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§ 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 Codes (IRC); therefore, it is advisable to consult with financial and legal advisors to determine the eligibility of the project.

(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.

History

HISTORY:

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

N.J.A.C. 19:31-1.4

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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

See: 29 New Jersey Register 1485(b), 29 New Jersey Register 2844(b).

In (d), deleted last sentence, relating to tax exemptions for interest income.

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§ 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.

N.J.A.C. 19:31-1.6

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§ 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.

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N.J.A.C. 19:31-1.7

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§ 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 carryforward 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.

History

HISTORY:

N.J.A.C. 19:31-1.7

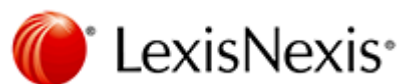
Amended by R.1995 d.435, effective August 21, 1995.

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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N.J.A.C. 19:31-1.8

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§ 19:31-1.8 Attorney General review

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

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§ 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.

History

HISTORY:

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

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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N.J.A.C. 19:31-2.1

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New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 2. LOAN GUARANTEE PROGRAMS

§ 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)The Authority is empowered to own and lease equipment and/or real estate to eligible applicants.

(c)There are four types of guarantees available: Fixed Asset Guarantees, Working Capital Guarantees, Special Guarantees, and Smart Growth Pre-Development Guarantees.

1.Under the Fixed Assets Guarantee program:

i.The Authority may guarantee the lesser of \$ 2.0 million or 90 percent of the principal amount of the financing.

ii.The financing can either be:

(1)A taxable or tax-exempt Authority-issued bond financing (see N.J.A.C. 19:31-1); or

(2)Any other form of financing other than as stated in (b)1ii(1) above, including, but not limited to, bank loans, lease financing, seller take-back financing, Federal take-back financing and financings described in (b)3ii(1) and (2) below ("conventional financing");

iii.Proceeds of guaranteed conventional financing 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 \$ 1.5 million or 90 percent of the principal amount of the financing;

ii.The financing can be either a conventional financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code; and

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

3.Under the Special Guarantee program:

i.The Authority may guarantee any amount;

ii. The Authority guarantee shall be of:

- (1)** A loan or guarantee from a governmental entity which may be the Federal or State government, a department of the Federal or State government, an agency of the Federal or State government or a political subdivision of the State of New Jersey;
- (2)** A loan made under the Community Lending Program of the Federal Home Loan Bank of New York;
- (3)** Bonds issued by the Authority as a part of a bond issue for the benefit of multiple borrowers (whether or not such bond issue consists of multiple series of bonds issued for the benefit of individual borrowers);
- (4)** Conventional financing. An applicant for a conventional financing guarantee shall:
 - (A)** Be in an industry and municipality that is targeted by the Authority as set forth in N.J.A.C. 19:30-5;
 - (B)** Demonstrate to the Authority that it has viable options to vacate the State or locate to another state, has been offered economic incentives by the competing state and that, without the special guarantee the applicant will not undertake the relocation or expansion in the State; and
 - (C)** Create or maintain a minimum of 200 permanent full-time jobs in the State. The Authority's assistance shall not exceed \$ 65,000 per full-time job created and/or maintained; or

(5) Structured finance assistance. For purposes of this sub-subparagraph and the transaction documents, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Base years" means the first two complete calendar years following the approval by the members provided, however, that, at its discretion, an approved applicant may notify the Authority that the base years have terminated prior to such date, and further provided 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.

"Designated industries" means a business engaged in the field of biotechnology, pharmaceuticals, financial services, transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology as these terms are more particularly defined in N.J.A.C. 19:31-10.2.

"Disaster recovery center" means a redundant facility used to house back-up systems to be used in the event of a business interruption at the primary facility of the business.

"Employment compliance period" means with respect to net new full-time permanent jobs to be created, the five consecutive years immediately following the base years. Compliance with other covenants required by the transaction documents may be longer than the employment compliance period.

"Full-time permanent job" means a job filled by a full-time employee as that term is defined at N.J.A.C. 19:31-10.2.

"Manufacturing business" means a business in which more than 50 percent of the business conducted is the transformation of raw materials into finished goods for sale.

"Net new full-time permanent job" means the full-time permanent jobs created. "Net new full-time permanent job" 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 the application unless the employee's position at his or her previous employer is filled by a new employee.

"Structured finance assistance" means the program set forth in this sub-subparagraph, whereby the Authority purchases machinery, equipment, furniture, leasehold improvements or construction materials using the sales tax exemption granted to the Authority pursuant to N.J.S.A. 54:32B-9 and leases such items to an approved applicant.

(A) Eligibility. In order to be eligible for structured finance assistance, an applicant shall:

- I. Demonstrate that the project is a designated industry as that term is defined in N.J.A.C. 19:31-10.2; and is located either in a Metropolitan Planning Area (PA 1), Suburban Planning Area (PA 2), designated center or an area designated for growth in a plan that has been endorsed by the New Jersey State Planning Commission at N.J.S.A. 52:18A-196 et seq.;
- II. Demonstrate to the Authority that it has viable options to locate the project out of the State, has been offered economic incentives by a competing state and that, without the structured finance assistance, the applicant will not relocate or expand the project in the State;
- III. Create a minimum 10 net new full-time permanent jobs for manufacturing businesses and designated industries. For disaster recovery centers which will increase the tax base of the State or any political subdivision of the State, the Authority may waive the requirement for the creation of net new full-time permanent jobs.
- IV. For manufacturing businesses and designated industries, demonstrate that the business is making a minimum capital investment in the facility of \$ 10,000,000. For disaster recovery centers, demonstrate that the business is making a minimum capital investment in the facility of \$ 15,000,000.
- V. The business is not eligible for assistance under structured finance if the business is eligible for assistance under the Sales Tax Exemption component of the Business Retention and Relocation Assistance Act, P.L. 2004, c. 65, as amended. The business is not eligible for assistance under structured finance if the business has entered into an agreement for a Business Employment Incentive Program Grant at the project site (P.L. 1996, c. 26 as amended).

(B) Program requirements. Eligible applicants for structured finance assistance must comply with the following requirements:

- I. The Authority's exposure (if any) shall not exceed \$ 65,000 per full-time permanent job;
- II. The maximum time allowed for acquisition of machinery, equipment, furniture and fixtures, leasehold improvements or construction materials shall be five years from the approval by the members of the project although the actual lease term may be for a longer period; and
- III. Structured finance assistance shall have a rolling cap of \$ 40 million of sales tax benefit per two-year period based on the State's fiscal year. In the event that the rolling cap is met, the EDA may seek the approval of the State Treasurer to exceed the cap and shall only proceed with the administration of the sales tax benefit with the State Treasurer's written approval. By example, if the sales tax benefit approved in fiscal year 1 was \$ 18 million, the amount available for approval in fiscal year 2 would be \$ 22 million.

(C) If a firm does not meet their projections for net new full-time permanent jobs, it shall return to the State a proportionate percentage of the sales tax benefit.

(D) Fees are as follows:

I.A non-refundable application fee of \$ 1,000 shall accompany every application for assistance.

II.A closing fee of \$ 25,000 shall be paid to the Authority by the business at the time of closing.

III.A lease origination fee equal to 10 percent of the sales tax benefit shall be paid to the Authority by the business at the lease tranche closing(s), as they occur.

IV.A sales and use tax exemption letter fee of \$ 500.00 per year for each year a letter is issued by the Authority shall be paid to the Authority by the business.

V.An asset re-acquisition fee equal to 10 percent of the residual value of the machinery, equipment, furniture and fixtures shall be paid to the Authority by the business. The residual value will have a floor of one percent of the original purchase price and sales tax allocable to the residual value.

4.Under the Smart Growth Pre-development Guarantee Program:

i.The amount of the Authority guarantee shall not exceed \$ 1.0 million;

ii.The financing can be either a conventional financing or an Authority-issued tax-exempt or taxable bond (see N.J.A.C. 19:31-1), subject to the terms and conditions of the Internal Revenue Code;

iii.The financing proceeds shall be used for the purposes of pre-development site preparation costs to be determined by the Authority. Such costs may include, but are not limited to, land assemblage, demolition, removal of materials and debris and engineering costs; and

iv.Applicants for Smart Growth Pre-development Guarantee shall have projects which must be located either in Planning Areas 1 or 2, designated centers or in municipalities with endorsed plans as defined by the State Redevelopment Plan, must evidence municipal support and be part of a local redevelopment plan.

(d)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. Smart Growth Pre-development guarantees have a maximum term of three years. A Special Guarantee term shall not exceed the term of the financing. Film Production Assistance Program guarantee terms will be determined on a project-by-project basis. Factors to be considered in determining the terms of the guarantee are as set forth in N.J.A.C. 19:31-2.4.

History

HISTORY:

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

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

In (b), substituted "three types" for "two types" and added "and Special Guarantees"; in (b)1ii(1), inserted "Authority issued"; added (b)1ii(2); substantially amended (b)2ii; in (b)iii, substituted "financing proceeds" for "loan proceeds"; inserted (b)3; and in (c), added last sentence.

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

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

Inserted a new (b); recodified former (b) and (c) as (c) and (d); and in the new (c)3, inserted "or locate to another state" following "State" in ii(4)(B), and substituted a reference to companies for a reference to existing New Jersey companies in iii.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

Inserted (c)3ii(5).

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

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

In (b), deleted the second sentence; rewrote (c).

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

In (c), rewrote the introductory paragraph and added 4; in (d), added the last sentence.

Amended by R.2004 d.346 and d.347, effective September 20, 2004.

See: 36 N.J.R. 2305(a), 36 N.J.R. 4321(a), 36 N.J.R. 2616(a), 36 N.J.R. 4322(a).

Rewrote (c); in (d), added the second sentence.

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

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

Rewrote (c).

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

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

In (c), added definitions "Designated industries", "Disaster recovery center", and "Manufacturing business", rewrote definitions "Employment compliance period" and "Net new full-time permanent job", rewrote (A), deleted former (C), recodified and rewrote former (D) as (C), added (D).

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

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

In (c)2i, substituted "\$ 1.5 million" for "\$ 1 million".

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

Deleted (c)6.

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

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

In the introductory paragraph of (c), substituted "four" for "five", and deleted "Film Production Program Assistance Guarantees" following "Special Guarantees,"; deleted (c)4; and recodified (c)5 as (c)4.

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

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

In the introductory paragraph of (c), substituted "Pre-Development" for "Pre-development", in (c)3ii(4)(C) and (c)3ii(5)(B)l, substituted "\$ 65,000" for "\$ 50,000"; and in (c)3ii(4)(C), inserted "full-time".

N.J.A.C. 19:31-2.2

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§ 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.

N.J.A.C. 19:31-2.3

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§ 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.

History

HISTORY:

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added a new (e) and recodified former (e) as (f).

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

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

Deleted (e); and recodified (f) as (e).

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N.J.A.C. 19:31-2.4

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§ 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.

History

HISTORY:

Amended by R.2004 d.139, effective April 5, 2004.

See: 36 N.J.R. 143(a), 36 N.J.R. 1787(b).

Added (a)9.

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

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

In (a)7, inserted "and" at the end; in (a)8, substituted a period for "; and" at the end; and deleted (a)9.

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N.J.A.C. 19:31-2.5

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§ 19:31-2.5 Approval process

- (a) Only the Members can approve a guarantee, 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 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. Except for the Structured Finance Program, 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. Except for the Structured Finance Program, 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.

History

HISTORY:

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).

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

In (d)2 and (d)3, deleted "Angel Investor Program guarantee and the" preceding "Structured".

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N.J.A.C. 19:31-2.6

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§ 19:31-2.6 Attorney General review

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

History

HISTORY:

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

See: 27 New Jersey Register 2377(a), 27 New Jersey Register 3216(a).

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N.J.A.C. 19:31-3.1

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New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 3. DIRECT LOAN PROGRAM

§ 19:31-3.1 Program description

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

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

- 1.For the Smart Growth Pre-development Loan Program, the maximum loan amount will be \$ 1 million.
- 2.For the Brownfields Redevelopment Loan Program, the maximum loan amount will be \$ 750,000.
- 3.The maximum amount of combined total financing under the Smart Growth Pre-development and Brownfield Redevelopment loan program(s) is \$ 1.0 million.
- 4.The maximum amount of total financing for the New Jersey Growth Fund Program shall be \$ 1 million per transaction.
- 5.For the urban loan product, the maximum loan amount will be \$ 3 million, not to exceed 50 percent of the total project costs, for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of under \$ 70 million; and \$ 5 million for those projects wherein the tenant or owner will provide from non-Authority sources a capital investment of over \$ 70 million.
- 6.For the Edison Innovation Angel Growth Fund, the Authority may award up to \$ 250,000 in convertible debt financing to leverage private angel investments, on a two to one angel matching fund requirement, to a business that has generated a minimum of \$ 250,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, the Authority may award up to \$ 1 million in convertible debt financing to leverage institutional venture backed investments or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest, on a one to one matching fund requirement, to a business that has generated a minimum of \$ 500,000 or for the Edison Innovation Angel Growth Fund a minimum of \$ 250,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, the Authority may award up to \$ 500,000 in convertible debt financing, on a one to one matching fund requirement, to a business that has generated a minimum of \$ 2 million in prior 12-month commercial revenues. Except as otherwise provided, the total amount of assistance that a business may receive under the various programs funded by the Edison Innovation Fund, or any similar assistance provided by any other State agency, shall not exceed \$ 1 million dollars. Notwithstanding the foregoing, any amount received by a business under the Edison Innovation Growth Stars Fund, Edison Innovation Clean Energy Manufacturing Fund, and Edison Innovation Green Growth Fund, shall not be considered in the \$ 1 million dollar limit.

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

8.For the Real Estate Impact Fund:

i.The maximum loan amount for a developer or business will be \$ 3 million, not to exceed 25 percent of the total project costs; and the total amount of public assistance that a developer or business may receive shall not exceed 50 percent of the total project costs; and

ii.The maximum loan amount for a municipality will be \$ 750,000; the loan amount for a municipality shall be the lesser of 100 percent of the total project costs or the property's appraised value in its remediated state, divided by 120 percent, rounded to the nearest one hundred dollars.

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

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

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

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

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

(h)Proceeds of Real Estate Impact Fund loans may be used by a developer, business, municipality, local redevelopment agency, or county improvement authority for eligible project development costs within municipalities qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) or by a developer or business within Fort Monmouth or as part of New Jersey university/college sponsored projects that include public-private partnerships that promote emerging technologies or industries.

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

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

2.Variable Rate Interest: Interest on fixed asset and working capital loans will be set with a floor that shall be indexed to a nationally recognized rate, such as the Prime Rate as published in the Wall Street Journal at the time of closing, plus or minus any basis points to be determined by the Authority. The interest rate will be variable, adjusted on the first business day of each calendar quarter in accordance

with the relationship of the original calculated interest rate. The maximum increase in the variable interest rate during the term of the loan will be no more than five percentage points greater than the original calculated interest rate.

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

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

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

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

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

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

(j)For New Markets Loans:

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

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

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

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

i.CDFI Hot Zone, Empowerment Zone, Renewal Community, HOPE VI Redevelopment area or Small Business Administration HUB Zone;

ii.A brownfield redevelopment area, locally designated redevelopment area, or New Jersey Urban Enterprise Zone;

iii.A census tract with an unemployment rate of 1.5 times the national average; or

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

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

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

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

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

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

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

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

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

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

History

HISTORY:

Amended by R.1992 d.126, effective March 16, 1992.

See: 24 N.J.R. 177(b), 24 N.J.R. 970(b).

Revised (e).

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

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

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

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

Added (g) through (i).

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

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

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

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

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

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

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

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

Rewrote (e).

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

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

Rewrote (e).

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

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

Rewrote (e).

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

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

Rewrote the section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote (b)5.

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

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

Added (b)7.

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

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

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

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

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

Added (m).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

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

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

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

Amended by R.2017 d.070, effective April 17, 2017.

See: 49 N.J.R. 196(a), 49 N.J.R. 776(a).

Rewrote (b)8 and (h).

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§ 19:31-3.2 Eligibility standards

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

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

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

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

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

1. A commercially available product that meets the Authority's programmatic requirements in revenue thresholds, that is, for the Edison Innovation Angel Growth Fund, a minimum \$ 250,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, a minimum \$ 500,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, a minimum of \$ 2 million in prior 12-month commercial revenues;
2. A meaningful and defined market and customer base for the technology;
3. A management team possessing appropriate skill sets, capacity and financial resources and willingness to strengthen management through other means such as advisory or consultant services;
4. A meaningful customer base, partners, strategic alliances and professional relationships;
5. An ability to leverage the Authority's resources by evidence of other fund raising and need for future capital requirements;
6. A clear record of specific operational and research milestones achieved to date and proposed schedule and means to achieve future milestones; and
7. A current and complete business plan including a detailed financial model.

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

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

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

History

HISTORY:

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

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

Added (d) and (e).

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

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

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

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

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

Added (g) and (h).

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

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

Deleted (g) and (h).

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

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

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

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

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

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

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

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

Rewrote (g)2.

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

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

Deleted former (b) and (c); recodified former (d) through (g) as new (b) through (e); and in (c), substituted "and the" for a comma following "Protection", and deleted "and the New Jersey Commerce, Economic Growth and Tourism Commission" following "Treasury".

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

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

In (d)1, substituted "that" for "which", and ", a minimum \$ 250,000 in prior 12-month commercial revenues; for" for "and".

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N.J.A.C. 19:31-3.3

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§ 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;
- 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.

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N.J.A.C. 19:31-3.4

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§ 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.

N.J.A.C. 19:31-3.5

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§ 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, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars 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, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars 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.

History

HISTORY:

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".

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

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

In (d)2 and (d)3, substituted ", the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, and the Edison Innovation Growth Stars Fund" for "and the Edison Innovation R&D Fund".

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N.J.A.C. 19:31-3.6

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§ 19:31-3.6 Attorney General review

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

History

HISTORY:

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

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

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N.J.A.C. 19:31-4.1

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§ 19:31-4.1 Applicability and scope

(a)The EDA and the State Treasurer may enter into a redevelopment incentive grant agreement with a developer, or non-profit organization on behalf of a qualified developer, for any qualifying redevelopment project located in an economic redevelopment and growth grant incentive area, except an area that qualifies solely by virtue of being a transit village. Up to an average of 75 percent of the incremental increase in approved State revenues or 85 percent of the project annual incremental revenues in a Garden State Growth Zone that are directly realized from businesses operating on the redevelopment project premises may be paid to the developer in the form of a grant derived from the realized revenues. For certain qualified residential projects, mixed use parking projects or projects involving university infrastructure, where the estimated amount of incremental revenues is inadequate to fully fund the amount of the State portion of the incentive grant, tax credits equal to the full amount of the incentive grant may be awarded. The term of each approved State redevelopment incentive grant agreement may extend for up to 20 years. Except for a redevelopment incentive grant agreement with a municipal redeveloper, the base amount of the combined reimbursements from State and local grants or tax credits cannot exceed 20 percent of the eligible cost of the project, except in a Garden State Growth Zone, which cannot exceed 30 percent and except for the parking component of a mixed use parking project, which can be up to 100 percent. A developer seeking an incentive grant is required to make an equity participation for at least 20 percent of the project's eligible cost.

(b)The Authority will conduct a fiscal analysis to determine redevelopment project costs, evaluate and validate the project financing gap estimated by the developer and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project will result in net positive economic benefit to the State where each proposed project is located. The State Treasurer will approve or disapprove such analysis.

(c)In order to ensure compliance with the "Appropriations clause" of the New Jersey State Constitution (N.J. Const. Art. VIII, Sect. II, para.2), this subchapter provides that payments under State incentive grant agreements are subject to annual appropriations and availability of funds.

(d)Upon notice to and consent by the EDA and the State Treasurer, a developer's right, title, and interest in, a redevelopment incentive grant agreement may be pledged, assigned, or sold by a developer.

History

HISTORY:

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

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

Rewrote (a) and (d).

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

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

In (a), inserted ", mixed use parking projects or projects involving university infrastructure," and "or tax credits", and substituted ". Except" for "; however, except", and "and except for the parking component of a mixed use parking project, which can be up to 100 percent. A" for "; and a".

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N.J.A.C. 19:31-4.2

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§ 19:31-4.2 Definitions

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

"Ancillary infrastructure project" means structures or improvements that are located within the incentive area, but outside the project area of a redevelopment project, including, but not limited to, docks, bulkheads, parking garages, freight rail spurs, roadway overpasses, and train station platforms, provided a developer or municipal redeveloper has demonstrated that the redevelopment project would not be economically viable or promote the use of public transportation without such improvements, as approved by the State Treasurer.

"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).

"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 assignees, 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, a municipal redeveloper, or Rutgers, the State University of New Jersey.

"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, mixed use parking projects, or projects involving university infrastructure, if the project receives 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 the 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 be valued at the lesser of 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. For a qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity means the portion of the developer's fee that is delayed for a minimum of five years.

"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); or a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

"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, bi-cycle-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 the structures, improvements, or projects or any costs of remediation associated with the 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.

"Mixed use parking project" means a redevelopment project consisting of a building or structure, the parking component of which shall constitute 51 percent or more of any of the following: the total square footage of the entire mixed use parking project; the estimated revenues of the entire mixed use parking project; or the total construction cost of the entire mixed use parking project.

"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 an applicant for a redevelopment incentive grant agreement, which applicant is a municipal government, a municipal parking authority, 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); or a developer of a mixed use parking project, provided that the parking component of the mixed use parking project is operated and maintained by a municipal parking authority for the term of any financial assistance grant pursuant to P.L. 2015, c. 69.

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

"Non-parking component" means that portion of a mixed use parking project not used for parking, together with the portion of the costs of the mixed use parking project, including, but not limited to, the footings, foundations, site work, infrastructure, and soft costs that are allocable to the non-parking use.

"Parking component" means that portion of a mixed use parking project used for parking, together with the portion of the costs of the mixed use parking project, including, but not limited to, the footings, foundations, site work, infrastructure, and soft costs that are allocable to the parking use.

"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, and net profit margin, 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. A qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency (NJHMFA) will be determined to have a project financing gap if the developer cannot achieve the fee authorized by NJHMFA within five years after the project is placed in operation, provided that in no event shall the sum of the tax credits awarded under this subchapter and the State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency exceed ninety percent of the total development cost.

"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, 2019, 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. A qualified residential project shall not include transitional or homeless units.

"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), including the sports complex, that is, the 750-acre sports and exposition site located in the Borough of East Rutherford under the jurisdiction of the New Jersey Sports and Exposition Authority as of February 5, 2015, the effective date of P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.), and such additional property that is owned and controlled by the New Jersey Sports and Exposition Authority as may be designated by the Meadowlands Regional Commission, as established by P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), and section 6 of P.L. 2015, c. 19 (N.J.S.A. 5:10A-6) from time to time as part of the sports complex;

iii. A regional growth area, a rural development area zoned for industrial use as of December 5, 2016, the effective date of P.L. 2016, c. 75, 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 Statewide 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 the 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, but not be limited to, 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. 52:271-18 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 situated.

"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.

"University infrastructure" means any of the following located on the campus of Rutgers, the State University of New Jersey: buildings and structures, such as academic buildings, recreation centers, indoor athletic facilities, public works garages, and water and sewer treatment and pumping facilities; open space with improvements, such as athletic fields and other outdoor athletic facilities, planned commons, and parks; and transportation facilities, such as bus shelters and parking facilities.

"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.

History

HISTORY:

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", inserted "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".

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

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

Deleted definition "Cash on cash yield"; rewrote definitions "Equity", " 'Garden State Growth Zone' or 'growth zone' ", and "Project financing gap"; and in definition "Qualified residential project", substituted "2018" for "2015", and inserted the last sentence.

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

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

In definition "Developer", inserted ", a municipal redeveloper, or Rutgers, the State University of New Jersey"; in definition "Eligibility period", substituted ", mixed use parking projects, or projects involving university infrastructure, if the project receives" for "that receive"; in definition "Infrastructure improvements in the public right-of-way", substituted "the" for "such" preceding "structures," twice; added definitions "Mixed use parking project", "Non-parking component", "Parking component", and "University infrastructure"; rewrote definition "Municipal redeveloper"; in definition " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", rewrote paragraph 2ii; in definition " 'Redevelopment project' or 'project' ", deleted a comma following "owner", and inserted the first occurrence of ", but not be limited to,"; and in definition "SDA municipality", substituted "situated" for "situate".

Amended by R.2018 d.122, effective June 4, 2018.

See: 49 N.J.R. 3576(a), 50 N.J.R. 1374(a).

In definition "Developer", substituted "assignees" for "assigns"; in definition "Eligible revenue", substituted the third occurrence of "the" for "such"; in definition "Qualified residential project", substituted "2019" for "2018"; in definition "Qualifying economic redevelopment and growth grant incentive area" or "incentive area", in 2i, substituted "(i) of" for "(i)of", in 2iii, inserted "a rural development area zoned for industrial use as of December 5, 2016, the effective date of P.L. 2016, c. 75,", and in 2vii(4), substituted the second occurrence of "the" for "such".

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N.J.A.C. 19:31-4.3

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§ 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, a mixed use parking project, or a project involving university infrastructure, pursuant to a fiscal impact analysis, the overall public assistance provided to the project will result in net benefits to the State.

History

HISTORY:

N.J.A.C. 19:31-4.3

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

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

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

In (a)5, inserted "a mixed use parking project, or a project involving university infrastructure,".

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N.J.A.C. 19:31-4.4

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§ 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.

History

HISTORY:

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).

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N.J.A.C. 19:31-4.5

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§ 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, mixed use parking project, or project involving university infrastructure 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, mixed use parking project, or project involving university infrastructure 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, mixed use parking project, or project involving university infrastructure 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, mixed use parking project, or project involving university infrastructure 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 \$ 5,000 and \$ 2,500 for each additional request made annually.
- (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.

History

HISTORY:

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.

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

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

In (c) through (f), inserted ", mixed use parking project, or project involving university infrastructure," throughout; and in (f), substituted "\$ 5,000 and \$ 2,500 for each additional request made annually" for "\$ 2,500".

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N.J.A.C. 19:31-4.6

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§ 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. For a project involving university infrastructure, in validating the project financing gap, the Authority may rely on a certification of the Chief Financial Officer of the university that, based on current university budget projections, a financing gap exists;
- 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 100 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 100 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, and return on investment, 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, mixed use parking project, or project involving university infrastructure, will result in net positive economic benefits equaling no less than 110 percent of the amount of grant assistance, to the State for a period 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.

History

HISTORY:

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).

N.J.A.C. 19:31-4.6

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.

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

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

In (a)2, substituted the second and third occurrences of "100" for "50"; rewrote (a)4; and in (b), inserted "no less than", and deleted "equal to 75 percent of the useful life of the project" following "period".

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

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

In (a)1, inserted the second sentence; and in (b), inserted ", mixed use parking project, or project involving university infrastructure,".

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N.J.A.C. 19:31-4.7

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§ 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, mixed use parking project, or project involving university infrastructure, 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 or mixed use parking projects, in which case the maximum amount of any redevelopment incentive with respect to a mixed use parking project shall be up to 100 percent of the total project costs allocable to the parking component of the project and shall be up to 40 percent, including any increase in the amount of reimbursement under (e) below, of the total project cost allocable to the non-parking component of the project.

(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.

History

HISTORY:

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.

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

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

In (a), inserted "mixed use parking project, or project involving university infrastructure,"; and in (d), rewrote the second sentence.

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N.J.A.C. 19:31-4.8

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§ 19:31-4.8 State incentive grant agreement

(a) Except for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives 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. Within one year following the date of approval, the developer shall submit progress information indicating that the developer has financing, copies of all required State and Federal government approvals and all local planning and zoning board approvals, and site control of and site plan approval for the redevelopment 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. 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, mixed use parking projects, or projects involving university infrastructure, if the project receives 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 grant 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 reimbursement 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.);

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); and

17. To the extent the project consists of newly-constructed residential units, the approval letter will require that the project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.

(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.

History

HISTORY:

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.

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

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

Rewrote (a); in the introductory paragraph of (b), inserted the first occurrence of "grant"; in (b)15, deleted "and" from the end; in (b)16, substituted "; and" for a period; and added (b)17.

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

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

In (a) and the introductory paragraph of (b), substituted ", mixed use parking projects, or projects involving university infrastructure, if the project receives", for "that receive".

N.J.A.C. 19:31-4.9

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§ 19:31-4.9 Tax credits for qualified residential projects, mixed use parking projects, or projects involving university infrastructure

(a) In the case of a qualified residential project, mixed use parking project, or project involving university infrastructure, 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-10th 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 \$ 628,000,000, 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 the credits shall be restricted to qualified residential projects located in a Garden State Growth Zone located within the aforementioned counties and mixed use parking projects located in a Garden State Growth Zone or urban transit hub 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 the following categories of projects:

- i. Qualified residential projects located in urban transit hubs that are commuter rail in nature that otherwise do not qualify under (a)1 above;
- ii. Qualified residential projects located in Garden State Growth Zones that do not qualify under (a)1 above;
- iii. Mixed use parking projects located in urban transit hubs or Garden State Growth Zones that do not qualify under (a)1 above, provided however, an urban transit hub shall be allocated no more than \$ 25,000,000 for mixed use parking projects and \$ 25,000,000 of credits shall be restricted to mixed use parking projects in Garden State Growth Zones that have a population in excess of 125,000 and do not qualify under (a)1 above;
- iv. Qualified residential projects that are disaster recovery projects that otherwise do not qualify under (a)1 above; or

v. Qualified residential projects in 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. \$ 87,000,000 shall be restricted to the following categories of projects: qualified residential projects located 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 mixed use parking projects that do not qualify under (a)1 and 2 above and which are used by an independent institution of higher education, a school of medicine, a nonprofit hospital system, or any combination thereof; provided, however, that \$ 20,000,000 of the \$ 87,000,000 shall be allocated to mixed use parking projects that do not qualify under (a)1 or 2 above;

4. \$ 16,000,000 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; and

5. \$ 25,000,000 shall be restricted to projects involving university infrastructure.

(b) In developing a recommendation for allocating tax credits to qualified residential projects, mixed use parking projects, or projects involving university infrastructure, 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 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, mixed use parking project, or project involving university infrastructure 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, mixed use parking project, or project involving university infrastructure, 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, including the same financial and related analysis, the same term of the grant, and same mechanism for administering the credits as if such credits had been awarded to the developer pursuant to section 35 of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3). 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. The approval letter will require that the qualified residential project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.
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, mixed use parking project, or project involving university infrastructure, if the project 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, qualified residential project, mixed use parking project, or project involving university infrastructure. 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, 2019, each approved developer of a qualified residential facility that has been approved for tax credits after September 18, 2013, the effective date of P.L. 2013, c. 161 shall submit evidence of a temporary certificate of occupancy. The developer of a mixed use parking project or project involving university infrastructure seeking an award of credits towards the funding of its incentive grant agreement pursuant to (a)3 above and if approved after January 11, 2016, the effective date of P.L. 2015, c. 217, shall submit a temporary certificate of occupancy no later than July 28, 2021.

(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, mixed use parking project, or project involving university infrastructure, 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, a mixed use parking project, or a project involving university infrastructure.

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;

4. Evidence that the parking component of the mixed use parking project is not being used as non-parking component; and

5. 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.

History

HISTORY:

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.

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

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

Rewrote the introductory paragraph of (c), (c)1, and (e).

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

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

Section was "Tax credits for qualified residential projects". Rewrote the section.

N.J.A.C. 19:31-4.10

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§ 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.

History

HISTORY:

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.

N.J.A.C. 19:31-4.11

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

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§ 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 or 4.9, 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 \$ 25,000 of tax credits 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 before considering any further discounting to present value which may be permitted. 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.

History

HISTORY:

Recodified from N.J.A.C. 19:31-4.9 and amended by R.2015 d.014, effective January 20, 2015.

N.J.A.C. 19:31-4.11

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.

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

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

In (b), substituted "or 4.9" for "(d)", "\$ 25,000" for "100,000", and "before considering any further discounting to present value which may be permitted" for ", as determined at present value", and deleted ", 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," following "credits".

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N.J.A.C. 19:31-4.12

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§ 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.

History

HISTORY:

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.

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N.J.A.C. 19:31-4.13

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§ 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.

History

HISTORY:

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

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

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N.J.A.C. 19:31-4.14

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§ 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.

History

HISTORY:

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).

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N.J.A.C. 19:31-6.1

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§ 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.

History

HISTORY:

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".

N.J.A.C. 19:31-6.2

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§ 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.

History

HISTORY:

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".

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N.J.A.C. 19:31-6.3

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§ 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.

N.J.A.C. 19:31-6.4

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§ 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.

N.J.A.C. 19:31-6.5

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§ 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.

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N.J.A.C. 19:31-7.1

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§ 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.

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N.J.A.C. 19:31-7.2

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§ 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 local development corporation, community development corporation, municipal port authority (established pursuant to N.J.S.A. 40:68A-29), or governing body of a county, or, with the approval of the government of a county, a county development corporation or other public entity designated by the Authority as a sponsor.

History

HISTORY:

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

See: 37 New Jersey Register 1714(a), 37 New Jersey Register 3058(a).

In "Sponsor" definition, added "(established pursuant to N.J.S.A. 40:68A-29)" and deleted "(see N.J.S.A. 40:68A-29)".

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§ 19:31-7.3 Application for financial assistance

(a)Each application for financial assistance from the Fund shall be accompanied by a non-refundable application fee of \$ 1,000. A non-refundable commitment fee of .875 percent of the loan amount is charged with the acceptance by an applicant of a direct loan commitment under the Local Development Financing Fund. The fee to be paid at closing is .875 percent of the loan amount. If financial assistance is provided from the Fund to purchase a participation in a bank loan, a non-refundable fee of \$ 750.00 is charged with the acceptance of a commitment under the Fund. A closing fee is not charged for a bank participation from the Fund.

(b)Each application for financial assistance from the Fund shall be accompanied by evidence of the support of the municipality in which the project is located. For purposes of these rules, evidence of municipal support shall mean an approved resolution of the governing body of the municipality.

(c)Each application for financial assistance from the Fund shall be accompanied by a benefit statement prepared by the applicant. The benefit statement shall address:

- 1.The number of permanent jobs to be created in the municipality in which the project is located, excluding the period of construction or development;
- 2.The number of jobs preserved by the completion of the project in the case of an existing enterprise;
- 3.The increase in the valuation of real property in the municipality as a result of the completion of the project;
- 4.Whether the project will result in the maintenance or provision of at least the same number of housing units at comparable rates as exists prior to the undertaking of the project;
- 5.Whether the project will be located in an area targeted for economic development and receiving Federal, State and/or local development assistance under other programs;
- 6.The extent to which the project will contribute to an economic revitalization of the municipality and/or the region;
- 7.The extent to which the project will advance State and/or regional planning and development strategies; and
- 8.The extent to which the location of the project is accessible to and promotes the use of public transportation.

(d)Each application for financial assistance from the Fund shall be accompanied by evidence of private source or other public source financing commitments.

(e) Each application for financial assistance from the Fund shall be accompanied by evidence of all requisite Federal and/or State environmental permits necessary for the project.

(f) Each application for financial assistance from the Fund shall be accompanied by a plan for the utilization of minority and women contractors and equal opportunity for employment in connection with the project (see N.J.A.C. 19:31-7.6).

History

HISTORY:

Amended by R.2009 d.38, effective January 20, 2009.

See: 40 N.J.R. 5954(a), 41 N.J.R. 638(a).

In (a), substituted "\$ 1,000" for "\$ 500.00", and inserted the last two sentences.

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

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

In (a), added the last two sentences.

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N.J.A.C. 19:31-7.4

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§ 19:31-7.4 Financial assistance

(a)No more than 20 percent of the total financial assistance provided from the Fund shall be in the form of grants or other non-lending assistance.

(b)The total amount of financial assistance provided to project applicants in any county during any year shall not exceed 20 percent of the appropriation made during that year to the Fund.

(c)No financial assistance from the Fund shall be granted to an individual applicant project unless at least 50 percent of the total eligible project cost consists of private resources. For purposes of these rules, private resources shall include, but are not limited to:

1. Conventional private sector mortgages;
2. Purchase money mortgages;
3. Industrial Revenue Bonds;
4. Leases;
5. Loans guaranteed by the Federal Small Business Administration, or similar loan guarantees of other governmental and/or quasi-governmental entities; and
6. Equity investments in the project.

(d)The Fund shall provide loans in the form of permanent subordinate mortgage financing for eligible project cost at or below market rates of interest, as determined by the Authority (see N.J.A.C. 19:31-7.5(c)).

(e)The applicant shall secure interim financing on all projects involving construction, unless the Authority agrees otherwise in writing. The interim lender shall assume full responsibility for monitoring the construction of a project and for its timely completion. The interim lender may be the first mortgage lender or another experienced, qualified construction lender and shall be approved by the Authority.

(f)The applicant shall have such equity in the project as the Authority may deem appropriate to insure the applicant's ability to repay the loan from the Fund.

(g)The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitment and that without assistance from the Fund the project would be economically unviable and unable to proceed.

(h)Assistance other than loans from the Fund may be approved where the Authority deems such assistance necessary to the success of the project. Such assistance shall not be provided for projects that can be funded by loans.

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N.J.A.C. 19:31-7.5

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§ 19:31-7.5 Terms of financial assistance

(a) The minimum loan amount from the Fund shall be \$ 50,000 and the maximum loan amount from the Fund shall be \$ 2,000,000.

(b) The Authority shall determine the term and the interest rate to be charged on a loan from the fund through consideration and official action of the Members at a public hearing.

(c) Factors to be considered in establishing additional interest rate basis points above the floor previously established by the Board may include, among others:

1. The applicant's creditworthiness;
2. The quality of collateral;
3. The number of jobs maintained or expanded in New Jersey;
4. The location/municipality of project;
5. The industry type;
6. The increase in tax ratable values;
7. Leveraging of total project costs to public dollars;
8. Whether the business is new to the State or expanding operation in the State; and
9. Whether the applicant is locating to a former brownfield site.

(d) The Authority shall provide public notice of the loan term and interest rate, including the interest rate floor, to be charged for the Local Development Financing Fund as authorized by the Members through, among other methods, listing on the agency's website at www.njeda.com.

History

HISTORY:

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.2002 d.223, effective July 15, 2002.

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

In (c), substituted "three for "five".

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

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

In (c), substituted "approval," for "closing" following "time of loan".

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

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

In (c), substituted "closing" for "approval".

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

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

Rewrote (b) and (c); and added (d).

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N.J.A.C. 19:31-7.6

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§ 19:31-7.6 Evaluation of applications

(a)The Authority shall evaluate and rank each application for financial assistance considering the following factors:

- 1.The number of unemployed persons in the municipality in which the project is located;
- 2.The number of permanent full-time jobs to be created and/or maintained directly by the project, excluding the period of construction or development;
- 3.The number of jobs preserved by the completion of the project for an existing enterprise that otherwise would leave the State;
- 4.The increase in the valuation of real property in the municipality as a result of the completion of the project;
- 5.The percentage of the total eligible project costs to be financed from private and/or other public sources;
- 6.Whether the project results in the maintenance or provision of at least the same number of housing units at comparable rates that exist prior to the undertaking of the project within the municipality or surrounding area;
- 7.Whether the project will be located in an area targeted for economic development and/or will be receiving Federal, State and/or local development incentives under other programs;
- 8.The extent to which the project will contribute to an economic revitalization of a municipality or region, and will promote or add to the rehabilitation of the physical environment of the immediate area or municipality in which it is to be located;
- 9.The degree to which the project will facilitate the advancement of State or regional planning development strategies;
- 10.The extent to which the locations of the project are accessible to and/or promote the use of public transportation;
- 11.The degree of support for, participation in, and/or consultation about the project, within the community in which the project will be located;
- 12.The likelihood that the project will create and/or preserve private sector jobs, which will last for a period of at least two years; and
- 13.The likelihood that the project will result in providing a significant increase in the real property tax base of the municipality in which the project is located.

(b)After the evaluation and ranking is completed, the projects will be presented to the members of the Authority for their review and approval.

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N.J.A.C. 19:31-7.7

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§ 19:31-7.7 Minority and women business set-aside plans and requirements

(a)Each project approved to receive financial assistance from the Fund shall set a target level of the aggregate project construction costs for the purpose of providing contracting opportunities for minority businesses and women businesses.

(b)The developer and/or general contractor of the project shall identify the minority and/or women businesses that will participate in the project by construction trade, together with the contract sum to be paid to each minority business.

(c)In determining the target level and compliance therewith, a developer and/or general contractor must proceed in accordance with N.J.A.C. 12A:10-2.

N.J.A.C. 19:31-7.8

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§ 19:31-7.8 Rescission of financial assistance from the Fund

(a)The Authority may at its discretion rescind part or all of the financial assistance from the Fund when it has become evident after the granting of financial assistance that:

- 1.The commitment of other financial resources from private sources has been withdrawn;
- 2.The project is judged no longer capable of repaying the Fund for the financial assistance it has received;
- 3.The project is judged incapable of achieving its target requirement, pursuant to N.J.A.C. 19:31-7.7, or that the project is not employing good faith efforts to achieve the requirements under N.J.A.C. 19:31-7.7; or
- 4.The participants in the project are found not to be of a good moral character. Such a finding may be based on convictions of felony offenses or any other conduct of the applicant which may be viewed in a nonfavorable light by a reasonable person.

(b)Upon determination of the Authority that financial assistance from the Fund shall be rescinded, the Authority shall send a certified letter to the applicant and the sponsor informing them of the rescission.

N.J.A.C. 19:31-8.1

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§ 19:31-8.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1993, c.139 which pertain to the Hazardous Discharge Site Remediation Fund. This Act established the Hazardous Discharge Site Remediation Fund, a special, revolving fund for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous waste.

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N.J.A.C. 19:31-8.2

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§ 19:31-8.2 Definitions

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

"Act" means P.L. 1993, c. 139, as amended and supplemented.

"Applicant" means a municipality, county, redevelopment entity, company, firm, non-profit organization, an individual, corporation, partnership, or other private business entity which has been determined by the Department to be eligible for financial assistance or a grant under the Fund.

"Authority" means the New Jersey Economic Development Authority.

"Brownfield development area" means an area that has been so designated by the Department, in writing, pursuant to Section 7 of P.L. 1993, c. 139 as amended.

"Brownfield site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

"Department" means the Department of Environmental Protection.

"Discharge" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

"Financial assistance" means loans and loan guarantees.

"Fund" means the Hazardous Discharge Site Remediation Fund.

"Innocent party" means a person who:

1. Acquired the real property prior to December 31, 1983 and continues to own the real property at least until the Authority renders final approval to the grant;
2. Demonstrates that the hazardous substance or hazardous waste that was discharged at the real property was not used by that person, or by any person that had permission to use the site from the applicant; and
3. Certifies that the applicant or any person that had permission to use the site from the applicant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

"Members" means the members of the Authority.

"Non-profit organizations" mean 501(c)3 corporations pursuant to Section 501(c)3 of the Federal Internal Revenue Code, 26 U.S.C. § 501(c)3, that are exempt from taxation pursuant to section 501(a) of the Federal Internal Revenue Code, 26 U.S.C. § 501(a).

"Person" means any individual, corporation, company, partnership, firm, or other private business entity and shall not include non-profit organizations.

"Preliminary assessment" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Public entities" means municipalities, counties and, as defined in this section, redevelopment entities.

"Qualifying person" means any person who has a net worth of not more than \$ 2 million.

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation or natural resources, or both.

"Redevelopment entity" means any redevelopment entity authorized to exercise government powers pursuant to section 4 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-4).

"Remediation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation funding source" means the methods of financing the remediation of a discharge.

"Renewable energy generation" means:

1. Electric energy produced from solar technologies, photovoltaic technologies, wind energy, fuel cells, geothermal technologies, wave or tidal action, methane gas from landfills, a resource recovery facility, a hydropower facility or a biomass facility, provided that the biomass is cultivated and harvested in a sustainable manner, and provided further that the Commissioner of the Department of Environmental Protection has determined that the resource recovery facility, hydropower facility or biomass facility, as appropriate, meets the highest environmental standards and minimizes any impacts to the environment and local communities; and
2. Energy produced from solar thermal or geothermal technologies.

"Site investigation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

History

HISTORY:

Amended by R.1994 d.375, effective July 18, 1994.

See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

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

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

Rewrote "Applicant"; and inserted "Municipal governmental entity", "NJRA" and "Qualifying person".

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

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

In definition "Act", inserted ", as amended and supplemented"; in definition "Applicant", substituted "municipality, county, redevelopment entity, company, firm, non-profit organization" for "municipal governmental entity, the New Jersey Redevelopment Authority"; added definitions "Brownfield development area", "Brownfield site", "Non-profit organizations", "Public entities", "Redevelopment entity" and "Recreation and conservation purposes"; in definition "Department", deleted "and Energy" from the end; rewrote definitions "Innocent Party" and "Person"; and deleted definitions "Municipal governmental entity" and "NJRA".

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

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

Added definition "Renewable energy generation".

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N.J.A.C. 19:31-8.3

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§ 19:31-8.3 Eligibility

(a) Financial assistance from the Fund may be made for eligible projects to public entities for:

1. Implementation of remedial action on contaminated real property; and
2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose in imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area.

(b) Grants from the Fund may be made for eligible projects to public entities for:

1. Preliminary assessment, site investigation, or remedial investigation of a contaminated site;
2. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property to be used for recreation and conservation purposes, provided that such use is included in the comprehensive plan for the development or redevelopment of the real property and a permanent restriction regarding development and preserving such use is recorded and indexed with the deed in the registry of deeds for the county in which the real property is located;
3. Matching grants of up to 50 percent of the costs of remedial action on contaminated real property to be used for affordable housing pursuant to N.J.S.A. 52:27D-301 et seq.;
4. Matching grants of up to 75 percent of the costs of remedial action on contaminated real property for renewable energy generation;
5. Matching grants of up to 25 percent of the project costs, in a total amount not to exceed \$ 250,000, to public entities which propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action; and
6. In a brownfield development area, for preliminary assessment, site investigation, remedial investigation and remedial action on contaminated real property. An ownership interest in the real property shall not be required; however, any grant awarded for remedial action on real property not owned by the public entity shall be subject to the lien provisions set forth in N.J.A.C. 19:31-8.4.

(c) Financial assistance from the Fund may be made for eligible projects to persons for:

1. Remediation of real property located in a qualifying municipality, as defined in N.J.S.A. 52:27D-178;
2. Remediation on contaminated sites, or on sites at which there is an imminent and significant threat of a discharge of a hazardous substance or hazardous waste, and such discharge poses or would pose

an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area;

3.Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the N.J.A.C. 7:26C, and who have not been ordered or directed to perform the remediation by the Department or by a court pursuant to Section 27b(3) of the Act; and

4.Persons who own and plan to remediate an environmental opportunity zone for which an exemption from real property taxes has been granted.

(d)Grants from the Fund may be made for eligible projects to persons for:

1.Persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person is an innocent party, a grant may be up to 50 percent of the remediation costs, but shall not exceed the total grant amount of \$ 1,000,000;

2.An owner or operator of a child care center licensed pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), or a prospective owner or operator of a child care center who has applied for a license pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), a grant of \$ 1,500 for the costs of a preliminary assessment performed in order to obtain a no further action letter as required pursuant to the provisions of subsection b. of section 2 of P.L. 2007, c. 1 (N.J.S.A. 52:27D-130.5) or performed as part of the child care center licensing requirements established by the Department of Children and Families; and

3.Matching grants of up to 25 percent of the project costs incurred after receipt of the application by the Department, in a total grant amount not to exceed \$ 250,000 to qualifying persons who propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action.

(e)Preconditions to eligibility are as follows:

1.For public entities:

i.Except for remediation grants made pursuant to (b)6 above, public entities shall either hold a tax sale certificate on the real property; have acquired the real property through foreclosure or other similar means; or have acquired the real property through voluntary conveyance, or have passed a resolution or ordinance or other appropriate document to acquire it through voluntary conveyance for the purpose of redevelopment or for recreation and conservation purposes. Regarding the third precondition above, the document authorizing the real property acquisition may also provide that, should good faith negotiations fail, the public entity may choose to exercise its right of eminent domain in order to acquire title to the real property. Additionally, there must have been a discharge, or there is currently a suspected discharge, of a hazardous substance or hazardous waste on the real property.

ii.Except for grant awarded pursuant to (b)2, 3 or 6 above, no grant or financial assistance shall be awarded for a remedial action until the public entity actually owns the real property.

iii.No grant shall be awarded unless the public entity has adopted a comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated real property, or can demonstrate to the Authority that a realistic opportunity exists that the real property will be developed or redeveloped within three years from the completion of the remediation.

2.No financial assistance or grant from the Remediation Fund shall be rendered to a person or any public entity that, at the time of application, is in violation of an administrative or judicial order, judgment or consent agreement regarding violation or threatened violation of an environmental law regarding the subject real property, unless the violation, fee, penalty or assessment is currently being contested by the applicant in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform the required remediation activities.

3. Financial assistance from the Fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of the remediation and may be rendered only for that amount of the cost of remediation for which the person cannot establish a remediation funding source. An applicant for financial assistance or a grant shall certify to the Department and to the Authority that it cannot establish a remediation funding source for all or part of the remediation costs. This requirement shall not apply to public entities or to persons who are not required to establish a remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remediation funding source for the part of the remediation involving an innovative technology, an unrestricted use remedial action, persons performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation.

(f) The determination of eligibility will be made by the Department in accordance with Sections 28 through 31 of the Act.

History

HISTORY:

Amended by R.1994 d.375, effective July 18, 1994.

See: 26 N.J.R. 1612(b), 26 N.J.R. 2918(a).

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.2006 d.369, effective October 16, 2006.

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

Rewrote the section.

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

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

Added new (b)4; recodified former (b)4 and (b)5 as (b)5 and (b)6; in (d)1, deleted "and" from the end; added new (d)2; recodified former (d)2 as (d)3; and in (e)1i and (e)1ii, substituted "6" for "5".

N.J.A.C. 19:31-8.4

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§ 19:31-8.4 Lien provision

Any expenditure of grant monies by a public entity for a remedial action in a brownfield development area for real property in which the public entity does not have an ownership interest shall constitute a debt of the real property owner to the fund. The authority shall cause to be filed in the county recording office of the county in which the real property is located a notice of lien listing the name of the real property owner, a description of the real property subject to the remedial action and an identification of the amount of the grant awarded from the fund. The notice of lien shall have priority over all other claims or liens which have been filed against the real property, except as provided in the act. The lien shall be removed upon transfer of ownership of the real property to the public entity that expended grant monies for remedial action on that real property.

History

HISTORY:

New Rule, R. 2006 d.369, effective October 16, 2006.

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

Former N.J.A.C. 19:31-8.4, Terms of financial assistance, recodified to N.J.A.C. 19:31-8.5.

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N.J.A.C. 19:31-8.5

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§ 19:31-8.5 Financial assistance: term; interest rate; transfer of title

(a) Loans from the Fund or loans guaranteed by the Fund shall be for a term of not more than 10 years.

(b) Loans to public entities shall bear an interest rate equal to two points below the Federal Discount Rate at the time of approval or at the time of loan closing, whichever is lower, except that the rate shall be no lower than three percent. Loans to persons shall bear an interest rate equal to the Federal Discount Rate at the time of approval or at the time of the loan closing, whichever is lower, with a minimum floor of five percent.

(c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable. Notwithstanding the foregoing, the unpaid balance of the loan that is transferred by devise or succession shall not become immediately payable in full, and loan repayments shall be made by the new title holder of the real property.

History

HISTORY:

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.2000 d.297, effective July 17, 2000.

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

Rewrote (b).

Recodified from N.J.A.C. 19:31-8.4 and amended by R.2006 d.369, effective October 16, 2006.

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

Section was "Terms of financial assistance". Rewrote (b) and (c). Former N.J.A.C. 19:31-8.5, Amount of financial assistance and grants, recodified to N.J.A.C. 19:31-8.6.

N.J.A.C. 19:31-8.6

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§ 19:31-8.6 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable remediation costs, except that the cumulative maximum amount of financial assistance to a person in any calendar year, for one or more properties, shall be \$ 1,000,000.

(b) Financial assistance and grants to any one public entity shall not exceed \$ 3,000,000 in any calendar year, except as provided in (c) below.

(c) The Authority may award an additional amount of up to \$ 2,000,000 of financial assistance and grants in any calendar year to any one public entity for the remediation of real property in a brownfield development area.

(d) The total cumulative amount of matching grants awarded to public entities for remedial action of real property to be used for recreation and conservation purposes, for renewable energy generation or for affordable housing, shall not exceed \$ 5,000,000 in any calendar year.

(e) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$ 1,000,000.

(f) The amount of financial assistance or grant awarded shall be based upon a scope of work for remediation which is in compliance with N.J.A.C. 7:26D, 7:26E, 7:26B and 7:14B as applicable.

(g) The amount of a grant for costs of a remedial action shall not include the cost to remediate a site to meet residential soil remediation standards if the local zoning ordinances do not allow for residential use.

History

HISTORY:

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 "and grants" following "assistance"; and in (b), inserted "or NJRA" following "entity".

Recodified from N.J.A.C. 19:31-8.5 and amended by R.2006 d.369, effective October 16, 2006.

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

In (a), substituted "remediation" for "Remediation"; rewrote (b); added new (c), (d) and (g); recodified former (c) and (d) as new (e) and (f); and in (f), inserted "awarded". Former N.J.A.C. 19:31-8.6, Priority system for financial assistance and grants, recodified to N.J.A.C. 19:31-8.7.

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

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

In (d), inserted ", for renewable energy generation or for affordable housing,".

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§ 19:31-8.7 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule in the following order of priority:

1. Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; and
2. Sites in areas designated as Planning Area 1, Planning Area 2, designated centers, or areas receiving plan endorsement as designated pursuant to the "State Planning Act," section 1 through 12 of P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), sites that the Brownfields Redevelopment Task Force, established pursuant to section 5 of P.L. 1997, c. 278 (N.J.S.A. 58:10B-23), determines are of immediate economic development potential, and sites in brownfield development areas.
3. The Chief Executive Officer of the Authority shall, from time to time review the allocation of moneys in the Fund and the requirements of applicants for money from the Fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

History

HISTORY:

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

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

In (b), inserted a reference to the NJRA. 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)2, substituted "Chief Executive Officer" for "Executive Director".

Recodified from N.J.A.C. 19:31-8.6 and amended by R.2006 d.369, effective October 16, 2006.

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

In the introductory paragraph of (a), substituted "in the following order of priority:" for a period at the end; rewrote (a)1; added new (a)2; recodified former (a)2 as new (a)3; and deleted (b). Former N.J.A.C. 19:31-8.7, Application for financial assistance and grants, recodified to N.J.A.C. 19:31-8.9.

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N.J.A.C. 19:31-8.8

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§ 19:31-8.8 Non-profit pilot program

In accordance with the Act, an allocation from the Fund in an amount not to exceed \$ 5,000,000 shall be set aside for a Non-Profit Pilot Program. Under this Pilot Program, grants may be made for eligible projects to non-profit organizations for the purpose of funding preliminary assessment, site investigation and remedial investigation of real property that has been contaminated or is suspected of being contaminated by the discharge of a hazardous substance. All of the limitations and conditions for the award of financial assistance and grants applicable to municipalities pursuant to the provisions of the Brownfields and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.1 to 3.1, shall apply to the award of grants to non-profit organizations under this section.

History

HISTORY:

New Rule, R. 2006 d.369, effective October 16, 2006.

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

Former N.J.A.C. 19:31-8.8, Evaluation process for financial assistance and grants, recodified to N.J.A.C. 19:31-8.10.

N.J.A.C. 19:31-8.9

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§ 19:31-8.9 Application for financial assistance and grants

(a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source, if applicable.

(b) The Department shall forward the approved application to the Authority for further processing. The Authority shall have the discretion to request any additional information from the applicant and/or from the Department which it deems necessary in order to complete its evaluation of the application. An application shall be deemed to be complete at such time as the Authority has received all required information in the required form.

(c) The applicant will be given priority for financial assistance and grants based on the date of receipt by the Authority of a completed application, subject to any priority given under N.J.A.C. 19:31-8.7.

(d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority. Notwithstanding anything in this section to the contrary, in the event the applicant submits the additional information in the required form within the 30 day period, the application shall be deemed complete as of the initial application submission date.

(e) If the applicant fails to file the additional information within the 30-day period, the filing date for the application shall be the date the additional information is received by the Authority, for those applications relating to sites that are not within a priority category enumerated in N.J.A.C. 19:31-8.7.

(f) A completed application shall include, if applicable as determined by the Authority:

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 or grant 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, or, for an individual, copies of tax returns for the three most recent years.
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.In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.

(g)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.

(h)Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority Members at a public meeting. Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application. The applicant has no right to have its application presented to the Members.

History

HISTORY:

Administrative Correction.

See: 26 N.J.R. 2462(b).

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

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

Rewrote (b); inserted references to grants in (c) and (f)2; and in (d), added a second sentence.

Recodified from N.J.A.C. 19:31-8.7 and amended by R.2006 d.369, effective October 16, 2006.

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

In (a), inserted ", if applicable"; in (c), inserted ", subject to any priority given under N.J.A.C. 19:31-8.7"; and in (e), inserted ", for those applications relating to sites that are not within a priority category enumerated in N.J.A.C. 19:31-8.7". Former N.J.A.C. 19:31-8.9, Approval process for financial assistance and grants, recodified to N.J.A.C. 19:31-8.11.

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N.J.A.C. 19:31-8.10

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§ 19:31-8.10 Evaluation process for financial assistance and grants

(a) When all of the required information is received, the Authority will perform its own credit evaluation based upon applicable criteria as determined by the Authority, including:

1. Visitation to the applicant's place of business, or real property which is the subject of the application;
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;
8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches; and
9. For public entities, all Local Finance Board requirements must be satisfied.

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

(c) If a positive determination is made, the requested financial assistance or grant shall be presented to the Members for approval.

History

HISTORY:

N.J.A.C. 19:31-8.10

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

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

Inserted (a)9.

Recodified from N.J.A.C. 19:31-8.8 and amended by R.2006 d.369, effective October 16, 2006.

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

In the introductory paragraph of (a), substituted "applicable criteria as determined by the Authority, including" for "the following"; in (a)1, inserted ", or real property which is the subject of the application"; in (a)9, substituted "public entities" for "municipal government entities"; and in (c), inserted "or grant". Former N.J.A.C. 19:31-8.10, Disbursement of financial assistance and grants, recodified to N.J.A.C. 19:31-8.12.

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§ 19:31-8.11 Approval process for financial assistance and grants

- (a) Only the Members can approve financial assistance or a grant, except that Authority staff may approve a request for grant or financial assistance as delegated to them by the Authority Members.
- (b) When the Members approve financial assistance or a grant, 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, award closing package, notice of approval of financial assistance, or grant, is issued to the applicant.
1. The notice of approval will contain all material terms, conditions and collateral required by the Authority and will include personal guarantees of owners of 10 percent or more of the applicant and corporate, partnership or limited liability company guarantees of any companies related to the applicant. There may be a requirement for collateral apart from the applicant's collateral to secure the guarantees.
- (e) Within 90 calendar days for a person, or within 180 calendar days for a public entity, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.
- (f) When the notice of approval has been accepted by the applicant and returned to the Authority within the requisite time frame, a list of closing instructions shall be mailed to the applicant or public entity or its designated representative. The Authority's commitment shall terminate and the Authority shall have no further obligation in connection with an application if the notice of approval is not signed and returned to the Authority, together with the applicable fees, within 120 days of its delivery or month's end, whichever is later for public entities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants. In addition, in the event that the financing is not closed on or before 90 days from the date of acceptance for public entities and 180 days from the acceptance date for other applicants, the Authority's obligation to provide financing shall terminate and the applicant shall be required to submit a new application. Upon receipt of a written request, the Authority, in consultation with the Department, may consider an extension of time.
- (g) When all required documentation is prepared, in form and content satisfactory to the Authority, a closing shall be scheduled and the funds made available to the applicant subject to approval by the Authority.

History

HISTORY:

Administrative Correction.

See: 26 N.J.R. 2462(b).

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.2000 d.297, effective July 17, 2000.

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

Rewrote (d) and (f); in (e), inserted a reference to grants; and in (g), substituted a reference to closings for a reference to loan closings, and deleted a reference to sponsors.

Amended by R.2000 d.482, effective December 4, 2000.

See: 32 N.J.R. 3555(a), 32 N.J.R. 4275(b).

In (f), added "for municipalities and within 30 days of the date of the notice of approval or month's end, whichever is later (acceptance date) for other applicants" at the end of the second sentence, and inserted "for municipalities and 180 days from the acceptance date for other applicants" following "acceptance" in the third sentence.

Recodified from N.J.A.C. 19:31-8.9 and amended by R.2006 d.369, effective October 16, 2006.

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

Rewrote (a) and (d)1; in (e), substituted "person" for "private entity" and "public entity" for "municipal governmental entity or NJRA"; in (f), substituted "applicant or public entity" for "municipality", "its designated representative" for "attorney for the applicant", and "public entities" for "municipalities" twice; and, also in (f), deleted "of Environmental Protection" following "Department". Former N.J.A.C. 19:31-8.11, Attorney General review, recodified to N.J.A.C. 19:31-8.13.

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§ 19:31-8.12 Disbursement of financial assistance and grants

- (a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant to the Department with a certification from the contractor or consultant that the requested moneys will be spent or have been spent in accordance with a Department approved scope of work and a certification from the applicant that it is in full compliance with all of the terms and conditions of the assistance agreement. Disbursements are subject to certain preconditions, including, among other things, approval by the Department of the remediation contracts and all previously performed work.
- (b) The recipient of the financial assistance or grant must provide access, to the Authority and the Department, at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.
- (c) In the case of a grant or financial assistance, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.118 who does not have a defense to that liability under N.J.S.A. 58:10-23.11(g). All moneys collected in a cost recovery subrogation action shall be deposited into the Fund. No award of a grant or financial assistance shall be made if the applicant relinquishes, impairs or waives, or has relinquished, impaired or waived, any right to recover the costs of remediation against any insurance carrier, discharger or person in any way responsible for a hazardous substance pursuant to N.J.S.A. 58:10-23.11(g).
- (d) Where financial assistance to a person is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.
- (e) Upon request, the recipient of financial assistance or grant shall provide the Authority with evidence that the monies are being spent in accordance with the Department approved scope of work, and that it is adhering to the terms and conditions of its agreement with the Authority.

History

HISTORY:

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

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

Rewrote (a); in (c), substituted a reference to liable parties for a reference to responsible parties, and added a second sentence; and in (d) inserted a reference to the NJRA.

N.J.A.C. 19:31-8.12

Recodified from N.J.A.C. 19:31-8.10 and amended by R.2006 d.369, effective October 16, 2006.

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

In (a), inserted "or have been spent" and substituted "with" for "within" following "accordance"; in (b), substituted "to" for "by" following "access, "; in (d), deleted "other than a municipal governmental entity or the NJRA" following "person"; and added (e). Former N.J.A.C. 19:31-8.12, Fees, recodified to N.J.A.C. 19:31-8.14.

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

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

In (a), inserted "to the Department"; and rewrote (c).

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§ 19:31-8.13 Attorney General review

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

History

HISTORY:

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

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

Recodified from N.J.A.C. 19:31-8.11 by R.2006 d.369, effective October 16, 2006.

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

Former N.J.A.C. 19:31-8.13, Public record, recodified to N.J.A.C. 19:31-8.15.

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§ 19:31-8.14 Fees

(a) Application fees shall be charged as follows:

1.A \$ 500.00 non-refundable fee shall be due upon submittal of an application for financial assistance or grant;

2.Additional non-refundable application fees for financial assistance are as follows: \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged upon the acceptance of financial assistance under the Fund; and \$ 500.00 or one-half of one percent of the financial assistance, whichever is greater, shall be charged at closing.

(b) No Authority fees shall be paid from the financial assistance or grant award.

History

HISTORY:

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.

Recodified from N.J.A.C. 19:31-8.12 and amended by R.2006 d.369, effective October 16, 2006.

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

Rewrote the section.

Repeal and New Rule, R.2010 d.285, effective December 6, 2010.

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

Section was "Fees".

N.J.A.C. 19:31-8.15

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§ 19:31-8.15 Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

History

HISTORY:

Recodified from N.J.A.C. 19:31-8.13 by R.2006 d.369, effective October 16, 2006.

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

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N.J.A.C. 19:31-9.1

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§ 19:31-9.1 Applicability and scope

These rules are promulgated by the New Jersey Economic Development Authority (the Authority) to implement the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346 (the Act), as amended by P.L. 2009, c. 90. The Act establishes a tax credit program for capital investments and increased employment in targeted urban rail transit hubs to catalyze economic development in those transit hubs. The Act further provides that the Urban Transit Hub Tax Credit Program (the Program) is to be administered by the New Jersey Economic Development Authority and that the Authority consults with the Director of the Division of Taxation in the Department of the Treasury when adopting rules for the Program. The Program provides that businesses making at least \$ 50,000,000 in new capital investments in a qualified business facility in an "urban transit hub" and employing at least 250 full-time employees at that facility may be eligible for tax credits in order to catalyze economic development in those urban areas. The tax credits are equal to 100 percent of the claimant's qualified capital investments made, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation business tax or insurance premiums tax. Tenants in qualified business facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least \$ 17,500,000 of the capital investment in the facility and employ at least 250 full-time employees in that facility. Developers that previously applied for the 20 percent credit of their capital investment in a qualified residential project may reapply provided the project meets the statutory criteria that it is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits. Finally, businesses may apply for a credit for their capital investment in a qualified business facility that is part of a mixed use project and developers may apply for a credit for their capital investment in a qualified residential project that includes a mixed use project, but not for both a residential project and mixed use project separately. The tax credits are reduced to 80 percent if 200 new jobs (to the State) are not created, or forfeited if certain facility and Statewide employment levels are not maintained. The program is limited to municipalities that are eligible for urban aid, that had at least 30 percent of their real property value exempt from property taxes during 2006, and that have a specified commuter rail station, excluding any rail station located at an international airport.

History

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

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

Inserted ", as amended by P.L. 2009, c. 90", the seventh sentence, "to 80 percent if 200 new jobs (to the State) are not created," and "during 2006", substituted "\$ 50,000,000" for "\$ 75 million", "\$ 17,500,000" for "\$ 25 million" and "had at" for "have a" preceding "least 30 percent", and deleted "and all light rail stations" following "airport".

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

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

Rewrote the section.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

Inserted a comma following "2013" and following "insurance premiums tax", and substituted "December 21, 2012, and shall submit their documentation to support the amount of their capital investment no later than April 26, 2017" for "July 28, 2014 and satisfy the capital investment conditions for award of credits by July 28, 2017" and "the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it. Developers" for "developers".

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

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

Rewrote the section.

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§ 19:31-9.2 Definitions

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

"Acquisition" means the purchase of a qualified business facility between unrelated parties pursuant to an arm's length transaction. The value of the land shall be appraised as vacant and subtracted from the purchase price to determine the amount of the capital investment. If the acquisition is of a facility that existed prior to the January 13, 2008 effective date of the Act, the buyer shall undertake capital investments of a value not less than 50 percent of the total cost to acquire the facility in order for the acquisition of such facility to be included in this Program.

"Act" means the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 1563 or the entity is an organization in a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 414(b), (c). 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).

"Approval letter" means the letter sent by the Authority that sets forth the conditions subsequent to the approval, the forecasted schedule for completion and occupancy of the project, the date the 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such information which further the purposes of P.L. 2007, c. 346. The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

"Authority" means the New Jersey Economic Development Authority.

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

"Business" means 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 an entity classified as a partnership, an S corporation, or a limited liability company. A business shall include an

affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate are necessary to evidence compliance with eligibility requirements.

"Capital investment" in a qualified business facility and a qualified residential project means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs. 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(R) 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 or qualified residential project site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. With respect to commercial development, to be included the capital investment must be commenced after January 13, 2008, the effective date of P.L. 2007, c. 346. For applications submitted to and approved by the Authority prior to September 18, 2013, the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L. 2013, c. 161, the applicant shall incur expenses and submit its documentation for approval of its credit amount by January 13, 2016, the eighth anniversary of the effective date of P.L. 2007, c. 346, and for commercial development applications approved on or after September 18, 2013, and on or before December 31, 2013, the applicant shall incur expenses and submit its documentation for approval of its credit amount no later than April 26, 2019. With respect to residential development, the capital investment must be commenced after July 28, 2009, the effective date of P.L. 2009, c. 90, to be included and developers shall incur expenses and submit their documentation to support the amount of their capital investment no later than April 26, 2019. For purposes of this subchapter, "commenced" shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

"Developer" means, with respect to a qualified business facility, a business that intends to construct and lease a business facility. A developer may seek to receive approval that the facility will constitute a qualified business facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

"Eligibility period" means the 10-year period in which a business may claim an urban transit hub tax credit, beginning with the tax period in which the Authority first certifies that the business has met the capital investment and employment qualifications, if any, of the Program.

"Eligible municipality" means a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) or which was 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, which is taxable and that which is tax exempt. For State fiscal year 2008, the eligible municipalities are: Camden, East Orange, Elizabeth, Jersey City, Newark, New Brunswick, Paterson, Trenton and Hoboken. For subsequent State fiscal years, the Authority, after consultation of the Department of Community Affairs, shall annually publish at www.newjerseybusiness.gov a notice listing the eligible municipalities.

"Full-time employee" means a person employed by the 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, as determined by the Authority, or a person 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, as determined by the Authority, 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 an employee 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 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. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"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. For the purpose of calculating the number of new full-time employees, a position shall not be considered a new full-time position unless it is in addition to the number of full-time employees in the business's Statewide workforce in the last tax accounting or privilege period prior to the tax credit amount approval.

"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.

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-9.14 that must accompany the use of the tax credit certificate.

"Light rail station" means a location where passengers board or alight River Line Light Rail, the Hudson-Bergen Light Rail, the Newark Light Rail services, or any other light rail service owned and/or operated by New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation in the State of New Jersey. Light rail is a transit mode with a lighter volume traffic capacity compared to commuter rail service and characterized by lighter vehicles operating in one or two-car trains on fixed rails, powered by electric or diesel, and not regulated by the Federal Railroad Administration unless covered by a waiver for shared-use operation of freight and light rail passenger service.

"Mixed use project" means a project comprising both a qualified business facility and a qualified residential project, provided that the residential project does not need to be the predominant part of the mixed use project if it meets the criteria set forth in N.J.A.C. 19:31-9.3(a)5.

"Net leasable area" means the usable area or actual occupiable area of a building, a floor or an office suite. The amount of usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled, and thus is not fixed for the life of a building as would be the case with leasable area.

"New full-time position" means a position created by the business at the qualified business facility that did not previously exist in this State. New full-time position shall also include new full-time positions that a business creates after receipt of approval pursuant to N.J.A.C. 19:31-97 that are transferred to the qualified business facility upon completion thereof.

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

"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 Urban Transit Hub Tax Credit Program created pursuant to P.L. 2007, c. 346 and provided in this subchapter.

"Progress information" means the information that must be submitted pursuant to N.J.A.C. 19:31-9.8.

"Project" or "hub project" means employment by the business of a minimum of 250 full-time employees at a facility that meets the capital investment criteria of the Act in a qualified business facility located within a designated urban transit hub in an eligible municipality.

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment as defined under capital investment, located within a designated urban transit hub in an eligible municipality, used in connection with the operation of a business.

"Qualified residential project" means any building, complex of buildings or structural components of buildings, consisting predominantly of residential units, located in an urban transit hub within an eligible municipality.

"Rail station" means a rail station, including light rail stations, of the New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation, but shall not include any rail station located at an international airport, except that any property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation rail station platform area at an international airport upon which a qualified business facility is constructed or renovated commencing after the effective date of P.L. 2011, c. 149 shall be deemed an urban transit hub, excluding any property owned or controlled by the Port Authority of New York and New Jersey.

"Residential developer" means a business that intends to make or acquire capital investments in a qualified residential project pursuant to sections 34 and 35 of P.L. 2009, c. 90.

"Residential unit" means a residential dwelling unit such as a rental apartment, a condominium or cooperative unit, a hotel room, or a dormitory room.

"Site preparation" means the clearing, excavation, or removal of existing buildings, structures, vegetation, or facilities, and the site grading or other earth work, which is necessary for the construction of a qualified business facility.

"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.

"Tax accounting period" or "tax privilege period" or "tax period" shall mean tax year for purposes of this chapter.

"Tenant" means a business that is a lessee or owner of a condominium in a qualified business facility and does not include a lessee or owner of a condominium in a qualified residential facility.

"Urban transit hub" means property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations; property located within a one-mile radius of the mid point of the platform area of such a rail 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.) or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development; the site of the campus of an acute care medical facility located within a one-mile radius of the mid point of the platform area of such a rail station; the site of a closed hospital located within a one-mile radius of the mid point of the platform area of such a rail station; property located within a one-half mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station; and property adjacent to, or connected by rail spur to, a freight rail line if, as part of its regular course of business, as determined by the Authority, the business utilizes that freight rail line for loading and unloading freight cars on trains delineated by the Authority pursuant to subsection e. of section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-3e). A

property, which is partially included within the radius, shall only be considered part of the hub if over 50 percent of its land area falls within the radius. In the case of a rail station with multiple rail lines, a separate midpoint shall be determined for each such rail line. Once the hubs have been delineated, the Authority will post eligible rail stations and corresponding midpoints on the website at www.newjerseybusiness.gov. The posting will be updated if the eligible rail stations change and to reflect changes in station midpoints.

"Urban transit hub tax credit" or "tax credit" means the tax credit permitted under P.L. 2007, c. 346, as amended by P.L. 2009, c. 90 and this subchapter, which may be applied against the tax liability otherwise due for corporation business tax or insurance premiums tax 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.

"Urban transit hub tax credit transferee" or "tax credit transferee" means if the business transfers its tax credits by first obtaining and then selling or assigning its tax credits as evidenced by a tax credit transfer certificate, then the owner of the tax credits, including any subsequent owners of the tax credits.

History

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

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

Rewrote definitions "Affiliate", "Business", "Capital investment", "Full-time employee", "Light rail station", "Rail station", "Urban transit hub" and "Urban transit hub tax credit"; substituted definition "Approval letter" for definition "Agreement" or "project agreement"; rewrote definition "Approval letter"; added definitions "Developer", "Full-time employee at the qualified business facility", "Letter of compliance", "Professional employer organization", "Progress information", "Qualified residential project", "Residential developer", "Residential unit", "Soft costs" and "Tenant"; in definition "Eligibility period", inserted ", if any,"; and in definition "Eligible municipality", substituted the second occurrence of "was" for "is" preceding "exempt from", and inserted "during tax year 2006".

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

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

Added definitions "Mixed use project" and "Urban transit hub tax credit transferee"; in definition "Qualified residential project", substituted "consisting predominantly" for "including a mixed use project, the majority of which, as measured by square footage, consists"; in definition "Urban transit hub", inserted "if the business uses that freight line at any rail spur located adjacent to or within a one-mile radius surrounding the entrance to the property, provided the property is located in the eligible municipality," and in definition "Urban transit hub tax credit", substituted "or" for a comma preceding and deleted "or gross income tax" following "insurance premiums tax".

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 "Eligibility period", substituted "first certifies that" for "accepts the certification of" and deleted "that it" following the second occurrence of "business"; in definition "Full-time employee at the qualified business facility", inserted the last sentence; and rewrote definitions "Rail station" and "Urban transit hub".

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In definition "Capital investment", inserted a comma following the second, third, and fourth instances of "facility", substituted "third-party" for "third party", inserted a comma following the second instance of "construction", substituted "January 13, 2008, the" for "the January 13, 2008", inserted a comma following "Act", and substituted

"developers shall submit their documentation to support the amount of their capital investment no later than April 26," for "the applicant submits its documentation for approval of its credit amount by the eighth anniversary of that date, that is, by July 28,".

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

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

Rewrote definition "Capital investment".

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End of Document

N.J.A.C. 19:31-9.3

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

§ 19:31-9.3 Eligibility criteria

(a) In order to be eligible to be considered for an urban transit hub tax credit:

1. For a qualified business facility, if the business is other than a tenant, the business shall:
 - i. Make or acquire capital investments in a qualified business facility totaling not less than \$ 50,000,000. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of \$ 50,000,000 provided that the owner so indicate in his application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;
 - ii. Employ not fewer than 250 full-time employees at the qualified business facility; and
 - iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.
2. If the business is a tenant in a qualified business facility:
 - i. The owner of the qualified business facility shall make or acquire capital investments, or in a mixed-use facility capital and residential capital investments in the facility totaling not less than \$ 50,000,000, as calculated in accordance with (a)1i above;
 - ii. The tenant shall occupy a leased area of the qualified business facility that represents at least \$ 17,500,000 of the capital investment in the facility, as calculated pursuant to (b) below;
 - iii. The tenant business and up to two other tenants shall employ not fewer than 250 full-time employees in the aggregate at the qualified business facility;
 - iv. The business shall lease the qualified business facility for a term of not less than 10 years; and
 - v. Except for tenants of a qualified business facility for which the owner has previously demonstrated a net positive benefit and received approval of the project site or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the term of the tenant's lease, not to exceed 20

years. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment, but not from employees other than those referenced in (a)2iii above.

3. For a qualified residential project, the residential developer shall:

- i. Make or acquire capital investments totaling not less than \$ 50,000,000 in a qualified residential project. This requirement may be met by the residential developer or by one or more of its affiliates;
- ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and
- iii. Not be required to meet the employment requirements required for a qualified business facility.

4. For a qualified business facility that is part of a mixed use project, the business shall:

- i. Make or acquire capital investments in a qualified business facility that is part of a mixed use project provided that the qualified business facility represents at least \$ 17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified business facility is a part is not less than \$ 50,000,000;
- ii. Employ not fewer than 250 full-time employees at the qualified business facility; and
- iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the approved tax allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment, not to exceed 20 years.

5. For a qualified residential project that is part of a mixed use project, the developer shall:

- i. Make or acquire capital investments in a qualified residential project that is part of a mixed use project provided that the qualified residential project represents at least \$ 17,500,000 of the total capital investment in the mixed use project and the total capital investment in the mixed use project of which the qualified residential project is a part is not less than \$ 50,000,000;
- ii. Demonstrate to the Authority that the qualified residential project is likely to be realized with the provision of tax credits at the level requested, but is not likely to be accomplished by private enterprise without the tax credits; and
- iii. Not be required to meet the employment requirements required for a qualified business facility.

(b) In order to determine whether the tenant's leasable area of the qualified business facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$ 50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

(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) Because a business may include an affiliate or affiliates, the capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.

(e) A business shall be treated as owner of a qualified business facility or a qualified residential project if it holds 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.

(f) A business that is investing in a qualified business facility or qualified residential project may apply for tax credits valued at less than the total amount of the capital investments in its project.

(g)In determining whether a proposed capital investment will yield a net positive benefit, the transfer of an existing job from one location in the State to another may be considered as the creation of a new job if:

- 1.The business proposes to transfer existing jobs to a municipality in the State as part of a consolidation of business operations from two or more other locations that are not in the same municipality whether in-State or out-of-State; or
- 2.The business's chief executive officer, or equivalent officer, submits a certification pursuant to N.J.A.C. 19:31-9.5(a)3iv.

(h)For purposes of mixed use projects or qualified residential projects, an eligible municipality shall have the option, pursuant to section 18 of P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), of deciding the percentage of newly-constructed residential units within the project, up to 20 percent of the total, required to be reserved for occupancy by low or moderate income households, as those terms are defined under the rules of the Department of Community Affairs concerning affordable housing. For a mixed use project or a qualified residential project that has received preliminary or final site plan approval prior to the effective date of P.L. 2011, c. 89, the percentage shall be deemed to be the percentage, if any, of units required to be reserved for low or moderate income households in accordance with the terms and conditions of such approval.

(i)If a developer of a mixed use project obtains tax credits for its capital investment in a qualified residential project that is part of that mixed use project, it shall not be allowed a credit for the same qualified residential project pursuant to other sections of this subchapter. For a developer that is allowed a credit for its capital investment in a qualified residential project that is part of a mixed use project, it, or an eligible tenant, shall also be allowed a credit for the capital investment in a qualified business facility that is part of the same mixed use project, in the respective amounts set forth in N.J.A.C. 19:31-9.9(a), provided that the criteria in (a)4 and 5 above are satisfied.

History

HISTORY:

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 section.

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

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

In (a)3ii, inserted "and" at the end; in (a)3iii, substituted a period for "; and" at the end; deleted (a)3iv; and added (a)4, (a)5 and (g) through (i).

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

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

In (a)2v, substituted "requested tax credit" for "approved tax" and deleted the last sentence.

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

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

Rewrote the introductory paragraph of (a)4 and (i); and in the introductory paragraph of (a)5, substituted "is part of" for "includes".

End of Document

N.J.A.C. 19:31-9.4

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

§ 19:31-9.4 Restrictions

(a) A business shall not be allowed urban transit hub tax credits if:

1. The business participates in a Business Employment Incentive Program agreement pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) relating to the same capital investment, employees, and site that qualify the business for urban transit hub tax credits; or
2. The business receives assistance from the Business Retention and Relocation Assistance Grant Program pursuant to P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).

(b) A business that is allowed a tax credit under this section shall not be eligible for incentives authorized by the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

(c) A business shall not qualify for a tax credit based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which a grant was provided to the business pursuant to the InvestNJ Business Grant Program Act, P.L. 2008, c. 112 (N.J.S.A. 34:1B-237 et seq.).

(d) Capital investments in a qualified business facility must be incurred after January 13, 2008, the effective date of P.L. 2007, c. 346. An approved business must submit its documentation for approval of its credit amount before the end of the eighth year after the effective date, and thus, before January 13, 2016, if its application was submitted to and approved by the Authority prior to September 18, 2013, the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L. 2013, c. 161. The credit amount allowed for a tax period ending after January 16, 2016 during which documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it. This eight-year limit is expected to afford businesses applying toward the end of the five-year application period at least three years to complete the project. If the Authority approved the business's application on or after September 18, 2013, and on or before December 31, 2013, the business shall submit its documentation for approval of its credit amount no later than April 26, 2019, and the credit amount for any tax period ending after July 28, 2019, during which the documentation of the business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it. Capital investments in a qualified residential facility must be incurred after July 28, 2009, the effective date of P.L. 2009, c. 90, and developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2019. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2019, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

(e) If a business participating in a Business Employment Incentive Program agreement for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation

Assistance Grant Program, InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for urban transit hub tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act, as applicable.

History

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

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

In (a)1, inserted "or" at the end; in (a)2, substituted a period for "; or" at the end; deleted (a)3; added new (c); recodified former (c) and (d) as (d) and (e); rewrote (d); and in (e), inserted "InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act," and "InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act," and substituted a comma for "or" following the second occurrence of "Business Employment Incentive Program".

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

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

In (d), substituted "submitted" for the first occurrence of "applied for" and "business's" for "business" preceding "credit" throughout.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (d), substituted "eight-year" for "eighth year", and "developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2017. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2017, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it." for "be applied for within five years of July 28, 2009. A residential developer must submit its documentation for approval of its credit amount within eight years after July 28, 2009. The credit amount allowed for a tax period ending after July 28, 2017 during which documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it."

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

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

In (a)1 and (e), substituted "agreement" for "grant"; and, rewrote (d).

N.J.A.C. 19:31-9.5

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 50 No. 11, June 4, 2018

New Jersey Administrative Code > TITLE 19. OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY > CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS > SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

§ 19:31-9.5 Application submission requirements

(a) Each application to the Authority made by an owner, tenant or residential developer 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. Prospective future address of the business (if different);
 - iv. The type of the business;
 - v. 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. 12A:4-12;
 - 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. 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;
 - 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 if the business is a residential developer, a description of the capital investment planned to be made or acquired in a qualified residential project;

iii. The estimated value of the capital investment;

iv. A certification from the owner, with 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, equaling 110 percent of the requested tax allocation amount, to the State and the eligible municipality for the period equal to 75 percent of the useful life of the investment or the term of the tenant's lease, not to exceed 20 years, taking into account the criteria listed at N.J.A.C. 19:31-9.7(c). 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. If the capital investment is a qualified residential project, a pro forma analysis demonstrating that the project is likely to be realized with the provision of the tax credits at the level requested to be realized but is not likely to be accomplished by private enterprise without the credits;

vi. A description of how the green building standards to be set forth in the green building manual prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6) 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;

vii. Identification of the site of the proposed qualified business facility or qualified residential project, including the block and lot of the site as indicated upon the local tax map and evidence that the site is located wholly or partially (over 50 percent) within an urban transit hub in the form of a survey or other documentation acceptable to the Authority;

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

ix. If the capital investment is a qualified business facility, a schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

x. 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 company and copies of all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and, to the extent they exist, for the potential out-of-State location alternatives;

- xi.**The total number of anticipated new full-time positions that would be created 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
- xii.**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 and are subject to withholding as provided in the New Jersey Gross Income Tax Act;
- ii.**The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified business facility;
- iii.**To the extent a tenant is meeting the employment requirement together with up to two other tenants in the qualified business facility, a submission from the other tenants relating to (a)3i above;
- iv.**For the purpose of N.J.A.C. 19:31-9.3(g)2, a written certification by the chief executive officer, or equivalent officer, that the existing jobs are at risk of leaving the State and that the chief executive officer, or equivalent officer, has reviewed the information submitted that the representations contained therein are accurate, and the business intends to employ not fewer than 500 full-time employees in the qualified business facility;
- v.**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
- vi.**Any other necessary and relevant information as determined by the Authority for a specific application.

(b)A developer may apply to have a building approved as a qualified business facility by submitting the information required pursuant to (a)2i through ix above. Any tenant seeking an approval of tax credits for a qualified business facility so approved will be required to submit the information required pursuant to (a)1, 2v through ix and 3 above.

(c)The business or developer applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-2.7.

History

HISTORY:

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 a comma for "or a" following "owner" and inserted "or residential developer"; in (a)1xiv, substituted "revenue realized from the sale of the tax credits" for "amount of credit" and a semi-colon for the comma following "require", and deleted "which at minimum must conform with N.J.A.C. 19:31-9.8(b)10" following "owners"; rewrote (a)2ii; added new (a)2iv through (a)2vi; recodified former (a)2iv through (a)2ix as (a)2vii through (a)2xii; in (a)2vii and (a)2viii, inserted "or qualified residential project"; in (a)2ix, substituted "If the capital investment is a qualified business facility, a" for "A"; in (a)3i, substituted "will be" for the first occurrence of "are" and "at the qualified business facility" for "as defined in this chapter"; in (a)3ii, substituted "at" for "that would occupy"; added new (a)3iii; and recodified former (a)3iii and (a)3iv as (a)3iv and (a)3v.

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

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

N.J.A.C. 19:31-9.5

Rewrote (a)2x; added new (a)3iv; and recodified former (a)3iv and (a)3v as (a)3v and (a)3vi.

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

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

Rewrote (a)1x.

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N.J.A.C. 19:31-9.6

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§ 19:31-9.6 Application and servicing fees

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

- 1.If a business is an owner of the proposed qualified business facility, the application fee is \$ 5,000;
- 2.If a business is a tenant of the proposed qualified business facility wherein the owner has not made application for the approval of tax credits, the application fee is \$ 5,000; or
- 3.If a business is a developer of the proposed qualified business facility, the application fee of \$ 5,000.

(b)In addition to the application fees in (a)1, 2 and 3 above, for a qualified business facility, 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, not to exceed \$ 300,000, shall be charged by the Authority upon the approval of the tax credit.

(d)A non-refundable fee of .5 percent of the tax credit, not to exceed \$ 300,000, shall be paid prior to the receipt of the tax credit certificate.

(e)A business 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 investment and employment 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 letter of compliance. The annual review fee shall be \$ 2,500 per year.

(f)A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-9.10 shall pay to the Authority a fee of \$ 2,500.

(g)For each project with approved tax credits of \$ 5,000,000 or less, 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 approved 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 grant; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the grant, such as those requiring extensive staff time and Board approval.

History

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

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

In (a)2, inserted "wherein the owner has not made application for the approval of tax credits" and substituted "\$ 5,000" for "\$ 2,500"; added new (b); added (c), (d) and (f); recodified former (b) as (e); and rewrote (e).

Amended by R.2011 d.243, effective October 3, 2011.

See: 43 N.J.R. 1415(a), 43 N.J.R. 2622(a).

In (c) and (d), substituted "non-refundable" for "non-fundable".

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

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

Added (g).

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N.J.A.C. 19:31-9.7

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§ 19:31-9.7 Review of application and certification of project completion

(a) A business seeking an approval of tax credits for a qualified business facility may apply for tax credits for a qualified business facility that was commenced after January 13, 2008, within five years after January 13, 2008, the effective date of the Act. A residential developer may apply for tax credits for a qualified residential facility that was commenced after July 28, 2009, by December 21, 2012.

(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 resubmission 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. Adequately provides information for the subject application.

(c) In determining whether the company meets the net economic benefits test, as certified by the owner pursuant to N.J.A.C. 19:31-9.5(a)2iv and 3iv, 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 to the urban transit hub, 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) In developing a recommendation for allocating credits to qualified residential projects, the chief executive officer shall take into account, together with other factors deemed relevant by the Executive Director:

1. An evaluation of the residential developer's pro forma analysis submitted pursuant to N.J.A.C. 19:31-9.5(a)2v;
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; and

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.

(e) Upon completion of the review of an application pursuant to (b) through (d) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, in the case of a residential developer, 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. When considering an application involving intra-State transfers pursuant to N.J.A.C. 19:31-9.3(g), the Board shall make a separate determination to verify and confirm that the jobs are at risk of leaving the State, which will consist of reviewing 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 of which will be paid by the applicant. 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 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 urban transit hub tax credits.

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

(f) Within one year following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business 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.

(g) Upon completion of the capital investment and employment requirements of the program, the business shall submit a certification 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.

1. 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 business facility, provided however that in no event will the amount of tax credits exceed the amount of tax credits previously approved by the Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project. 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. In general, this certification shall be submitted to the Authority no later than five years after the Authority's receipt of the progress information.

3. For project applications for a qualified business facility approved in the fifth year that the Act is in effect but prior to September 18, 2013, the certification shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For developer applications approved in the fifth year that the Act is in effect but prior to September 18, 2013, any tenant's application and certification relating to a qualified business facility so approved shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For project applications approved on or after September 18, 2013, and on or before December 31, 2013, the certification shall be

submitted no later than April 26, 2019, and the credit amount for any tax period ending after July 28, 2019, during which the documentation of the business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it. Residential developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2019. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2019, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

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.

(h) 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, the Authority shall notify the business 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.

History

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

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

Rewrote (a) and the introductory paragraph of (b); added new (c) and (d); recodified former (c) as new (e) and former (d) as (g); rewrote (e) and (g); added (f); recodified former (e) as (h); and rewrote (h).

Amended by R.2011 d.208, effective August 1, 2011.

See: 43 N.J.R. 1192(a), 43 N.J.R. 1900(a).

In (e)1, substituted "approval letter" for "project agreement".

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

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

In (c), inserted "and 3iv"; and in the introductory paragraph of (e), inserted the second sentence.

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 (b), inserted "completed" and the next to last sentence.

Amended by R.2015 d.201, effective December 21, 2015.

See: 47 N.J.R. 2055(a), 47 N.J.R. 3160(a).

In (a), inserted a comma following the first occurrence of "2008", and substituted ", by December 21, 2012" for "within five years after July 28, 2009, the effective date of P.L. 2009, c. 90 (that is, by July 28, 2014)"; in (g), inserted a comma following "accountant"; and rewrote (g)3.

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

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

Rewrote (g)3.

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§ 19:31-9.8 Tax credit certificate

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

- 1.The starting date of the eligibility period;
- 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;
- 6.Reporting requirements and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

History

HISTORY:

Amended by R.2010 d.177, effective August 16, 2010.

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

Section was "Project agreement". Rewrote the section.

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§ 19:31-9.9 Tax credit amount; application and allocation of the tax credit

(a)The amount of tax credit allowed shall be equal to the lesser of the amount which satisfies the net benefit test pursuant to N.J.A.C. 19:31-9.7(c), or either the capital investment made by the business or the capital investment represented by the business's leased area, or area owned by the business as a condominium, subject to any reduction or disqualification provided in the Act and this subchapter and, provided that in no event will the amount of tax credits exceed the amount of tax credits previously approved by Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project as follows:

1.If the owner uses space in a qualified business facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified business facility not leased to tenants and the denominator of which is the total net leaseable area. For purposes of this calculation, unless the business that owns or operates the residential space qualifies under N.J.A.C. 19:31-9.3, residential space leased or offered for lease or sale shall not be included in the numerator.

2.In order to determine the amount of the tenant's or condominium's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in N.J.A.C. 19:31-9.3(b) to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further provided that such tenant allowance or tenant improvements meet the definition of capital investment.

(b)For the 10 consecutive years following the notification pursuant to N.J.A.C. 19:31-9.7(h), a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, beginning with the tax period in which the business is first certified by the Authority as having met the investment capital and employment qualifications, subject to the provisions of the Act and this subchapter.

(c)The business may apply the credit against their corporation business tax or insurance premiums tax 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, or as subsequently adjusted pursuant to N.J.A.C. 19:31-9.14 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.

(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)For applications submitted to and approved by the Authority prior to September 18, 2013, 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) (that is 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. For commercial development applications approved on or after September 18, 2013, and on or before December 31, 2013, the credit amount for any tax period ending after July 28, 2019, during which the documentation of the business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it. With respect to residential development, the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2019, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

History

HISTORY:

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).

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

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

Rewrote (g).

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§ 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, in an amount not less than \$ 25,000 of tax credits, 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. 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 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 before considering any further discounting to present value which shall be permitted. 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 before considering any further discounting to present value which shall be permitted.

(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.

History

HISTORY:

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".

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

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

In (a), inserted "in an amount not less than \$ 25,000 of tax credits," inserted the sixth occurrence of "the", and deleted the former fourth sentence; and rewrote (b).

N.J.A.C. 19:31-9.11

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§ 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.

History

HISTORY:

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".

N.J.A.C. 19:31-9.12

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§ 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.

History

HISTORY:

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).

N.J.A.C. 19:31-9.13

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§ 19:31-9.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified business facility or sublease of the business's tenancy as follows:

1. If the qualified business facility is sold in whole or in part during the 10-year 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, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

2. If a tenant subleases its tenancy in whole or in part during the 10-year eligibility period, the sublessee 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, except that if the sublessor tenant retains sufficient capital investment and employment to remain eligible for the program, the forfeiture shall affect only the credits attributable to the subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the sublessee shall be subtracted.

(b) In the event of sale of the qualified residential facility in whole or in part, the seller may either retain the tax credit amount or assign to the new owner a tax credit amount equal to the amount of the capital investment that is sold, provided that the capital investment sold represents at least \$ 17,500,000 of the capital investment in the facility. In order to determine the amount of capital investment sold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the square footage of the portion of the qualified residential facility that is sold and the denominator of which is the total square footage of the qualified residential facility.

(c) Tenants in a qualified residential project are not eligible to apply for tax credits and an owner may not assign tax credits to a tenant.

History

HISTORY:

Repeal and New Rule, R.2010 d.177, effective August 16, 2010.

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

Section was "Remedies".

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N.J.A.C. 19:31-9.14

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§ 19:31-9.14 Reporting requirements; letter of compliance

(a)After notification pursuant to N.J.A.C. 19:31-9.7(h):

1. In the case of a qualified business facility, 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:

i. The number of full-time employees and new full-time positions employed at the qualified business facility, the number pertaining to the business's Statewide employment, 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 will result in forfeiture of the tax credit for that privilege period; and

ii. 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 or this subchapter; and

2. In the case of a qualified residential project, either the owner of the project or a tax credit transferee shall furnish to the Authority a report in a format as may be determined by the Authority which shall contain the following information:

i. 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; and

ii. 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 a MAI appraiser or governmental official. Failure to submit a copy of the annual report or submission of the annual report, without the information required above, will result in forfeiture of any annual tax credits to be received by the business or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the business 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.

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

(c)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.

History

HISTORY:

Recodified from N.J.A.C. 19:31-9.11 and amended by R.2010 d.177, effective August 16, 2010.

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

Section was "Reporting requirements". Rewrote the introductory paragraph of (a) and (a)2; in (c), substituted "tax credit certificate" for "project agreement"; added new (d); and recodified former (d) as (e). Former N.J.A.C. 19:31-9.14, Appeals, recodified to N.J.A.C. 19:31-9.15.

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 "Reporting requirements; letter of compliance".

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N.J.A.C. 19:31-9.15

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§ 19:31-9.15 Approval process

(a) All completed applications for eligibility in the program shall be presented to the Board for approval or denial.

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

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

(d) An applicant may challenge 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 challenges 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.

(e) Challenges that are timely submitted in accordance with (d) above 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 challenge and to make a recommendation on the merits of the challenge to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer shall have sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the challenge. In the case of an application submitted in response to a competitive solicitation, the Authority shall not consider any new evidence or information about the project, but must consider only evidence or information submitted as of the solicitation submission deadline. In the case of an application submitted other than in response to a competitive solicitation, 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 challenge. 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 and shall have the opportunity to file written comments and exceptions to the hearing officer's report within a reasonable amount of time 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 challenge. Such decision shall become effective 10 working days after the Governor's receipt of the minutes of the public

meeting at which such decision occurs, provided no veto has been issued. The applicant shall have the opportunity to attend the public meeting at which the Board considers its challenge.

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.

History

HISTORY:

Recodified from N.J.A.C. 19:31-9.14 by 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. 19:31-9.15, Severability, recodified to N.J.A.C. 19:31-9.16.

Repeal and New Rule, R.2013 d.076, effective May 6, 2013.

See: 45 N.J.R. 110(a), 45 N.J.R. 1139(d).

Section was "Appeals".

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N.J.A.C. 19:31-9.16

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§ 19:31-9.16 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.

History

HISTORY:

Recodified from N.J.A.C. 19:31-9.15 by R.2010 d.177, effective August 16, 2010.

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

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