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RULE PROPOSALS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

45 N.J.R. 631(a)

Proposed Amendments: *N.J.A.C. 19:30-6.3 and 6.7*

Administrative Rules

Fees

Authorized By: New Jersey Economic Development Authority, Michele Brown, Chief Executive Officer.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-051.

Submit written comments by May 17, 2013 to:

Maureen Hassett, SVP Finance & Development
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990

The agency proposal follows:

Summary

The New Jersey Economic Development Authority ("EDA" or "Authority") is proposing amendments to *N.J.A.C. 19:30* to increase certain bond closing fees and revise existing fee waiver provisions that pertain to multi-jurisdictional, interstate projects.

Specifically, the proposed amendment at *N.J.A.C. 19:30-6.3(a)3* eliminates the existing closing fee limit for conduit bond transactions that support multi-jurisdictional, interstate projects established pursuant to *N.J.A.C. 19:30-6.3(a)*. The proposed amendment is intended to ensure the EDA is appropriately compensated for the increased level of post-issuance bond compliance required under new provisions instituted by the Internal Revenue Service (IRS), particularly regarding major conduit bond transactions supporting multi-jurisdictional, interstate projects. Specifically, IRS Form 8038 - Information Return for Tax Exempt Private Activity Bond Issues, requires issuers of tax exempt bonds to enumerate all post-issuance compliance procedures in place pursuant to *sections 141 through 150 of the Internal Revenue Code*, to assist in preserving the tax-exempt status of its outstanding tax-exempt bonds.

In addition, the proposed amendment at *N.J.A.C. 19:30-6.7* would revise existing fee waiver provisions to provide authorization to waive, postpone, or decrease bond application and closing fees for conduit bond transactions that support multi-jurisdictional, interstate projects.

As the Authority has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The proposed amendments would enable the EDA to ensure that its bond fees cover its cost of operations to continue providing economic opportunities that help sustain New Jersey's economy, prosperity, safety, health, and general welfare.

Economic Impact

The EDA has not revised its bond fees in over 15 years and the existing rates do not adequately address the increased work involved in processing and monitoring bonds, particularly large conduit transactions. Accordingly, the proposed amendments will help the EDA to better promote economic investment in the State by charging bond fees that more accurately reflect the actual cost of bond review, monitoring, and compliance.

Federal Standards Statement

The proposed amendments comply with, and do not exceed, any applicable Federal requirements or standards as included in *sections 141 through 150 of the Internal Revenue Code* and IRS Form 8038.

Jobs Impact

The EDA anticipates that the proposed amendments will not impact the number of businesses, not-for-profits, and government bodies that take advantage of its Authority-issued and conduit bonds thereby resulting in continued job creation through its financings. In addition, any new costs that result from the increased fee will be outweighed by the benefits of EDA bond financing for multi-jurisdictional, interstate projects.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Analysis

The proposed amendments do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The EDA's fee structure for Authority-issued bonds is set on a percentage based on the amount of the bond issue. Accordingly, differentiation of the fee structure is provided based on the type of business and amount of the bond issue.

Housing Affordability Impact Analysis

The proposed amendments will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing in the State. The proposed amendments increase certain bond closing fees and revise existing fee waiver provisions to pertain to multi-jurisdictional, interstate projects.

Smart Growth Development Impact Analysis

The proposed amendments will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments increase certain bond closing fees and revise existing fee waiver provisions to pertain to multi-jurisdictional, interstate projects.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 6. FEES

19:30-6.3 Closing fees

(a) Except as set forth in (a)1 below, for Authority-issued bonds, the fee to be paid at closing is one-half of one percent of the amount of the bond issue up to and including \$ 15,000,000; three-eighths of one percent of the amount in excess of the next \$ 10,000,000; and one-half of one percent of the bond amount in excess of \$ 25,000,000.

1.-2. (No change.)

3. In all instances, **except for conduit bond transactions that support multi-jurisdictional, interstate projects**, the fees due and payable for conduit bond transactions shall not exceed \$ 300,000.

(b)-(i) (No change.)

19:30-6.7 Fee waiver

The Chief Executive Officer may, with the approval of the members, waive certain fees upon demonstration by the applicant that the imposition of the fee would impose an undue financial hardship. The members may delegate to a Director, with the concurrence of the Chief Executive Officer, Chief Operating Officer, or Senior Vice President, authority to waive a loan commitment extension fee; and may delegate to a Director, authority to waive late fees when the cause for the late fee is beyond the control of the borrower. The Chief Executive Officer, with the approval of the members, may waive, postpone, or decrease bond application and closing fees for municipal governmental agency(s), [or] State agency projects, **or conduit bond transactions that support multi-jurisdictional, interstate projects**. In the case of State agency projects, such waiver, postponement, or decrease shall be in accordance with the directives of the State Treasurer regarding the specific State agency projects.