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Draft Emerge Program Rules and Industry Definitions for Informal Public Comment

PURPOSE OF DOCUMENT

These draft rules and industry definitions include recommendations related to program design and administration for Emerge, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020.

In accordance with Executive Order 63, these draft rules are being provided to enable the public to provide input as the New Jersey Economic Development Authority begins to launch the programs contained in the new law.

BACKGROUND

The New Jersey Economic Development Authority serves as the State's principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 into law on January 7, 2021. A courtesy copy of this act can be found by clicking [here](#). The ERA creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

Programs created in the law include:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

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The New Jersey Economic Development Authority is soliciting input from the public on the following draft rules pertaining to implementation of the new Emerge business tax incentive program.

EMERGE PROGRAM OVERVIEW

Emerge encourages economic development in the State's priority sectors by providing per-job tax credits for up to seven years (the "eligibility period"). The overview provided here highlights certain key aspects of the program. The full details of the program are contained in the draft rules (below) and the statute.

To be eligible for Emerge support, a project must meet various eligibility criteria at application and at project certification after approval. In addition, that project must comply with certain standards during the term of an Emerge project agreement. Some of the key criteria and standards include:

- Create a minimum of 35 new full-time jobs. The job requirement is lowered to 25 new full-time jobs for businesses in targeted industries.
 - Business with less than 100 employees at the time of application, engaged primarily in a targeted industry (Small Business) do not have a minimum, but must demonstrate job growth of at least 25 percent by the end of the eligibility period.
- To receive tax credits for retained jobs, the minimum number of retained jobs is 500 in certain areas and 1000 in all other eligible incentive areas.
- Be located in a qualified incentive location.
- Meet minimum capital investment requirements, except for Small Businesses.
- Yield a net positive benefit to the State of at least 400 percent of the requested tax credit. Projects in certain target areas are subject to a lower net positive benefit threshold.
- Demonstrate that the award of the tax credit is a "material factor" in the decision to create or retain at least the minimum number of full-time jobs in the New Jersey.
- Ensure that at least 80 percent of incented employees' work time is spent in New Jersey.
- Ensure the Qualified Business Facility can accommodate at least 50 percent of incented new jobs.
 - To receive tax credits for retained jobs, the Qualified Business Facility must accommodate all the retained full-time jobs at the time of application.
- Commit to stay at the Qualified Business Facility for 1.5 times the eligibility period.

Projects under the Emerge and Aspire Programs are subject to a program cap of \$1.1 billion per year for the first six years of the programs, with the cap split between northern and southern counties. Any remaining unused tax credits are available in the seventh and last year.

The Emerge Program awards are calculated on an annual per job basis, with base credits for new jobs ranging between \$500-\$4,000 per job depending on project location or certain project

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categories. Eligible retained jobs are calculated at 50 percent the value of new jobs. Bonuses may increase the per job calculation up to \$8,000 depending on project location, industry, and alignment with certain Emerge program policy objectives. Jobs that are covered by a labor harmony agreement are eligible for an additional \$1,000 bonus over the capped amounts.

Tax credit awards will be reduced if a project pays less than the county median salary and all jobs must pay no less than 30 percent of the host county's median salary.

Tax credits awarded through Emerge can be used to offset Corporate Business Tax or Insurance Premiums Tax, can be transferred for no less than 85 percent of their value, or, if allowed under the State's annual appropriation act and if funds are available, may be surrendered to NJ Division of Taxation for 90 percent of the value of the credits.

In order to receive Emerge tax credits, the project must be in good standing with the NJ Department of Labor, NJ Department of Treasury, and the NJ Department of Environmental Protection (as determined by each Department). All projects that receive Emerge support must also meet minimum environmental standards, pay prevailing wages to construction workers and building service workers, and provide health care.

Projects that have a total project cost exceeding or equaling \$10 million must also enter into a Community Benefit Agreement with NJEDA and the county or municipality in which the project is located, unless the municipality certifies the Redevelopment Agreement and Emerge approval letter.

To learn more about the Emerge program, please visit <https://www.njeda.com/era/#Programs> and select "Emerge."

ANTICIPATED EMERGE PROGRAM MILESTONES

The authority currently anticipates bringing proposed final rules for the Emerge program to its Board for consideration on May 12, 2021. All Economic Recovery Act programs, including Emerge, will have a 60-day public comment period beginning once rules are published.

The Authority currently anticipates opening applications for the program in late May, 2021 in parallel to the public comment period utilizing special adoption rules. The special adoption rules will be identical to the proposed final rules, but are only effective for 180 days, by which point the Authority anticipates the final proposed rules will be officially adopted.

POTENTIAL APPLICANTS FOR THE EMERGE PROGRAM

If you are a potential applicant or involved with a project that may want to apply in the first few months of these programs, please complete this [expression of interest form](#) and we will have a member of our team reach out to you.

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ECONOMIC RECOVERY ACT TRANSPARENCY WEBSITE

The NJEDA's Economic Recovery Act website (www.njeda.com/economicrecoveryact) allows members of the public to learn more about the programs included in the ERA and provide input on how the Authority will operationalize various aspects of its new incentive programs. The site also allows members of the public to share their thoughts on how NJEDA can make the programs more transparent.

This general feedback process precedes and is separate from the NJEDA's formal procedure to establish special adoption rules, which will be effective immediately as authorized under the Economic Recovery Act. In addition, it is also separate from the procedure for long-term rules which will follow the Administrative Procedures Act public comment process.

PUBLIC FEEDBACK: WRITTEN COMMENTS

Members of the public will also be able to submit feedback on the Emerge Program through the NJEDA's Economic Recovery Act website (<https://www.njeda.com/economicrecoveryact/>) between the following dates:

- **PUBLIC FEEDBACK OPEN:** April 5, 2021
- **PUBLIC FEEDBACK CLOSED:** April 16, 2021

We welcome constructive input on how to ensure new programs created through the Economic Recovery Act are structured and administered in a manner that drives opportunities for all residents and communities. Members of the public can do that during one of the Listening Sessions referenced below, by sending an email to emerge@njeda.com, or through the online portal on the NJEDA's website. The Listening Sessions will focus on the draft rules developed for the Emerge program.

All feedback received through this process will be assessed and considered when preparing the final version of the rules that is proposed by the authority for Board approval. Following potential Board approval, there will be a 60-day period for formal public comment.

Please observe the following guidelines when submitting your feedback:

PLEASE DO:

- Reference a specific part of the rules by section and subsection when providing comments
- Share your feedback, relevant observations, and additional information.
- Keep comments brief and to the point.
- Use attachments to share more detailed or formal feedback.

PLEASE DO NOT:

- Include information that you do not want to be made public.
- Submit any information or other material protected by copyright without the permission of the copyright owner.
- Submit comments about topics unrelated to the Emerge Program.

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We may, at NJEDA's sole discretion, publish any, all, or a representative sample of comments in full or in part.

Do not include any information in your comment that you do not want to become public. Do not include any personally identifying or contact information if you do not want to be identified. (Providing optional contact information, however, will allow us to follow up with you if clarification is needed.) We will not accept or agree to a request to keep information confidential.

By submitting material, you grant to the NJEDA the non-exclusive, worldwide, transferable right and license to display, copy, publish, distribute, transmit, print, and use such information or other material in any way and in any medium, including but not limited to print or electronic form.

PUBLIC FEEDBACK: LISTENING SESSIONS

The New Jersey Economic Development Authority (NJEDA) will host three virtual Public Listening Sessions in April to solicit input from the public on the draft rules.

Public Listening Sessions are scheduled for:

- Thursday, April 8th, 2021 at 5:00 p.m.
- Monday, April 12th, 2021 at 3:00 p.m.
- Wednesday, April 14th, 2021 at 3:00 p.m.

Sessions are expected to last approximately two hours and will be convened via Zoom.

Members of the public interested in attending the sessions can access them as follows:

URL: tinyurl.com/xyr2k65r
Passcode: Emerge

SUMMARY OF DRAFT RULES SECTIONS

The following summarizes the contents of each section of the proposed new rules implementing the Emerge program:

N.J.A.C. 19:31-22.1 Applicability and scope – Addresses the statutory authority for the Emerge program and summarizes the scope and purpose of the program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State, pursuant to sections 68 through 81 of P.L. 2020, c. 156.

N.J.A.C. 19:31-22.2 Definitions – Defines certain terms used in this subchapter, incorporates terms defined in P.L. 2020, c. 156 pertaining to the program, clarifies statutory terms, and provides additional terms included in the implementation of the program.

N.J.A.C. 19:31-22.3 Eligibility criteria – Outlines the criteria for a business to be eligible for tax credits, including requirements for capital investment and creation or retention of new or retained full-time jobs, and that the business must demonstrate to the Authority that: 1) the proposed capital investment and the resultant retention and creation of eligible positions will yield a net positive economic benefit to the State; and, 2) the award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program.

N.J.A.C. 19:31-22.4 Restrictions – Provides for certain restrictions on program eligibility, such as the ineligibility of final point of sale retail facilities.

N.J.A.C. 19:31-22.5 Application submission requirements – Establishes the information and procedures required for submitting an application to the Authority for tax credits under the program.

N.J.A.C. 19:31-22.6 Fees – Establishes non-refundable application and other fees intended to assist the Authority in recouping the administrative costs in processing applications.

N.J.A.C. 19:31-22.7 Review of completed application – Outlines the Authority's review process, which comprises a review to determine eligibility of a project, entails a Board determination and notification of the business and the Division of Taxation of the determination.

N.J.A.C. 19:31-22.8 Determination of grant amount; bonus award – Establishes the base amount of the value of each tax credit, as well as additional bonus awards which shall be based on factors outlined in the section.

N.J.A.C. 19:31-22.9 Approval letter and commitment agreement – Requires that all applicants execute an approval letter and commitment agreement with the Authority to establish the terms and conditions for the tax credits; and, sets forth a number of those terms and conditions such as the requirement for maintaining employees at, or associated with, the project site and in the State, the requirement that the project comply with all State and Federal laws as applicable, including prevailing wage and affirmative action laws, and the allocation of tax

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credits to a business and its affiliate or affiliates. Includes review of the business's certification of having completed the project and having met the requirements for the Authority to issue the tax credit certificate. If the Authority accepts the certification, notification is made to the business and the Director of the Division of Taxation in Treasury.

N.J.A.C. 19:31-22.10 Reporting requirements and annual reports – Imposes the annual reporting requirements of the business during the term of the commitment agreement and outlines the provisions for issuance of the certificate of compliance by the Authority.

N.J.A.C. 19:31-22.11 Tax credit amount; application and allocation of the tax credit – Addresses the total amount of tax credit allowed, the tax liabilities against which the credit may be applied, the allocation of tax credits to a business and its affiliate or affiliates for the eligibility period, and the carry forward of credit amounts.

19:31-22.12 Application for tax credit transfer certificate – Allows a business that is a holder of a credit, upon application and approval by the Division of Taxation in Treasury and the Chief Executive Officer of the Authority, to sell its credit, covering one or more years, under the tax credit transfer certificate program for consideration received by the business of not less than 85 percent of the transferred credit amount.

N.J.A.C. 19:31-22.13 Cap on total credits – Establishes the caps on the value of all credits approved by the Authority pursuant to this program, which shall be subject to limitations set forth in section 98 of P.L. 2020, c. 156; and, provides that the amount of available tax credit shall be posted at the beginning of each calendar year on the website of the Authority.

N.J.A.C. 19:31-22.14 Reduction and forfeiture of tax credits – Establishes provisions for the reduction, forfeiture, and recapture of tax credits in certain instances wherein a 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, and the number of full-time employees at, or associated with, the qualified business facility, their salaries and their withholdings drop below 80 percent of the number of new and retained full-time jobs, salaries or withholdings specified in the commitment agreement.

N.J.A.C. 19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility – Requires that in the event a qualified business facility is sold, the new owner shall not acquire the capital investment of the seller and, except if the seller is an eligible small business, the seller shall forfeit all credits for the tax period in which the sale occurs, except for credits of a tenant which shall remain unaffected. The same restriction would apply to a tenant that subleases its tenancy to any sublessor tenant(s). Allows an eligible business to change the location of the qualified business facility prior to certification of capital investment under certain conditions.

N.J.A.C. 19:31-22.16 Affirmative action and prevailing wage – Provides that the Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements, pursuant to paragraph (8) of subsection a. of section 71 of P.L.

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2020, c. 156 will apply to State incentive grant projects undertaken in connection with financial assistance received under the Emerge program.

N.J.A.C. 19:31-22.17 Appeals – Outlines the requirements for an applicant to appeal an action of the EDA Board and the process by which the Authority shall consider each appeal in a timely manner.

N.J.A.C. 19:31-22.18 Recovery Infrastructure Fund – Establishes a dedicated fund to be known as the Recovery Infrastructure Fund, coordinated with the Department of Community Affairs, which shall be dedicated to the purpose of funding certain local infrastructure, and credited with money remitted by eligible businesses pursuant to paragraph (2) of subsection b. of section 71 of P.L. 2020, c. 156.

N.J.A.C. 19:31-22.19 Reports on implementation of program – Details the provisions of P.L. 2020, 156 which establishes requirements for an initial report and other biennial reports, on the implementation of the program, including preparation by a State college or university, pursuant to an agreement executed between the State college or university and the Authority, and a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

N.J.A.C. 19:31-22.20 Severability – States that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

FULL TEXT OF DRAFT RULES

The following is the draft proposed text of the Emerge Program rules provided for the purpose of receiving feedback from the public:

SUBCHAPTER 22. EMERGE

19:31-22.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the Emerge Program Act, sections 68 through 81 of P.L. 2020, c. 156. The Act authorizes the Authority to administer the program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State. The Board may approve the award of tax credits to an eligible business upon application of the eligible business and following the execution of a letter of intent and the payment of fees, subject to the limitations set forth in the subchapter. The value of all tax credits approved by the Authority for businesses eligible pursuant to section 71 of P.L. 2020, c. 156 shall be subject to the limitations set forth in section 98 of P.L. 2020, c. 156.

19:31-22.2 Definitions

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

“Act” means the Emerge Program Act, sections 68 through 81 of P.L. 2020, c. 156.

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. 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 (26 U.S.C. s.1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. s.414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by sections 1563 and 414 of the Internal Revenue Code of 1986 (26 U.S.C. 29 ss.1563 and 414). An affiliate of a business may contribute to meeting either the capital investment or full-time employee requirements of a business that applies for a credit under section 71 of P.L. 2020, c. 156.

“Approval letter” means the letter sent by the Authority to the eligible business awarded tax credits under the program and countersigned by the eligible business pursuant to N.J.A.C. 19:31-22.9(a) which sets forth the conditions that must be met by the eligible business before the execution of a commitment agreement.

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

“Authorized agent of the owner” means the chief executive officer or equivalent officer for North American operations.

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

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

“Building services” means any cleaning or routine building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. “Building services” shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the “prevailing wage” as defined in section 2 of P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

“Business” means an applicant proposing to own or lease premises in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and N.J.S.A. 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.17B:23-5, or is a partnership, S corporation, limited liability company, or non-profit corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. After approval by the Board of the award, if the business transfers the project in whole or in part or the business merges into another company, a business shall include a successor, as determined by the Authority in its sole discretion, to the business and a successor, as determined by the Authority in its sole discretion, to an affiliate of the business if the business applied for a credit based upon any capital investment made by or full-time employees of the affiliate, provided any successor must execute the incentive agreement, which shall include: the obligation to not reduce the number of full-time employees in the successor's Statewide employment in the last tax period prior to the approval of the award; an agreement that all parties to the incentive agreement are jointly and severally liable under the incentive agreement; and an acknowledgment that the tax credit will be allocated to each party to the incentive agreement in accordance with the number of full-time employees that each employs at, or associated with, the qualified business facility.

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“Capital investment” means expenses that a business or an affiliate of the business incurs or that a landlord incurs on behalf of a business or an affiliate of the business following the submission of a complete application to the Authority pursuant to section 72 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.5, but prior to the project completion date, as shall be defined in the project agreement, for:

1. Site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, including but not limited to, water, electric, sewer, and stormwater, and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems or other environmental components required to attain the level of silver rating and gold rating standards or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq., but does not include site acquisition; and

2. Obtaining, and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods subject to bonus depreciation under sections 168 and 179 of the federal Internal Revenue Code (26 U.S.C. ss.168 and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property; or any combination of the foregoing. Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Capital investment shall include the value of a capital lease, as defined by generally accepted accounting practices (GAAP), of furnishings and machinery, apparatus, or equipment, based on the shorter of the useful life of the leased property or the commitment period.

3. Associated soft costs, which shall not exceed 20 percent of all capital investment.

“College or university” means a county college, an independent institution of higher education, a public research university, or a State college.

“Commitment agreement” means the contract between an eligible business and the Authority pursuant to N.J.A.C. 19:31-22.9, that the parties execute after the conditions in the approval letter are met.

“Commitment period” means a period that is 1.5 times the eligibility period specified in the project agreement entered into pursuant to section 73 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.9, rounded up, for each applicable phase agreement.

“Community benefits agreement” means the agreement between, the eligible business, the municipality or county and the authority pursuant to N.J.A.C. 19:31-22.9(d).

“Complex of buildings” means buildings that are part of the same financing plan and operational plan. The buildings comprising a complex of buildings may be non-contiguous and in geographical locations with different factors that affect the tax credit calculation.

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“County college” means an educational institution established by one or more counties, pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

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

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

“Doctoral university” means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education’s Basic Classification methodology on the effective date of P.L. 2017, c. 221.

“Eligibility period” means the period in which an eligible business may claim a tax credit under the program for a given project phase, beginning with the tax period in which the Authority accepts certification of the eligible business that it has met the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(e), and extending thereafter for a term of not more than seven years, with the term to be determined at the discretion of the applicant at application, provided that the term of the eligibility period may consist of nonconsecutive tax years if the applicant elects at any time after the end of the first tax period of the eligibility period to defer the continuation of the eligibility period to a subsequent tax period and the applicant is, at the time of the election, in compliance with the requirements of the program. The Authority may extend the eligibility period one additional tax period to accommodate a prorated payment pursuant to paragraph (2) of subsection a. of section 77 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

“Eligible business” means any business that satisfies the criteria set forth in section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3 at the time of application for tax credits under the program.

“Eligible position” or “full-time job” means a full-time position in a business in this State which the business has filled with a full-time employee. An eligible position shall not include an independent contractor or consultant, unless the independent contractor or consultant meets the definition of a full-time employee. An eligible position may not include a position that is engaged in final point of sale retail, unless the position is located at a qualified business facility used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219).

“Employment and Investment Corridor” means the portions of the qualified incentive area that are not located within a distressed municipality and which:

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1. Are designated pursuant to the "State Planning Act," P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition;

2. Intersect with portions of: a port district, a qualified incentive tract, or federally-owned land approved for closure under a federal Commission on Base Realignment and Closure action;

3. Are the proposed site of a qualified incubator facility, a tourism destination project, or transit oriented development; or

4. At the time of application, contain:

i. A vacant commercial building or campus having over 400,000 square feet of office, laboratory, or industrial space available for occupancy for a period of over one year, provided that "employment and investment corridor" shall no longer include the building or campus when there is less than 400,000 square feet of vacant space; or

ii. A site that has been negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

"Enhanced area" means an urban transit hub as defined in section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208); the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and, the three municipalities with the highest percentage of Supplemental Nutrition Assistance Program recipients according to the 2017 Municipal Revitalization Index.

"Full-time employee" means

1. A person:

i. Who is employed by a business for consideration for at least 35 hours a week and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.; or

ii. who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for at least 35 hours a week and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S. 54A:1-1 et seq.; or

iii. who is a partner of a business who works for the partnership for at least 35 hours a week 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. 54A:1-1 et seq.; or

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iv. who is a resident of another State, and would be eligible under (a) through (c) above but whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S. 54A:1-1 et seq.

v. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for (a) through (c) above. A "full-time employee" shall include, but shall not be limited to, an employee that has been hired by way of a labor union hiring hall or its equivalent, provided that the 35 hours of employment per week at, or associated with, the qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons.

2. A "full time employee" further means a person eligible under 1 above who, except for purposes of the Statewide workforce, and as evidenced by documentation acceptable to the Authority:

i. Is provided, by the business, no later than 90 days of hire, employee health benefits under a health benefits plan authorized pursuant to State or federal law; provided, however, that with respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal, the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; and

ii. Is paid no less than \$15 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher.

3. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business or a contract worker whose income is subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S. 54A:1-1 et seq., except that any person working as an independent contractor or contract worker whose income is subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S. 54A:1-1 et seq., for the business shall be deemed a full-time employee if the business demonstrates to the Authority that:

i. The person working as an independent contractor or contract worker for the business works at least 35 hours per week or renders any other standard service generally accepted by custom or practice as full-time employment;

ii. The person is provided, at the date of initial engagement, as evidenced by documentation acceptable to the Authority, employee health benefits under a health benefits plan authorized pursuant to State or federal law; and

iii. The business provides documentation to the Authority to permit the Authority to verify the compensation paid to, the withholdings of, and the time worked by, the person working as an independent contractor or contract worker.

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iv. The business shall provide to the Authority an annual report that identifies the number of persons working as independent contractors or contract workers for the business and their contractual or partnering relationship with the business.

4. "Full-time employee" shall not include any person who, at the time of project application, works in New Jersey for consideration for at least 35 hours per week for the business, or who renders any other standard of service generally accepted by custom or practice as full-time employment, but who, prior to project application, works under an employee leasing agreement between the business and an employee leasing company that is not a professional employer organization or who was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or federal law.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L. 2020, c. 156, is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Incentive area" means:

1. An aviation district;
2. A port district;
3. A distressed municipality or transit hub municipality;
4. An area designated pursuant to the "State Planning Act," P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning Area); or a Designated Center under the State Development and Redevelopment Plan, provided an area designated as Planning Area 2 (Suburban) or Planning Area 3 (Fringe Planning Area) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation.
5. An area located within 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);

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6. An area located within 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);

7. An area located within a regional growth area, rural development area zoned for industrial use as of the effective date of P.L. 2016, c. 75, or town, 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.);

8. An area located within a government-restricted municipality;

9. An area located within land approved for closure under any federal Commission on Base Realignment and Closure action;

10. An area located within an area 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), so long as that area designated as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within:

i. A designated center under the State Development and Redevelopment Plan;

ii. A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition as it pertains to Statewide planning areas;

iii. 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 N.J.S.A. 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);

iv. 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; or

v. Any area on which an existing tourism destination project is located; or

11. An area located in a qualified opportunity zone.

"Independent institution of higher education" means a college or university incorporated and located in New Jersey, which by virtue of law, character, or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education that is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States

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Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

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

“Industrial use” means assembling, processing, manufacturing, or any combination thereof, of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity. “Industrial use” includes farming purposes as that term is defined under 26 U.S.C. s.6420(c)(3)(A), undertaken in an industrial space.

“Infrastructure Fund” means the Recovery Infrastructure Fund established pursuant to section 79 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.18 to fund local infrastructure improvements.

“Labor harmony agreement” means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations which have requested to be on the list and which the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

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

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“Mega project” means a project of special economic importance, at which 500 or more new full-time jobs are created, having capital investment of at least \$50,000,000 in a targeted industry and which provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to: being undertaken by a business that is making an industry leading investment in a new technology or high-growth sub-industry level or catalyzing a new sub-industry or industry-cluster within the State.

“Minimum environmental and sustainability standards” means the standards established by the Authority in accordance with the green building manual prepared by the Commissioner 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 to reduce environmental degradation and encourage long-term cost reduction.

“Municipal Revitalization Index” means the most updated municipal revitalization distress score as published at time of project Board approval by the Department of Community Affairs.

“New full-time job” means an eligible position that did not previously exist in this State created by a business at, or associated with, a qualified business facility. For the purposes of determining the number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. A new full-time job is at a qualified business facility if the business demonstrates to the Authority's satisfaction that the employee filling the new full-time job spends at least 80 percent of his or her work time at the qualified business facility, and a new full-time job is associated with a qualified business facility if the business informs the Authority of the qualified business facility with which the employee is associated and demonstrate to the Authority's satisfaction that the employee spends at least 80 percent of his or her work time in this State.

“Other eligible area” means the portions of the incentive area that are not located within a distressed municipality, or the employment and investment corridor.

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

“Phased project” means a project with an initial phase that is a mega project and each subsequent phase includes a minimum capital investment of \$25 million and minimum of 250 new full-time jobs.

“Port district” means the portions of an incentive area that are located within the “Port of New York District” of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to “The South Jersey Port Corporation Act,” P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

“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.).

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“Program” means the Emerge Program established by section 4 of P.L. 2020, c. 156 and as implemented by this subchapter.

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

“Project agreement” or “incentive agreement” means the approval letter and the commitment agreement executed between an eligible business and the Authority, which together set forth the terms and conditions under which the eligible business may receive the tax credit award authorized pursuant to the program.

“Project phase agreement” or “incentive phase agreement” means a sub-agreement of the project agreement that governs the timing, capital investment, employment levels, and other applicable details of the respective phase.

“Public research university” means a public research university as defined in section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

“Qualified business facility” means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located therein, used in connection with the operation of a business that is not engaged in final point of sale retail business at that location, unless the building, complex of buildings or structural components of buildings, and all machinery and equipment therein, are used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219). In determining whether a qualified business facility for professional services is engaged in final point of sale retail, the Authority shall consider several factors, including, but not limited to, whether the business is a small business and whether the preponderance of its customer base is located within this State.

“Quality child care facility” means a child care center licensed by the Department of Children and Families, operating continuously, which has not been subject to an enforcement action, and which has and maintains a total licensed capacity of at least 60 children age 6 years or younger.

“Qualified incentive tract” means a population census tract having a poverty rate of 20 percent or more; or, a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Qualified incubator facility” means a commercial building located within an incentive area: that contains 5,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with, a research institution, teaching hospital, college, or university; and within which at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

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“Qualified opportunity zone” means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

“Research and development premises” or “research and development space” means premises or space in which at least 51 percent of the square footage will be or has been used for research and development.

“Retained full-time job” means an eligible position that currently exists in this State and is filled by a full-time employee, but which, because of a potential relocation by the business, is at risk of being lost to another state or country or of being eliminated. For the purposes of determining the number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

“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.

“Small business” means a business engaged primarily in a targeted industry with fewer than 100 employees, as determined six months before application and at the time of application. Employees of a small business shall include a person who is employed by a business for consideration for at least 35 hours a week; who is employed pursuant to an employee leasing agreement for at least 35 hours a week; or who is a partner of a business who works for the partnership for at least 35 hours a week. Employee of a small business shall also include any person who works as an independent contractor for the business or a contract worker who works at the business for at least 35 hours a week. For those persons who are employed by the business or who work for the business as independent contractors or contract workers for less than 35 hours, 35 hours of employment a week shall constitute one employee, regardless of whether or not the hours of work were performed by one or more persons. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment. For purposes of the number of employees, a small business shall include all of its affiliates, regardless of whether the affiliate may contribute full-time jobs or capital investment to the project.

“Soft costs” means all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

“Square foot” or “Square footage” means the sum of all areas on all floors of a building or structure 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.

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“Square foot of gross leasable area” or “Square footage of gross leasable area” or “Gross leasable area” means rentable area of the building or structure 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 or structure that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building or structure and is not affected by changes in corridor sizes or configuration.

“State college” means a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes.

“Statewide workforce” means the total number of full-time employees in the Statewide workforce of the business and any affiliate of the business, if the affiliate contributes any capital investment or full-time employees. Statewide workforce shall not include: a new eligible position at, or associated with, the qualified business facility, unless the new eligible position is in addition to the number of full-time employees specified in the commitment agreement and the business is not receiving an additional tax credit award for the new eligible position; or, full-time employees at any final point of sale retail facilities, unless the award includes full-time employees engaged in final point of sale retail.

“Targeted industry” means any industry identified from time to time by the Authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models. A project shall be considered to be in a targeted industry if the activity undertaken by the full-time employees will be in a targeted industry, or if the business is in a targeted industry. An eligible business shall be considered to be in a targeted industry, if the project is for full-time employees of a division or subsidiary that falls within the definition of a targeted industry. A division or affiliate of an eligible business that is in a targeted industry shall be considered to be in a targeted industry, even if the project is for full-time employees that do not work directly in the targeted industry. The Authority may consider whether a business fits into another innovative industry that disrupts current technologies or business models, by assessing factors such as, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new firms to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based firms to collect a share of revenues that were traditionally only available to companies in other geographies.

“Total project cost” means the greater of the actual cost or the estimated cost to be incurred in connection with the project by the business or its landlord until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the commitment agreement.

“Tourism destination project” means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the 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, including a non-gaming business within an established tourism district with a significant impact on the economic viability of that tourism district.

“Transit oriented development” means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a Government-restricted municipality, 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.

“Transit hub” means an urban transit hub, as defined in section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), and that is also located within an incentive area.

“Transit hub municipality” means a Transit Village or 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 has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and, in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

“Transit Village” means a municipality that has been designated as a transit village by the Commissioner of Transportation and the Transit Village Task Force.

“Withholdings” means the amount withheld by a business from the wages of full-time employees or estimated taxes paid by, or on behalf of, partners that are full-time employees, or any combination thereof, pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1-1 et seq. Withholdings shall not include amounts withheld by a business from stock options or from stock options, money, or other payments given to a full-time employee pursuant to the termination of employment of the full-time employee. Withholdings shall include amounts withheld by a business from money or other payments given to a full-time employee pursuant to a bonus for commencing employment or for services rendered by the full-time employee.

19:31-22.3 Eligibility criteria

(a) Beginning on January 7, 2021, the effective date of P.L. 2020, c. 156, but prior to March 1, 2027, to be eligible for tax credits under the program, a business's owner or authorized agent of the owner, shall demonstrate to the Authority at the time of application that:

1. The business will make, acquire, or lease a capital investment at the qualified business facility equal to or greater than the applicable amount set forth in subsection (b) of this section;

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2. The business will create or retain new and retained full-time jobs at, or associated with, the qualified business facility in an amount equal to or greater than the applicable number set forth in subsection (c) of this section. To be eligible as an eligible position or full-time job, the business must demonstrate to the Authority's satisfaction that the employee spends at least 80 percent of her or his work time in this State and that the eligible position requires an employee to have his or her primary place of work in this State;

3. The qualified business facility is located in a qualified incentive area;

4. The award of tax credits will be a material factor in the business's decision to create or retain the number of new and retained full-time jobs set forth in its application, except that:

i. The award of tax credits shall not be considered a material factor in the creation or retention of full-time jobs filled by employees providing professional services, as defined in N.J.S.A. 14A:17-3(1), and their direct administrative support staff, unless as of the date of the business's application, the full-time job is filled by an employee whose primary business office is located outside of the State. Direct administrative support staff shall not include employees in information technology, human resources, or employee relations positions; and

ii. In determining whether a position relating to professional services not excluded by i. above shall be considered final point of sale retail for which the award of tax credits shall not be considered a material factor in the creation or retention of the full-time job, the Authority shall consider several factors, including, but not limited to, whether the business is a small business or whether the preponderance of its customer base is located within this State.

5. The award of tax credits, the capital investment resultant from the award of tax credits, and the resultant creation and retention of new and retained full-time jobs will yield a net positive economic benefit to the State equaling at least 400 percent of the requested tax credit allocation amount, or for a phased project the requested tax credit allocation amount for the initial phase, and on a cumulative basis each phase thereafter, which determination shall be calculated prior to considering the value of the requested tax credit under the program and shall be based on the benefits generated during the period of time from approval through the end of the commitment period, or through the end of the longer period of extended commitment that the business may elect for purposes of receiving credit for benefits projected to occur after the expiration of the commitment period, pursuant to N.J.A.C. 19:31-22.7(f), except that:

i. An award of tax credits to a business for a qualified business facility located in a distressed municipality or transit hub municipality shall yield a net economic positive benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 300 percent of the requested tax credit amount;

ii. An award of tax credits to a business for a qualified business facility located in a government-restricted municipality, or for a mega project, shall yield a net positive economic benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 200 percent of the requested tax credit amount;

iii. The net positive economic benefits shall be evaluated on a present value basis with the requested tax credit allocation amount discounted to present value at the same discount rate as the benefits from capital investment resultant from the award of tax credits and the resultant retention and creation of full-time jobs as provided in subparagraph iv. of this paragraph; and

iv. The net positive economic benefits shall be discounted to reflect the uncertainty of the business's location after the commitment period expires, provided that a business may elect a period of extended commitment for which time the economic benefits shall be creditable to the determination of the net positive economic benefit of the project, and a business electing a period of extended commitment and failing to maintain the project through the expiration of that extended commitment period shall be obligated to repay a proportion of the incremental benefits received on account of having extended the commitment period, taking into consideration the number of years of extended commitment during which the business maintained the project;

v. If, during the term of the program, the methodology used by the Authority in projecting the net positive economic benefits of a project in making the determination required pursuant to this paragraph is modified, in all instances, the respective percentages by which the benefits must exceed the requested tax credit allocation amount set forth pursuant to this paragraph 5 may be adjusted prospectively to ensure consistent application of the respective thresholds in this paragraph 5 applied to each application. Any modification to the methodology and respective percentages shall be applied to pending applications and to projects that have been previously approved if the business requests a modification or this subchapter or the incentive agreement requires or authorizes the Authority to conduct a reevaluation of the net positive economic benefit;

6. The qualified business facility shall be in compliance with minimum environmental and sustainability standards;

7. The project shall comply with the authority's affirmative action requirements, adopted pursuant to section 4 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3.1 et seq.; and

8. Each worker employed to perform construction work or building services work at the qualified business facility shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.), unless:

i. The work performed under the contract is performed at a qualified business facility owned by a landlord that is not a business receiving authority assistance;

ii. The landlord is a party to the construction contract or building services contract;

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iii. The qualified business facility constitutes a lease of less than 35 percent of the entire facility at the time of contract and under any agreement to subsequently lease the qualified business facility; and

iv. In accordance with section 1 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.1), nothing in this paragraph shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first certificate of compliance pursuant to paragraph (8) of subsection a. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

(b) The minimum capital investment required to be eligible under the program shall be the sum of the following, provided that to the extent a business's qualified business is comprised of more than one of the uses in paragraphs 1 through 4 below, the minimum investment for common areas will be in proportion to the other areas:

1. For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development portion of the premises for continued similar use by the business, a minimum investment of \$20 per square foot of gross leasable area;

2. For the new construction of an industrial, warehousing, logistics, or research and development portion of the premises for use by the business, a minimum investment of \$60 per square foot of gross leasable area;

3. For the rehabilitation, improvement, fit-out, or retrofit of existing portion of the premises that does not qualify pursuant to subparagraph 1 or 2 of this paragraph, a minimum investment of \$40 per square foot of gross leasable area;

4. For the new construction of a portion of the premises that does not qualify pursuant to subparagraph 1 or 2 of this paragraph, a minimum investment of \$120 per square foot of gross leasable area;

5. For a small business, no new minimum capital investment shall be required, provided the applicant has demonstrated evidence satisfactory to the Authority of its intent to remain in the State for the commitment period, which may include, but is not limited to, a proposed lease, membership agreement or similar commitment for space;

6. In the event the business invests less than that amount set forth in paragraph (a)1 of this subsection in the qualified business facility, the business shall donate the uninvested balance to the infrastructure fund established pursuant to section 79 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.18, which donation shall not be included in the net positive economic benefit analysis pursuant to N.J.A.C. 19:31-22.3(a) or the full economic analysis pursuant to N.J.A.C. 19:31-22.7(d); and

(c) The minimum number of new or retained full-time jobs required to be eligible under the program shall be as follows:

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1. For a small business, 25 percent growth of its workforce with new full-time jobs within the eligibility period. The small business shall submit a growth plan, which specifies the number of new full-time employees at, or associated with, the qualified business facility that the eligible business will hire each year of the eligibility period; provided that by the end of the eligibility period, the eligible business shall have a minimum of 25 percent growth of its workforce with new full-time jobs;

2. For a business engaged primarily in a targeted industry which does not qualify as a small business, 25 new full-time jobs;

3. For any other business, a minimum of 35 new full-time jobs;

4. For a business locating in a qualified incentive tract or government-restricted municipality that will retain 500 or more retained full-time jobs, a minimum of the business's retained full-time jobs at the time of application and new construction or rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises equal in size to the space occupied by the business's retained full-time jobs at the time of application;

5. For a business located in the State that will retain 1,000 or more retained full-time jobs, a minimum of the business's retained full-time jobs at the time of application and new construction or rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises equal in size to the space occupied by the business's retained full-time jobs at the time of application; and

(d) A business shall provide and adhere to a plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business's new or retained full-time employees as approved, as determined by the Authority in its sole discretion by considering square footage allocable to eligible positions, except that a business shall also satisfy the space requirements in (c)4 and (c)5 above if a business is receiving tax credits for any retained full-time jobs. The authorized agent of the owner of the business shall certify, under the penalty of perjury, that not less than 80 percent of the withholdings of new or retained full-time jobs are, and will be, subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. The requirements set forth in this paragraph may be modified by the Authority to respond to an emergency, disaster, or other factors that result in employees of an eligible business having to work from a location other than the qualified business facility.

(e) The owner of the business, or an authorized agent of the owner, shall certify that all factual representations made by the business to the Authority pursuant to subsection (a) of this section are true under the penalty of perjury.

(f) A business eligible pursuant to this section may submit an application to the Authority in accordance with the provisions of section 72 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.5 on or after January 7, 2021, the effective date of P.L. 2020, c. 156, but prior to March 1, 2027.

(g) For a qualified business facility that is a complex of buildings:

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1. The minimum capital investment required pursuant to subsection (b) and for purposes of qualifying as a mega project above shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion. In all other instances, each building in a complex shall meet a minimum capital investment required pursuant to subsection (b) above. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples of complexes of building that are proximate:

i. A complex of buildings consists of building A and building B, which are both on the same block but separated by other buildings.

ii. A complex of buildings consists of building A and building B, which are both on the same block but separated by other buildings.

iii. A complex of buildings will consist of building A and building B, which will be adjacent to each other but have separate entrances.

iv. A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot.

2. The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings.

(h) For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility shall have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

1. Having a capital investment in excess of \$50,000,000, at which more than 250 full-time employees of a business are created or retained; and

2. Demonstrating to the satisfaction of the Authority a combination of two or more of the following as a result of the project:

i. Positive financial benefit to the Tourism District;

ii. A net increase in visitors to the Tourism District;

iii. An increase in marketing dollars spent on the Tourism District; or

iv. The addition of unique amenities or services to the Tourism District, which amenities or services may be located at the project.

(j) A business shall be treated as owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

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(k) A business may apply for tax credits under the program for more than one project pursuant to one or more applications. Notwithstanding this subsection, the Authority may, in its sole discretion, consider two or more applications as one application based on factors including, but not limited to, the location of the qualified business facilities, the types of jobs proposed, and the business's financing and operational plans.

19:31-22.4 Restrictions

(a) The Authority shall not enter into an incentive agreement with a business that has previously received incentives administered by the Authority unless the capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

(b) A project that consists solely of final point of sale retail facilities shall not be eligible for a grant of tax credits. If a project consists of both final point of sale retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. If a warehouse facility is part of a final point of sale retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), shall not be considered final point of sale retail facility.

(c) For the purposes of the certifications and annual reports required pursuant to the commitment agreement and set forth in N.J.A.C. 19:31-22.9(e) and 19:31-22.10(a)5, if a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs.

1. To the extent an eligible retained full-time job that was the basis of the award no longer exists, the business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

2. If a qualified business facility comprises a complex of buildings with different factors affecting the tax credit calculation, the business shall meet the employment requirements related to the retained full-time jobs at, or associated with, each building before receiving benefits for new full-time jobs at, or associated with, any building. The business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, regardless of the location of such position, provided that the position is included in the order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new eligible position filled by a full-time employee or the tax credit for the retained full-time job that no longer exists.

(d) For a project that has any full-time employees at, or associated with, the qualified business facility, to the extent a full-time employee is the subject of a previous incentive award,

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that is not subject of the project agreement, then the business shall have to maintain 100 percent existing employees before any full-time employee may be counted as an eligible position.

(e) To remain a mega project, the business shall maintain at least 500 new full-time jobs and demonstrate the factors approved for leadership each year during the commitment period.

19:31-22.5 Application submission requirements

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

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

i. The name of the business;

ii. The contact information of the business;

iii. The prospective future address of the business (if different);

iv. The type of the business;

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

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of full-time employees in New Jersey at the time of application and in the last tax period prior to the credit amount approval;

ix. The total list of the business's locations in New Jersey and the function performed at each location;

x. A written certification by the owner of the eligible business or authorized agent of the owner stating that the business applying for the program is in good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury, and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

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

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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; and

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

2. Project information, which shall include the following:

i. An overall description of the proposed project;

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

iii. The estimated value of the capital investment;

iv. Supporting evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit pursuant to N.J.A.C. 19:31-22.3(a)5, taking into account the criteria listed at N.J.A.C. 19:31-22.3(a)5i through v;

(1) In determining whether a proposed capital investment will yield a net positive economic benefit, the business's owner or authorized agent of the owner, shall submit a certification indicating that:

(A) To the extent that an application includes retained full-time jobs, that the existing full-time jobs are at risk of leaving the State or being eliminated;

(B) The tax credits are a material factor in any projected creation or retention, as applicable, of new full-time jobs; and

(C) All factual representations made by the business to the Authority are true under the penalty of perjury; and

(2) 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; and

v. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project;

vi. Identification of the site or sites of the proposed qualified business facility, including the block and lot of the site or sites as indicated upon the local tax map. For purposes of determining geographical location of a building or contiguous buildings that extend over more than one geographical location, the building or contiguous buildings shall be considered in the

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geographical location in which the building or contiguous buildings are located with the most beneficial total tax credit amount;

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

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

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

x. The identification of at least five key factors that are influencing the business's decision to either move to or stay in the State, or locate out of State, weighted to reflect importance to the business;

xi. A narrative description of the business's rationale to move to or stay in the State, or locate out of State and any other issues driving the applicant's decisions;

xii. Competitive proposals that the eligible business has received from other states;

xiii. The total number of anticipated new and retained full-time jobs in New Jersey 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;

xiv. For a small business, the growth plan required by N.J.A.C. 19:31-22.3(c)1; and

xv. 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 eligible positions that are the subject of the application will be at, or associated with, the qualified business facility, and evidence to the Authority's satisfaction that demonstrates that 80 percent of each eligible position will be performed in this State.;

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

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

4. Any other necessary and relevant information as determined by the Authority for a specific application, including but not limited to:

i. A list of current employees and retained full-time employees at, or associated with, the qualified business facility;

ii. The WR 30 of the business for the privilege period prior to application;

iii. A list of affiliates that will be contributing to the capital investment or full-time employees to the project;

iv. All locations in this State of the business and affiliates that will be contributing to the capital investment or full-time employees to the project;

v. The Statewide work force for the privilege period prior to application;

vi. A floor plan of the proposed qualified business facility that identifies the location of the function of the eligible positions at the proposed qualified business facility and square footage; and

vii. A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the last tax period prior to the credit amount approval.

(b) The business applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-22.6.

(c) 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 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.

(d) If circumstances require an eligible business to amend its application to the Authority prior to approval, then the owner of the eligible business, or an authorized agent of the owner, shall certify to the Authority that the information provided in its amended application is true under the penalty of perjury.

19:31-22.6 Fees

[CURRENTLY UNDER CONSIDERATION - INTENTIONALLY LEFT BLANK FOR THE DRAFT RULES: New Emerge Fee Structure]

19:31-22.7 Review of completed application

(a) A business seeking an approval of tax credits for a project shall apply for tax credits prior to March 1, 2027.

(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 completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

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

(c) Before the Board may consider an eligible business's application for tax credits:

1. The Authority will confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the eligible business is in compliance by being in substantial good standing with the respective department, or, if compliance issues exist, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan. Substantial good standing shall be determined by each department and mean that the eligible business:

- i. Is in substantial compliance with all material rules or regulations of the respective department that apply to the eligible business;
- ii. Has no violations of those rules or regulations (or has entered into a corrective action plan with respect thereto); and
- iii. Has no unpaid liability in excess of threshold dollar amount as established by each respective department.

2. The Authority may contract with an independent third party to perform a background check on the eligible business.

3. The eligible business shall execute a non-binding letter of intent with the Chief Executive Officer of the Authority, specifying the amount and terms and conditions of tax credits that the Authority is prepared to propose for Board approval and that are intended to be a material factor in the decision by the eligible business to create or retain the proposed number of new and retained full-time jobs, and in which the eligible business certifies such tax credits are a material factor in its decision.

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i. If the eligible business has taken actions to commit to the project in this State, including, but not limited to, obtained site control of the qualified business facility, has a signed lease, without penalty-free contingency language that the lease is conditioned upon receiving the tax credits, has expended physical construction costs for a building or other structure, has taken a formal decision that selects a site, has made a public announcement that it intends to locate to the State, has entered into any binding contract for relocation or equipment, including but not limited to, moving, furniture, fixtures and equipment purchases, or has made non-refundable deposits prior to the execution of the letter of intent, then the Authority may rescind approval of the award of tax credits, unless the eligible business disclosed these facts prior to executing the letter of intent and the Authority determines that the award of tax credits was still a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program.

ii. The letter of intent will also include a certification from the owner of the eligible business, or an authorized agent of the owner that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury.

iii. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.

(d) In determining whether the award of tax credits is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program, the Authority shall undertake a full economic analysis of all locations under consideration by the eligible business. The Chief Executive Officer of the Authority may further consider the costs associated with opening and maintaining a business in New Jersey, competitive proposals that the eligible business has received from other states, the prevailing economic conditions, and any other factors that the Chief Executive Officer of the Authority deems relevant to assist the Authority in determining whether an award of tax credits is a material factor in the eligible business's decision. Based on this information, the Authority shall independently verify and confirm the eligible business's assertion that the award of tax credits under the program is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program and, in the case of retained full-time jobs, the jobs are actually at risk of leaving the State, before the Authority may award the eligible business any tax credits under this program.

(e) In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-22.3(a)5 and as certified by the business's owner or authorized agent of the owner pursuant to N.J.A.C. 19:31-22.5(a)2iv, the Authority's consideration shall include, but not be limited to, the direct and indirect benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(f) In making the determination required pursuant to subsection (e), the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the "Five-Year Exemption and Abatement Law," P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the "Long Term

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Tax Exemption Law,” P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et al.), the “New Jersey Urban Enterprise Zones Act,” P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the business’s State or local tax liability.

(g) Upon completion of the review of an application pursuant to (b) through (g) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Authority shall 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 pursuant to N.J.A.C. 19:31-22.9(a).

19:31-22.8 Determination of grant amount; bonus award

(a) The total amount of the tax credit for an eligible business for each new or retained full-time job shall be as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period, notwithstanding any other provisions of P.L. 2020, c. 156 to the contrary. Unless the business demonstrates to the Authority’s satisfaction that a new or retained full-time job is primarily working at the qualified business facility, the tax credit for the full-time job shall be calculated with the base amount for a qualified business facility in another eligible area and shall not include bonuses based on specific characteristics of the qualified business facility, such as geographical location.

(b) For a project that has a complex of buildings, the total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. Subject to subsections (c) and (d) of N.J.A.C. 19:31-22.4, the total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings, including location of the buildings. Notwithstanding that the total tax credit for jobs in different buildings may be calculated separately, forfeitures pursuant to N.J.A.C. 19:31-22.14 and defaults and recaptures included in the incentive agreement pursuant to N.J.A.C. 19:31-22.9(c)5 shall be based on the aggregate capital investment and eligible full-time jobs.

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

1. For a qualified business facility located within a government-restricted municipality, or which is a mega project, \$4,000 per year;
2. For a qualified business facility located within an enhanced area, \$3,500 per year;
3. For a qualified business facility located within a distressed municipality, \$3,000 per year;
4. For a project in a qualified opportunity zone or an employment and investment corridor, \$2,500 per year; and
5. For a project in other eligible areas, \$500 per year.

(d) In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased with the following bonuses, except that the Authority shall not award a bonus to an eligible business with full-time jobs at the qualified business facility, whether the full-time job is subject to the tax credit award or not, that pay less than \$15 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher:

1. For an eligible business with a qualified business facility located in a municipality with a Municipal Revitalization Index score greater than 50, an increase of \$1,000 per year;

2. For an eligible business with a qualified business facility that is an industrial or research and development premises for industrial or research and development use and at which the capital investment in the industrial or research and development portion of the premises is in excess of the minimum capital investment required for eligibility for the entire qualified business facility pursuant to subsection b. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), an increase of \$1,000 per year for each additional amount of investment that exceeds the minimum amount required for eligibility by 40 percent, with a maximum increase of \$3,000 per year, unless the project qualifies as a mega project or the qualified business facility is located in a government-restricted municipality, in which case the maximum increase is \$5,000 per year;

3. For an eligible business with large numbers of new full-time jobs during the commitment period, the increases shall be in accordance with the following schedule:

i. If the number of new full-time jobs is between 251 and 400, \$500 per year;

ii. If the number of new full-time jobs is between 401 and 600, \$750 per year;

iii. If the number of new full-time jobs is between 601 and 800, \$1000 per year;

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

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

4. For an eligible business that annually funds a training program specific to the business's industry, which has the capacity to enroll 10 percent or more of the eligible business's full-time workforce, or pays a State educational institution to provide to the public a training program specific to the business's industry, an increase of \$500 per year; provided, however, that if the training program is provided by a State educational institution that is within 10 miles of the qualified business facility, then the increase shall be \$1,000 per year;

5. For an eligible business that qualifies as a small business, an increase of \$500 per year;

6. For an eligible business with new full-time jobs and retained full-time jobs at the qualified business facility with a median salary in excess of the existing median salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a

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government-restricted municipality, a business that employees full-time positions at the project with a median salary in excess of the median salary for full-time workers residing in the government-restricted municipality, an increase of \$250 per year for the new or retained full-time employees that are at the qualified business facility during the eligibility period for each 35 percent by which the project's median salary levels exceeds the county or government-restricted municipality median salary, with a maximum increase of \$1,500 per year;

7. For an eligible business with a qualified business facility located in a qualified incentive tract, an increase of \$500 per year;

8. For an eligible business engaged primarily in a targeted industry, an increase of \$500 per year;

9. For an eligible business with a qualified business facility located in a qualified incubator facility, an increase of \$500 per year;

10. For an eligible business that enters into a labor harmony agreement, an increase of \$2,000 per year that the portion of the project as represented by the new or retained full-time employees that are the subject of the labor harmony agreement is in effect; provided further that an eligible business receiving a bonus under this subparagraph may exceed the limitation applicable to the eligible business pursuant to subsection (e) below by an amount not to exceed \$1,000;

11. For an eligible business that provides its employees access to child care either through an on-site quality child care facility free of charge to its employees or by offering employees a minimum of \$1,000 per employee per year in reimbursements, subsidies or vouchers to be paid by the eligible business to its employees for the cost of child care in accordance with standards adopted by the authority, an increase of \$1,000 per year.

12. For an eligible business that enters into an agreement with a prisoner re-entry program for the purpose of identifying and promoting employment opportunities at the eligible business for former inmates and current inmates leaving the corrections system, and that hires at least one active participant in the re-entry program, an increase of \$500 per year;

13. For an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Silver" rating standards but does not exceed "Gold" rating standards, or that completes substantial environmental remediation, an additional increase of \$250 per year, or for an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Gold" rating standards, an additional increase of \$500 per year;

14. For an eligible business in a targeted industry with a qualified business facility that is used by the eligible business to conduct a full-time collaborative research relationship with a college or university, including, but not limited to, a doctoral university, an increase of \$1,000 per year. The full-time collaborative research relationship must commence after approval of the application and must require at least 35 hours per week of collaborative activity, or any other standard of collaborative activity generally accepted by custom or practice as full-time, as

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determined by the Authority, and evidenced by an agreement at certification. To be eligible for this bonus, the agreement must remain in effect each year of the eligibility period;

15. For an eligible business with a project that generates solar energy on site for use within the qualified business facility of an amount that equals at least 50 percent of the qualified business facility electric supply service needs, an increase of \$500 per year;

16. For an eligible business with a marine terminal project in a municipality located outside a government-restricted municipality, but within the geographical boundaries of the South Jersey Port District, an increase of \$1,500 per year;

17. For an eligible business with a qualified business facility located in a qualified opportunity zone, an increase of \$1,000 per year; and

18. For an eligible business if one-third or more of the members of the eligible business's governing board or other governing body self-identify as members of an underrepresented community, which shall be Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native or lesbian, gay, bisexual, or transgender, an increase of \$2,000 per year. The Authority shall work with the State's Chief Diversity Officer or other State entities to ensure that the bonus provided under this subparagraph is implemented faithfully and in compliance with law.

(e) Except as provided in (d)10 above, the gross amount of the tax credit available to an eligible business for each new or retained full-time job shall be the sum of the base amount set forth in (c) above and the various additional bonus amounts for which the business is eligible pursuant to (d) above, subject to the following limitations:

1. For a mega project or a project in a government-restricted municipality, the gross amount for each new or retained full-time job shall not exceed \$8,000 per year;

2. For a qualified business facility located within an enhanced area, the gross amount for each new or retained full-time job shall not exceed \$6,000 per year;

3. For a qualified business facility within a distressed municipality, the gross amount for each new or retained full-time job shall not exceed \$5,000 per year;

4. For a qualified business facility in a qualified opportunity zone or an employment and investment corridor, the gross amount for each new or retained full-time job shall not exceed \$4,000 per year; and

5. For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$3,000 per year.

(f) The Authority shall reduce the gross amount of tax credits per full-time job if the median salary of new full-time jobs and retained full-time jobs at, or associated with, the qualified business facility is less than the existing median salary for full-time workers residing in the

county in which the qualified business facility is located. The Authority shall reduce the gross amount of tax credits per full-time job by an amount, in percentage points, equal to the percentage the median salary of new full-time jobs and retained full-time jobs at, or associated with, the qualified business facility is below the existing median salary for full-time workers residing in the county in which the qualified business facility is located. The Authority shall not award a tax credit to an eligible business if the median salary of new full-time jobs and retained full-time jobs at, or associated with, the qualified business facility is 30 percent or more below the existing median salary for full-time workers residing in the county in which the qualified business facility is located.

(g) After the determination by the Authority of the gross amount of tax credits for which an eligible business is eligible pursuant to (e) and (f) above, the final total tax credit amount shall be calculated as follows: for each new full-time job, the eligible business shall be allowed tax credits equaling the lesser of 100 percent of the gross amount of tax credits for each new full-time job; and, for each retained full-time job, the eligible business shall be allowed tax credits equaling 50 percent of the gross amount of tax credits for each retained full-time job.

(h) Notwithstanding the provisions of subsections (a) through (g) of this section to the contrary, for each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed an amount determined by the Authority to be necessary to induce the project to be sited in New Jersey as determined by the Board. The Authority shall determine the amount necessary to complete the project through staff analysis of all locations under consideration by the eligible business and all lease agreements, ownership documents, or substantially similar documentation for the eligible business's current in-State locations and potential out-of-State location alternatives, competitive proposals from other states, the prevailing economic conditions, and any other information that the Authority deems relevant, that may include, but is not limited to, public policy goals, the amount of space dedicated to eligible positions at the qualified business facility, net positive economic benefits, and leadership in targeted industries.

19:31-22.9 Approval letter and commitment agreement

(a) Following approval by the Board, but before the issuance of tax credits, the Authority shall require an eligible business to execute and return an approval letter to the Authority. The Board's award of the credits will be subject to conditions subsequent set forth in the approval letter that must be met in order to retain the credits. Such conditions shall include, but not be limited to, the requirement that the project complies with the prevailing wage requirements pursuant to P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(a)8 and the Authority's affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3.1 et seq. and that the project does not violate any environmental law requirements or minimal environmental and sustainability standards.

(b) Commencing with the date six months following the date the Authority and an eligible business execute the approval letter, the eligible business shall be required to demonstrate that it has obtained site plan approval, as applicable, and has committed financing for, as applicable,, and site control of, the qualified business facility in accordance within the time periods set forth

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in this subsection, unless otherwise modified in the approval of the application by the Board. The eligible business shall provide an estimated date of completion and shall submit periodic progress reports.

1. Within the later of 12 months following the date of application approval by the Authority or six months following the date of execution of the approval letter, each approved business shall submit progress information indicating that the business has site plan approval, committed financing for and site control of the qualified business facility, except that a business shall have until the later of 24 months from the date of application approval or six months following the date of execution of the approval letter to submit such progress information for a mega project or for a qualified business facility that consists of new construction.

2. The approval letter shall contain any other condition of approval and the period within which the business must provide to the Authority evidence that the condition has been met.

3. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information required by (b)1 above, is not received by the Authority within the required period of time.

(c) Upon satisfaction of conditions in the approval letter, as determined by the Authority, the business shall execute a commitment agreement. The terms of the commitment agreement shall be consistent with the applicable eligibility requirements of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3, and shall include, but shall not be limited to, the following:

1. A detailed description of the proposed project which will result in job creation or retention, and the number of new and retained full-time jobs that are approved for tax credits;

2. For a phased project, an incentive phase agreement which for each phase identifies a description of the phase, the expected capital investment and number of new full-time jobs, and the time following acceptance of the incentive agreement when each phase is to begin and be completed, with the awarding of tax credits under the incentive agreement to be predicated on the number of full-time jobs created through the fulfillment of each incentive phase agreement;

3. The eligibility period of the tax credits or, for a phased project, the eligibility period of the tax credits for each phase;

4. Personnel information that will enable the Authority to administer the program;

5. A requirement that the eligible business maintain the project at, or associated with, a location in New Jersey for the commitment period, with at least the minimum number of full-time jobs, salaries, and withholdings as required by this program pursuant to subsections (a) through (c) in N.J.A.C. 19:31-22.14, and a provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the eligible business does not remain in compliance with this provision for the required term or significantly reduces the number of full-time employees, or the salaries or withholdings thereof, based on the amounts that result in forfeitures or reductions under subsections (a) through (c) in N.J.A.C. 19:31-22.14, to an amount

less than the minimum jobs, salaries, or withholdings to which the eligible business certified at the commencement of the eligibility period, for two or more successive tax periods;

6. A method for the eligible business to certify that it has met the capital investment, employment, and other eligibility requirements of the program set forth in subsections b. and c. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3, and to report annually to the Authority the number of new and retained full-time employees, and the withholdings and salaries thereof, for which the tax credits are to be allowed;

7. Representations that the eligible business is in substantial good standing or meets the agreement requirements described in paragraph (1) of subsection b. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.7(c)1, the project complies with all applicable laws, and specifically, that the project does not violate any environmental law;

8. A provision permitting an audit of the payroll records of the business and any other evidence and documentation supporting the certifications pursuant to (e) below, the annual reports pursuant to N.J.A.C. 19:31-22.10, and the addition of affiliates pursuant to N.J.A.C. 19:31-22.14(h) from time to time, as the authority deems necessary;

9. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the eligible business and each contractor and subcontractor performing work at the qualified business facility is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan, as set forth in N.J.A.C. 19:31-22.7(c)1; a provision providing that if the eligible business is not in substantial good standing with any of the departments and has been given written notice thereof by the respective department and at least one week to respond thereto, then the Authority may suspend the issuance of tax credits or certificate of compliance pending resolution of the violation(s) or noncompliance; and a provision to permit the Authority, in its sole discretion, to require the business to forfeit the tax credits for those years if the violation(s) or noncompliance remain unresolved and the suspension continues for two years;

10. A requirement for the eligible business to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

11. A provision permitting the Authority to amend the agreement;

12. A provision establishing the conditions under which the Authority, the eligible business, or both, may terminate the agreement;

13. For a small business, an attached schedule with the reduced amount of the award if the business does not meet the projections in the growth plan;

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14. Milestones for the project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority may rescind the award of tax credits if a project fails to advance in accordance with milestones in the commitment agreement or fails to provide progress reports required under the approval letter;

15. An agreement by the business that the statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

16. Indemnification and insurance requirements;

17. Default and remedies, including, but not limited, to a default if an eligible business made a material misrepresentation on its application;

18. The schedule indicating the repayment of the incremental tax credits received by a business that elected a period of extended commitment pursuant to N.J.A.C. 19:31-22.3(a)5.iv if the business fails to maintain the project through the expiration of that extended commitment period; and

19. A provision requiring a community benefits agreement if the total project cost equals or exceeds \$10 million.

(d) For a project whose total project cost equals or exceeds \$10 million, in addition to the commitment agreement, an eligible business shall execute a community benefits agreement or agreements pursuant to subsection b. of section 73 of P.L. 2020, c. 156, as prescribed herein:

1. The business shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the qualified business facility is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the EDA of the municipality's request. The Authority shall not participate in negotiations between the eligible business and the municipality or county; however, prior to execution, the Authority shall review the agreement to determine compliance with the requirements of this subsection (d), including, but not limited to, a provision for mediation as required by (d)4.ii. below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the qualified business facility is located. The eligible business and the municipality or county, as applicable, shall have 6 months, with two 3-month extensions, after Authority Board approval, to enter into a community benefits agreement. The community benefits agreement is a condition to entering into a commitment agreement.

2. The community benefits agreement shall include a list of contributions by the business; the monetary equivalent for any non-monetary contribution; and, an event of default for forfeiture pursuant to 7ii. below in two successive years. The community benefits agreement may include but, shall not be limited to, requirements for training, employment, and youth development and

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free services to underserved communities in and around the community in which the qualified business facility is located.

3. The eligible business and the municipality or county shall have 6 months, with two three-month extensions, after Authority Board approval, to enter into a community benefits agreement. The community benefits agreement is a condition to entering into a commitment agreement.

4. Prior to entering a community benefits agreement, the chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county, in which the qualified business facility is located shall hold at least one public hearing subject to the Open Public Meetings Act, at which, the chief executive or designee from his or her office, shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address; and, shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

5. The community benefits agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

i. The community advisory committee created pursuant to this subsection shall be comprised of representatives from community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the qualified business facility is located.

ii. The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.

iii. For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the qualified facility is located, at least one representative from a community group, and at least one resident from the zip code in which the qualified business facility is located. There shall be no more than one municipal or county employee on the community advisory committee.

iv. For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at iii above.

v. Community advisory committee members shall be required to sign a letter to certify to no financial or other interested relationship with the eligible business, which shall be submitted to the Authority by the business or the municipality, or if the county is executing the agreement, the county.

vi. Any report or action shall be approved by a majority of the members of the community advisory committee.

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6. The community advisory committee shall produce an annual report, including an evaluation whether the eligible business is in compliance with the terms of the community benefits agreement:

i. If the report from the community advisory committee and the certification from the eligible business pursuant to N.J.A.C. 19:31-22.10(a)5 both indicate that the eligible business is in compliance with the community benefits agreement, then the eligible business shall be in compliance with the community benefits agreement.

ii. If the report from the community advisory committee indicates that the eligible business is not in compliance with the terms of the community benefits agreement, the Authority shall serve as or identify a mediator. The community advisory committee, municipality or county, as applicable, and the eligible business shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority.

iii. If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. 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. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer, or equivalent officer, containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in nature. The business, municipality or county, and the community advisory committee 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 five business days from receipt of such report. The Chief Executive Officer, or equivalent officer, shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this paragraph is not a contested case 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.

7. If the business is not in compliance as determined under 6. above, the following apply:

i. The amount of tax credits that the business may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the business is not in compliance, provided, however, no recapture or repayment shall be required, if the Authority determines that

(1) Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;

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(2) The eligible business is using best efforts, with all due diligence, to proceed with the completion of the contribution; and

(3) The eligible business has made all reasonable efforts to prevent, avoid, mitigate, and overcome the non-compliance.

ii. For any other non-compliance, 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 compliance 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.

8. An eligible business shall not be required to enter into a community benefits agreement pursuant to this subsection if the eligible business submits to the Authority a copy of the eligible business's redevelopment agreement and approval letter that is certified by the chief executive of the municipality in which the project is located.

(e) Upon completion of the capital investment and employment requirements of the program, an eligible business shall submit to the Authority certifications evidencing that the eligible business has satisfied the conditions relating to the capital investment, employment, and other eligibility requirements, including withholdings and, if applicable, requirements related to a mega project, of the project agreement with supporting evidence satisfactory to the Authority. Absent extenuating circumstances and the written approval of the Authority, the eligible business shall submit the certification within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline; provided that the date of completion shall not occur later than four years following the date of approval of the application by the Authority; provided further that the Authority may grant one additional extension not to exceed one year as follows:

1. The Authority must find that:

i. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;

ii. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and

iii. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

2. The eligible business shall provide timely notice to the Authority of the delay within 30 days after the eligible business has actual or constructive knowledge of the delay, and shall provide periodic reports, not less than every 30 days, of the status of the delay and the steps the eligible business is taking to mitigate or overcome the delay.

(f) If the Governor declares an emergency, then the Chief Executive Officer of the Authority shall have the discretion to grant an extension for the duration of the emergency and the Board of

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the Authority, upon recommendation of the Chief Executive Officer, may grant two additional six-month extensions; provided, however, that:

1. The extensions are due to the economic disruption caused by the emergency;
2. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;
3. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and
4. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

(g) In any submission required by the Authority pursuant to this section, the owner of the eligible business, or an authorized agent of the owner, shall certify that the information provided is true under the penalty of perjury.

(h) The certifications required by subparagraph (e) of this section shall be in the following form:

1. The business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to the capital investment. Capital investment in a complex of buildings that are not proximate shall be certified for each building. If the project seeks to qualify for the bonus pursuant to N.J.A.C. 19:31-28.8(d)(2), in addition to submitting a certification of capital investment in the qualified business facility, the business shall submit a certification for the capital investment in the industrial or research and development portion of the premises for industrial or research and development use. In the event the capital investment is reduced below the capital investment amount set forth in N.J.A.C. 19:31-22.3(a)1, the business shall remain eligible if the business donates the difference between the amount set forth in N.J.A.C. 19:31-22.3(a)1 and the amount of capital investment invested into the infrastructure fund. If the amount paid into the infrastructure fund together with the amount of capital invested is less than the capital investment in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certified capital investment, together with any donation to the infrastructure fund, is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to employment. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional jobs located at the qualified business facility, and, except as set forth in N.J.A.C. 19:31-22.10(f), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in

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subsections (c) and (d) of N.J.A.C. 19:31-22.4. In the event the number and median salary of new or retained full-time jobs is reduced below the number or median salary of new or retained full-time jobs in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

3. The Authority shall qualify certified public accountants and provide to business the list of qualified certified public accountants; provided, the business may select an independent certified public accountant not on the Authority's list for purposes of the capital investment certification or the business's chief financial officer may certify for purposes of the employment certification upon the Authority's prior approval if the business demonstrates an extenuating circumstance prohibiting the business from retaining a qualified independent certified public accountant, including, but not limited to, the unavailability of any of the qualified independent certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business, or the business is a small business.

4. The business shall submit a certification with a floor plan showing the qualified building facility as of the date of the certifications identifying the uses pursuant to N.J.A.C. 19:31-22.3(b) and square foot of gross leasable area for each such use.

5. Any material modification, at or before the date of certifications, to the project as approved by the Board, including, but not limited to, a reduction in the amount of the capital investment, new and retained full-time jobs, or square foot of gross leasable area for each use pursuant to N.J.A.C. 19:31-22.3(b), shall require review and approval by the Authority to determine that the project as modified does not undermine the basis for the tax credit award approved.

6. The Authority may request additional information or certifications from the business to determine eligibility and may seek information from the Department of Labor and Workforce Development to support the certifications.

(i) Once the Authority accepts the certifications required under (e) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications under (e) above, provided it shall not exceed the maximum amount determined by the Board under N.J.A.C. 19:31-22.7(g) and N.J.A.C. 19:31-22.8. The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

19:31-22.10 Reporting requirements and annual reports

(a) An eligible business which is awarded tax credits under the program shall submit annually, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment period, a report that indicates that the eligible business continues

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to maintain the number of new and retained full-time jobs, and the salaries thereof, specified in the commitment agreement, including, but not limited to:

1. The number of full-time employees and new or retained full-time jobs employed at, or associated with, the qualified business facility;
 2. The list of affiliates that contributed to the full-time employees at, or associated with, the qualified business facility;
 3. The number of full-time employees in the business's Statewide workforce;
 4. The number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application;
 5. Information on any change or anticipated change in the identity of the affiliates comprising the business elected to claim all or a portion of the credit;
 6. A certification indicating whether or not the business is aware of any condition, event, or act, which would cause the business not to be in compliance with the approval, the Act, the commitment agreement, community benefits agreement pursuant to subsection b. of section 73 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.9(d), or this subchapter; and
 7. A copy of its applicable New Jersey tax return showing business income and withholdings as a condition of its continuation in the program, and the quarterly wage report required under R.S.43:21-14 submitted to the Department of Labor and Workforce Development together with an annual payroll report showing:
 - i. The new full-time jobs which were created in accordance with the project agreement;
 - ii. The new full-time jobs created during each subsequent year of the commitment period; and
 - iii. The withholdings and salaries, as measured by the median salary, of the new and retained full-time jobs created and the amount of withholdings paid to New Jersey.
- (b) The certified report required by (a) above is due 120 days after the end of the business's tax privilege period; and failure to timely submit the certified report, absent extenuating circumstances and the written approval of the Authority, shall result in the forfeiture of the tax credits for that privilege period. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in subsections (c) and (d) of N.J.A.C. 19:31-22.4.
- (c) An eligible business shall explain, in the certified report required by (a) above, the reason for any discrepancies between the annual payroll report submitted by the eligible business to the Authority and the quarterly wage report submitted to the Department of Labor and Workforce

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Development. The owner of the eligible business, or an authorized agent of the owner, shall certify that the information provided pursuant to (a) above and this subsection is true under the penalty of perjury. Claims, records, or statements submitted by an eligible business to the authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

(d) Upon receipt and review to the Authority's satisfaction of each certified report required by (a) above submitted during the eligibility period, the Authority shall provide to the eligible business and the Director a certificate of compliance indicating the amount of tax credits that the eligible business may apply against its tax liability. The Authority shall pro rate the tax credit for the first and last years of the eligibility period based on the number of full months the project was certified in the year the eligible business first certifies. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period. The certificate of compliance will indicate the amount of the tax credit certificate that will be recommended to the Division of Taxation for issuance for an identified tax privilege period.

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

(f) If the certified report required by (a) above submitted by a small business demonstrates that the business has met the number of new full-time employees specified in the growth plan pursuant to N.J.A.C. 19:31- 22.3(c)1 each year of the eligibility period, then the business shall be entitled to an increased credit amount for that tax period, and each subsequent tax period, for each additional full-time employee added above the number of full-time employees certified, until the full-time employees number meets the maximum number projected for the final year of the eligibility period. Failure to meet the projections in any year shall not constitute a default but shall cause the authority to reduce the award in accordance with a schedule attached to the project agreement.

(g) An eligible business shall forfeit the credit amount for any tax period for which the eligible business's documentation remains uncertified as of the date for certification indicated in the commitment agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the eligible business.

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

(i) A business may include an affiliate for any period, provided that the business provides a valid tax clearance certificate for the affiliate and a verification of the nature of the affiliate relationship during the relevant period, and provided further that the affiliate provides acceptable responses to the Authority's legal disclosures inquiries, as determined by the Authority, and the affiliate executes a joinder to the commitment agreement. A business may remove an affiliate by notifying the Authority of the affiliate that is to be removed. A formal modification of the Authority's approval of the approval letter shall not be necessary to add or remove an affiliate after approval or execution of the approval letter.

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(j) A business may change its name filed with the Authority by providing a copy of the filed amendment to the certificate of incorporation or formation, as the case may be, of the business and a valid tax clearance certificate with the business's new name. A formal modification of the Authority's approval shall not be necessary to change a business's name after approval or execution of the approval letter.

19:31-22.11 Tax credit amount; application and allocation of the tax credit

(a) Except for a small business which will have incremental or additional tax credits pursuant to a growth plan under N.J.A.C. 19:31-22.10(f), for each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter. Except as set forth in N.J.A.C. 19:31-22.10(f), the total tax credit amount that a business may apply each year shall not exceed the maximum annual amount determined by the Board at approval pursuant to N.J.A.C. 19:31-18.7(g) and N.J.A.C. 19:31-22.8.

(b) Upon receipt by the Director of the certificate of compliance, the Director shall allow the eligible business a tax credit. The eligible business may apply the credit allowed by the Director against the eligible business's tax liability for the tax period in which the Director allowed the tax credit or may carry forward the credit for use by the eligible business in any of the next seven successive tax periods, which credit shall expire thereafter.

(c) The amount of credit allowed may be applied against the tax liability otherwise due 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 N.J.S.A. 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S. 17B:23-5.

(d) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe.

1. With respect to credits passed through to a person subject to tax liability due pursuant to sections 2 or 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and N.J.S.A. 54:18A-3), the person shall be allowed to apply credits against the person's tax liability without the provision of a tax credit certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying the person's tax return and the person shall be considered the tax certificate holder and be subject to this subsection (d).

2. The Authority may recapture all or part of any tax credits claimed by a person pursuant to (d)1 above with penalties and interest from the person or the business in the event the Division of Taxation in the Department of the Treasury does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period.

(e) The Director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of a credit applied under this section against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

(f) In lieu of applying any credit certificate or credit transfer certificate against tax liability otherwise due 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 N.J.S.A. 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S. 17B:23-5, the credit certificate or credit transfer certificate may be surrendered to the Division of Taxation in the Department of the Treasury for a cash payment equal to 90 percent of the amount of tax credits evidenced by the certificate, subject to appropriation and the availability of funds, provided that the issuance date of the credit certificate or credit transfer certificate to the taxpayer surrendering such certificate occurred at least two years prior to the date of surrender.

19:31-22.12 Application for tax credit transfer certificate

(a) An eligible business may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, within three years of the tax period in which the Director allows the eligible business a tax credit, in lieu of any amount of the tax credit against the eligible business's State tax liability. The tax credit transfer certificate, upon receipt thereof by the eligible business from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in an amount not less than \$25,000, within three years of the tax period in which the eligible business receives the tax credit transfer certificate from the Director, to another 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 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S. 17B:23-5. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall apply the transferred credit against the same tax for which the eligible business was approved a tax credit under the program. The tax credit transfer certificate provided to the eligible business shall include a statement waiving the eligible business's right to claim the credit that the eligible business has elected to sell or assign.

(b) The eligible business shall not sell or assign a tax credit transfer certificate allowed under this section for consideration received by the eligible business of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The tax credit transfer certificate issued to the eligible business by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits under this program and any other terms and conditions that the Director may prescribe.

(c) With respect to credits to be sold or assigned, in full or in part, pursuant to an application to the Authority for a tax credit transfer certificate by a business to a person subject to tax liability due pursuant to sections 2 or 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 or N.J.S.A. 54:18A-3), the person shall be allowed to apply the credits against the person's tax liability

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without the provision of a tax credit transfer certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying its tax return, and the person be considered a tax credit transferee and be subject to (d) below.

(d) The Authority may recapture all or part of any tax credits claimed by a person pursuant to (c) above with penalties and interest from the person or the business in the event the Authority or the Director does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period.

(e) The purchaser or assignee of a tax credit transfer certificate shall be subject to any limitations and conditions that apply to the use of the tax credits by the eligible business. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.

(f) The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferrer;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The State tax against which the transferee may apply the tax credit; and
5. The consideration received by the transferrer.

19:31-22.13 Cap on total credits

The combined value of all credits approved by the Authority pursuant to this program shall be subject to limitations set forth in section 98 of P.L. 2020, c. 156. The amount of available tax credit shall be posted at the beginning of each calendar year on the website of the Authority.

19:31-22.14 Reduction and forfeiture of tax credits

(a) If, in any tax period, an eligible business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under the program, then the eligible 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 eligible 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.

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(b) Except for a small business, if the annual report filed by an eligible business pursuant to section 77 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(a) provides that the number of new full-time employees employed by the eligible business at, or associated with, the qualified business facility, or the salaries thereof, as measured by the median salary, was reduced by more than 10 percent of the number of new full-time employees, or salaries thereof, in the annual report of the prior year, or the commitment agreement if the annual report is the first such report filed, then the Authority may reevaluate the net positive economic benefit of the project and reduce the size of the award accordingly. This reduction shall not affect any recapture under subsection (f) of this section.

(c) If, in any tax period, the amount of withholdings paid to New Jersey or full-time employees employed by the eligible business at, or associated with, the qualified business facility, or the salaries thereof, drops below 80 percent of the withholdings and number of new and retained full-time jobs, and the salaries thereof, specified in the commitment agreement or the incentive phase agreement, then the eligible business shall forfeit its tax credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the amount of withholdings paid to New Jersey or number of full-time employees employed by the eligible business at, or associated with, the qualified business facility to 80 percent of the withholdings and number of jobs specified in the commitment agreement or incentive phase agreement or the restoration of 80 percent of the salaries specified in the commitment agreement is reviewed and approved by the Authority.

(d) If the business is not in compliance with the community benefits agreement pursuant to N.J.A.C. 19:31-22.9(d)4, the Authority shall reduce the size of the award by the amount equal to 120 percent of the monetary value of the contribution or contributions for which the business is not in compliance. This reduction shall not affect any recapture under subsection (f) of this section.

(e) If at any time during the eligibility period the Authority determines that the eligible business made a material misrepresentation on the eligible business's application, the eligible business shall forfeit all tax credits awarded under the program, which shall be in addition to any other remedies in the commitment agreement and any criminal or civil penalties to which the business and the officer may be subject.

(f) The Authority may recapture all or part of a tax credit awarded if an eligible business does not remain in compliance with the requirements of a project agreement for the duration of the commitment period. A recapture pursuant to this subsection may include interest on the recapture amount, at a rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. Failure of the eligible business to meet any program criteria shall constitute a default and shall result in the recapture of all or part of the tax credit awarded.

(g) With the exception of N.J.A.C. 19:31-22.12(d), if all or part of a tax credit sold or assigned pursuant to section 78 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.12 is subject to

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recapture, then the Authority shall pursue recapture from the eligible business and not from the purchaser or assignee of the tax credit transfer certificate.

(h) Any funds recaptured pursuant to this subsection, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility

(a) A small business may move its qualified business facility, upon prior notice to the Authority, provided that the business remains in New Jersey during the commitment period and, for the purposes of this subsection, the tax credit calculation for each new or retained job will be re-calculated for the new location, but the tax credit amount shall not be greater than the amount approved.

(b) Except for a small business, or an eligible business engaged primarily in a targeted industry with less than 50 employees at application:

1. If the qualified business facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller, provided, however, that any tax credits of tenants shall remain unaffected. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that an eligible business may change the location of the qualified business facility before certification of the capital investment if:

i. The new facility:

(1) Meets all applicable location qualifying criteria and has gross leasable area not less than the gross leasable area of the qualified business facility initially approved by the Authority and the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program; or

(2) Does not meet all applicable location qualifying criteria or has less gross leasable area than the gross leasable area of the qualified business facility initially approved by the Authority, if the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program, provided that the Authority shall require a new cost benefit analysis illustrating the economics of the project which reflect occupancy at the alternate proposed qualified business facility location for the remaining duration of the commitment period and shall re-calculate the net positive economic benefit of the project to reflect the economics of occupancy at the alternate proposed location for the remaining duration of the net positive economic benefit test period in lieu of the economics of continuing occupancy at the qualified business facility proposed to be vacated, and provided further that the award of tax credits shall be reduced consistent with the variations in qualifying criteria for the alternate qualified business facility location as well as in a manner consistent with the revised net positive economic benefit calculation.

(c) In the event that the modified project economics materially deviate from the economics of the initial approval in a manner that undermines the recommendation of approval made by the staff of the Authority at the time of the initial approval, then the business requesting to re-locate a qualified business facility shall be required to obtain the approval of Board.

(d) If a business leases, or subleases, or otherwise reduces its tenancy in whole or in part during the eligibility period, the new tenant shall not acquire the tax credits of the business, and the business shall forfeit all tax credits for any tax period of its lease or sublease in which the business, in continued occupation of a portion of the qualified business facility, fails to maintain the number of jobs required for the business to earn tax credits for the tax period or fails to independently satisfy the minimum capital investment or sustainability requirements for the program as set forth in section 71 of P.L. 2020, c. 156. Provided, however, if the capital investment of the business in the occupied portion of the qualified business facility is below the project minimum capital investment as set forth in section 71 of P.L. 2020, c. 156, the business may include capital investment made by or on behalf of the new tenant in the leased or subleased portion of the qualified business facility, so long as that capital investment is not the subject of an independent application under an incentive program with the Authority. Notwithstanding the foregoing, a business may lease or sublease a portion of its qualified business facility to a new tenant that is a quality child care facility and up to five percent for any other new tenant without forfeiting any of the business's credits, provided that the new tenant's full-time employees and capital investment shall not be included in the business's eligible full-time employees or capital investment.

19:31-22.16 Affirmative action and prevailing wage

The Authority's affirmative action requirements in P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3.1 et seq. and prevailing wage requirements in P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-3.4.1 et seq., and N.J.A.C. 19: 31-22.3(a)(8) will apply to projects undertaken in connection with financial assistance received under the program.

19:31-22.17 Appeals

(a) The Board's action 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 effective 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

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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.

19:31-22.18 Recovery Infrastructure Fund

(a) The Authority shall establish a dedicated fund to be known as the "Recovery Infrastructure Fund." Money in the fund shall be dedicated to the purpose of funding local infrastructure, which shall include:

1. Buildings and structures, such as schools, fire houses, police stations, recreation centers, public works garages, and water and sewer treatment and pumping facilities;
2. Sidewalks, streets, roads, ramps, and jug handles;
3. Open space with improvements such as athletic fields, playgrounds, and planned parks;
4. Open space without improvements;
5. Public transportation facilities such as train stations and public parking facilities; and
6. The purchase of equipment considered vital to public safety.

(b) The fund shall be credited with money remitted by eligible businesses pursuant to paragraph (2) of subsection b. of section 71 of P.L. 2020, c. 156, N.J.A.C. 19:31-22.3(b)6, or N.J.A.C. 19:31-22.9(h)1.

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(c) Money remitted to the fund by an eligible business pursuant to N.J.A.C. 19:31-22.3(b)(6) or N.J.A.C. 19:31-22.9(h)1 shall be earmarked for use on local infrastructure projects in the municipality in which the eligible business's project is located.

(d) A municipality shall apply to the authority, in a form and manner prescribed by the Authority, for disbursements from the Recovery Infrastructure Fund. The Authority, in consultation with the Department of Community Affairs, shall review and approve applications for disbursements of money from the fund pursuant to the provisions of this section. Applications shall be reviewed in the order that completed applications are received. In order to be approved, an application will be required to meet a minimum score established by the Authority in consultation with the Department of Community Affairs, based on factors, including but not limited to, whether the applicant demonstrates that it has a financing plan for the entire project and the proposed public benefit of the project. The Authority shall issue an approval with condition to be met prior to disbursements.

(e) The Department of Community Affairs shall coordinate with the Authority and other boards, commissions, institutions, departments, agencies, State officers, and employees to carry out the local infrastructure projects funded through the Recovery Infrastructure Fund.

19:31-22.19 Reports on implementation of program

Beginning the year next following the year in which P.L. 2020, c. 156 takes effect and every two years thereafter, a State college or university shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the program, and submit the report to the Authority, the Governor, and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required under this section shall include a description of each eligible business receiving a tax credit under the program, a detailed analysis of the consideration given to each applicant, an analysis of whether the incentives awarded influenced the eligible business's decisions to locate a qualified business facility in the State, the return on investment for incentives awarded, the eligible business's impact on the State's economy, and any other metrics the State college determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

19:31-22.20 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.

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DRAFT TEXT FOR NJEDA PROPOSED TARGETED INDUSTRY INTERPETATIONS

The following is the draft text of the NJEDA's policy interpretations to further define the targeted industries included in the Emerge program regulations and statute. These draft industry definitions will not be included in the program regulations, but instead would be incorporated in NJEDA's program policies.

NJEDA is seeking public feedback on these definitions in addition to the draft regulation text:

Advanced transportation and logistics industry includes, but is not limited to, the research, development, commercialization, and implementation of technology and innovative methodologies to move goods, services, and people, including by rail, road, air, sea, cable, space and the processing, storage, supply chain management, handling and packaging of goods and services.

Advanced transportation includes, but is not limited to, the areas of infrastructure, vehicles, and operations. Examples of advanced transportation technologies may include advanced transportation, sensor development, electrification of vehicles and infrastructure, new transport vehicle development, smart infrastructure and smart cities technologies.

Advanced logistics includes, but is not limited to, the research, development, commercialization, and implementation of innovative planning, storage, supply chain management, handling, and packaging of goods and services.

Examples of advanced logistics technologies may include real-time dynamic tracking or pricing, automated processing and handling, the use of blockchain and artificial intelligence, and the use of advanced telecommunication technologies in logistics.

Excluded from this industry are conventional warehousing and distribution facilities, operations and conventional transportation businesses, such as trucking.

Advanced manufacturing industry includes, but is not limited to, activities that integrate advanced or innovative technologies, processes and materials to improve the manufacturing of products. Such activities include research, development, commercialization, and implementation of new manufacturing methods and processes that utilize technology or other innovative methodologies including both physical equipment and software supporting advanced production.

Examples of advanced manufacturing technologies include additive manufacturing technologies, computer-aided manufacturing, utilization of advanced sensors and robotics to improve production, development of advanced materials to support production, and digital twin

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development and utilization. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are conventional manufacturing firms that do not sufficiently develop or utilize technologies such as those listed above.

Aviation industry includes, but is not limited to, commercial businesses that are directly involved with air transportation, which utilizes an aircraft, such as airplanes, helicopters and drones.

The aviation industry also includes aircraft manufacturing, aviation component manufacturing, aviation research, air safety, involvement with military aviation and the design, production or use of drones. The aviation industry also includes research, development, and commercialization of aviation-specific software, processes, guidance systems, technologies, and other industry-specific innovative methodologies. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are the operations of regularly scheduled commercial or private flights.

Autonomous vehicle research or development industry includes, but is not limited to, the research, development and implementation of technologies that support the advancement of vehicles that operate independently, increasingly without human involvement, and the related infrastructure for such vehicles.

Examples of autonomous vehicle and infrastructure technologies include sensors, radars, cameras, actuators, complex algorithms, machine learning systems, and software processors that support autonomous vehicle operations and maintenance. Excluded from this industry are research, development, and implementation of technologies that do not advance towards fully automated vehicular operations or the related infrastructure.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Zero-emission vehicle research or development industry includes, but is not limited to, the research, development and implementation of technologies that advance the production of electric and other zero emission vehicles that reduce greenhouse gas emissions or improve air quality and the related infrastructure. This industry also includes firms that are undertaking specific projects to implement these technologies.

Examples of zero-emission vehicle technologies include plug-in-hybrid electric vehicles, battery-powered electric vehicles, hydrogen fuel cell-powered vehicles, vehicle charging infrastructure, electricity grid infrastructure improvements, and software to support these technologies.

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Excluded from this industry are research, development, and implementation of technologies that do not reduce greenhouse gas emissions or improve air quality.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Clean energy industry includes, but is not limited to, the research, development, commercialization, manufacturing of products and services, and implementation of technologies that support renewable energy generation and distributed energy resources, grid modernization, energy efficiency and zero-carbon building development, and transport system electrification.

Examples of clean energy technologies include solar power, onshore and offshore wind, electric battery storage, fuel-cell-based storage, carbon capture technologies, non-combustion waste-to-energy technologies, wave energy, water use minimization technologies, carbon-reducing materials, nuclear energy, heat pumps and geothermal, run of river hydroelectric, and other innovative recycling technologies and processes. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are distribution or transmission utilities, conventional landfill operations, combustion-based waste-to-energy projects, and natural gas projects.

Life sciences industry includes, but is not limited to, the research, development, commercialization, manufacturing, and implementation of innovative treatments, diagnostic tools, healthcare related software, medical devices, services, and equipment that supports the study, protection and improvement of plant, animal and human life.

Examples of life science industry practices include specialization in biomedicine, biochemistry, pharmaceuticals, biophysics, neuroscience, cell biology, biotechnology, medical devices, nutraceuticals, health-technology, botany and advanced agricultural development, cosmeceuticals, and life systems technologies. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Exclusions from this industry include direct provision of health care services in hospitals, outpatient facilities, dentist offices, nursing homes, or within a home setting.

Hemp processing industry refers to activities in compliance with the federal Agriculture Improvement Act of 2018 (also known as the 2018 Farm Bill) and any applicable regulations regarding hemp processing promulgated by the New Jersey Department of Agriculture, United States Department of Agriculture, or the United States Food and Drug Administration, including but not limited to, the research, development, commercialization, processing and manufacturing of commercial and industrial hemp products derived from hemp seeds, oil, fibers and shives for commercial use, including in the automotive, construction, food and beverage, personal care, and textile industries.

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The term also includes research and development activities that advance hemp processing equipment and technologies for production, testing, and manufacturing operations, provided that such activities comply with the above-referenced laws and regulations. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

The hemp processing industry excludes hemp grown for personal use or with a tetrahydrocannabinol (THC) concentration of 0.3% or greater.

Information technology industry includes, but is not limited to, the research, development, and commercialization of advanced software products and information technology services.

Information technology industry includes specialization in application and software development, advanced data analytics, artificial intelligence, blockchain related development, eSports, cybersecurity, cloud computing, provision of web services or servers, telecommunications, mobile communications services, provision of software as a service and other computing technologies.

Information technology industry does not include retail IT service providers, software implementation services that utilize customized product implementations, third party technology implementation to utilizes off-the-shelf solutions, website design services, social media or marketing services, and businesses from other industries that generally utilize technology to support their business operations.

High technology industry includes, but is not limited to, the research, development, commercialization, and manufacturing of technology hardware, technology processes, electronics, and technology-based components.

High technology industry also includes specialization in microelectronics, telecommunications, electronics equipment and components, advanced computing hardware, data storage hardware, advanced optical products and equipment, advanced sensor and instrumentation development, digital imaging, electromagnetics, mobile communication devices and infrastructure, semiconductors and semiconductor equipment.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Finance and insurance industry includes, but is not limited to, the research, development, commercialization and management of financial and risk-management solutions, products and services for individuals, businesses and government agencies, including insurance lines, investment banking, depository and lending, and investment management services.

The finance and insurance industry may include technology driven financial innovations generally referred to as fintech, research and development activities that advance finance and insurance industry practices, including executing financial transactions. The finance and

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insurance industry may also include wagering platforms and related products and services, cryptocurrencies and related products and services, and regional or global headquarters of finance and insurance operations.

Excluded from this industry are retail banks, insurance, or wagering operations, real estate or leasing companies, and short-term or “payday” lenders operations.

Professional services industry includes global headquarters, regional headquarters, or major service hubs (such as innovation centers or centers of excellence) of knowledge-economy based businesses, from which customers or operations across multiple states or countries are served.

Examples of knowledge-economy based businesses considered providing professional services include firms that specialize in consulting, accounting, advertising, law, marketing, architecture, design, and engineering firms.

Exclusions from this industry include local branch offices of professional services providers, real estate agents, travel agencies, local contractors or architects, trades-based services, financial planners, doctors, dentists, and other offices or business units where a material amount of the professionals require business licenses to operate in the State.

Film and digital media industry includes, but is not limited to, the production and management of media communications, processes and technologies for theatrical motion pictures, television and cable broadcast, streaming services, web-based platforms. Digital media may include spoken word production and media software including video games. Research and development activities that advance media production, management and technology are also included.

Exclusions are productions intended for local broadcast and local performance venues, and companies and businesses that provide indirect sources of support to the production industry such as food services (including craft services and catering) and vehicle rentals used solely for transportation purposes.

Non-retail Food and Beverages industry includes, but is not limited to, the growing, processing, packaging, preservation and distribution of raw agricultural goods into consumer food products, including fresh prepared foods, packaged foods, and alcoholic and nonalcoholic beverages, aquaculture and fisheries.

The industry includes the regional or global headquarters for food-based businesses, breweries, wineries and major wholesale food distribution facilities. Research and development activities that advance food innovation technologies, commercialization, production, food distribution models and manufacturing operations are also included in the non-retail food and beverage industry.

Excluded from this industry include distribution businesses serving retail food customers, including grocery stores, farmers markets, community supported agriculture organizations, bodegas, or convenience stores, and establishments that serve food and beverages, including restaurants, cafeterias, cafés, fast-food, pubs, delis, and catering businesses.