



54 N.J.R. 124(a)

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RULE PROPOSALS

Reporter

54 N.J.R. 124(a)

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Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Code Citation

Proposed Repeal and New Rule: N.J.A.C. 19:31-22.16

Proposed Amendments: N.J.A.C. 19:31-22.1 through 22.11, 22.14, and 22.15

Text

Authority Assistance Programs

Emerge Program Rules

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2021, c. 160.

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

Proposal Number: PRN 2022-010.

Submit written comments by March 19, 2022, to:

Jacob Genovay, Senior Legislative and Regulatory Officer
New Jersey Economic Development Authority
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The agency proposal follows:

Summary

The New Jersey Economic Development Authority ("NJEDA" or "Authority") is proposing amendments to the rules implementing the EmERGE program pursuant to recently enacted statutory revisions in P.L. 2021, c. 160 (approved July 2, 2021).

In accordance with the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, the NJEDA specially adopted and concurrently proposed the EmERGE program rules on May 20, 2021, and adopted the concurrently proposed rules on December 15, 2021, as simultaneously noticed along with these proposed amendments.

Under the New Jersey Economic Recovery Act of 2020, the EmERGE Program Act, sections 68 through 81 of P.L. 2020, c. 156, was established to encourage economic development in the State's priority sectors by providing per-job tax credits for up to seven years. To be eligible for the program, a project must meet various eligibility criteria at application and at project certification, including:

- Be located in a qualified incentive area;
- 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 more highly distressed areas of the State 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 New Jersey;
- Ensure that at least 80 percent of incented employees' work time is spent in New Jersey;
- Ensure that the qualified business facility can accommodate at least 50 percent of incented new jobs, and to receive tax credits for retained jobs, the qualified business facility must accommodate all the retained full-time jobs at the time of application; and
- Commit to stay at the qualified business facility for 1.5 times the eligibility period.

The following provides a summary of the proposed amendments:

N.J.A.C. 19:31-22.1 Applicability and scope

The proposed amendment revises the section to include a citation for P.L. 2021, c. 160, which amends the Emerge Program Act.

N.J.A.C. 19:31-22.2 Definitions

The proposed amendments add new definitions for "technology startup company" and "substantial environmental remediation"; delete the definition of "authorized agent of the owner"; and redefine certain terms used in this subchapter, as follows:

"Business" is revised to: 1. delete the provision that a business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by full-time employees of an affiliate; 2. delete "at, or associated with, the qualified business facility" as pertains to certain full-time employees in a cooperative or part of a cooperative; and 3. replace "incentive" with "commitment" agreement.

"Capital investment" is revised to add that capital investment also means expenses incurred on behalf of the business or affiliate by its landlord, which may be demonstrated through an executed letter of intent or lease.

"Employment and Investment Corridor" is revised to: 1. delete the existing date of "until June 30, 2013," pertaining to a designated growth center in an endorsed plan under the New Jersey State Development and Redevelopment Plan; and 2. correct a reference to the State Development and Redevelopment Plan, and provide that at the time of application, the Employment and Investment Corridor contain any combination of office, laboratory, or industrial space, with the existing availability for occupancy requirement.

"Enhanced area" is revised to clarify that the area means a municipality that contains an urban transit hub, as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

"Full-time employee" is revised to 1. clarify that a person who is a resident of another state, and would be eligible pursuant to subparagraphs 1i, ii, or iii, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., shall qualify due to a reciprocity agreement with the other state; 2. delete the requirement for an employee hired by way of a labor union hiring hall that the employee be employed 35 hours a week at a place "at, or associated with, the qualified business facility," instead, providing that the 35 hours must be worked "in the State"; 3. delete the provision excepting full-time employees of the Statewide workforce from the requirement to be provided employee health benefits; and 4. delete the requirement that a full-time employee shall be paid no less than \$ 15.00 per hour or 120 percent of the minimum wage as set forth in the statute.

"Incentive area" is revised to 1. delete reference to a transit hub municipality, which is replaced with enhanced area; 2. maintain eligibility for areas designated under the State Planning Act as Planning Area 2 (Suburban) or Planning Area 3 (Fringe Planning Area) or a Designated Center, but delete the requirement that those areas must be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a major transportation center, such as a New Jersey Transit Corporation or Port Authority Transit Corporation station; and 3. correct a reference to the State Development and Redevelopment Plan.

"New full-time job" is revised to delete the provision that an eligible position created by a business shall be at, or associated with, a qualified business facility.

"Project agreement" or "incentive agreement" is revised to delete "or incentive agreement."

"Project phase agreement or "incentive phase agreement" is revised to delete "or incentive phase agreement."

"Quality child care facility" is revised to: 1. correct a reference to the Department of Children and Families; 2. provide that a qualified center may also be a registered family child care home with the Department of Human Services; and 3. delete "total" and "of at least 60" as pertains to licensed capacity, and 4. delete the age requirement of six, which is replaced with 13 and add "who attend for less than 24 hours a day."

"Retained full-time job" is revised to delete "or of being eliminated" as pertains to an eligible position that currently exists in New Jersey, is filled by a full-time employee, and which is at risk of being lost to another state or country due to potential relocation.

"Statewide workforce" is revised to delete the provision that an eligible position shall be "at, or associated with, the qualified business facility."

N.J.A.C. 19:31-22.3 Eligibility criteria

The proposed amendments make changes in the following New Jersey Administrative Code provisions:

At N.J.A.C. 19:31-22.3(b), replace "a business's authorized agent of the owner" with "the chief executive officer of the business or an equivalent officer."

At N.J.A.C. 19:31-22.3(b)2, replace "at, or associated with, the qualified business facility" with "in the State."

At N.J.A.C. 19:31-22.3(b)5i, replace "transit hub municipality" with "an enhanced area" as pertains to the location of a qualified business facility regarding the required net positive benefit to the State.

At N.J.A.C. 19:31-22.3(b)5v, replace "incentive" with "commitment" agreement.

At N.J.A.C. 19:31-22.3(b)5iv, replace "after" with "beyond," regarding the election of extended commitment period by the business for which the economic benefits shall be creditable by the Authority, and delete the provision that if the business makes this election, the net positive economic benefits calculated shall be additionally discounted by the Authority to reflect the uncertainty of the business's location after the commitment period expires.

N.J.A.C. 19:31-22.3(b)8i(2), which pertains to instances in which the payment of prevailing wage shall not apply, is amended to be clear that the exception applies where the landlord is a party to the construction contract, building services contract, or both.

At N.J.A.C. 19:31-22.3(b)8i(3)ii, the amendment corrects statutory cross-references.

Existing N.J.A.C. 19:31-22.3(c) addresses both required capital investment for some types of projects, and also building size requirements for other types of projects. The sentence related to qualification based on both retained full-time jobs and the size of the project being at least equal to the space occupied at the time of application is being eliminated.

At N.J.A.C. 19:31-22.3(d)1, the amendment replaces "at, or associated with, the qualified business facility" with "in the State."

The proposed amendment at N.J.A.C. 19:31-22.3(d)4 adds that, for a business eligible for tax credits for new full-time jobs at paragraphs (d)2 or 3, the business shall also be eligible for retained full-time jobs in addition to the new full-time jobs if the business will retain 150 retained full-time jobs when locating in a government-restricted municipality, 250 retained full-time jobs when locating in a qualified incentive tract or enhanced area municipality, or 500 retained full-time jobs when locating anywhere else in the State.

The proposed amendment at recodified N.J.A.C. 19:31-22.3(d)5 clarifies that a business that is not eligible at paragraphs (d)2, 3, or 4, but is locating in an "enhanced area," an existing qualified incentive tract, or a government-restricted municipality, shall be eligible for the greater of 500 "retained," rather than the existing "new," full-time jobs or the retained full-time jobs at the time of application.

The proposed amendment at recodified N.J.A.C. 19:31-22.3(d)6 revises the cross-references to paragraphs (d)4 and 5 replaces "new" with "retained" as it pertains to full-time jobs or the business's retained full-time jobs at time of application.

The proposed amendment at N.J.A.C. 19:31-22.3(e) adds "and adhere to" regarding the requirements listed at paragraphs (e)1 and 2.

The proposed amendment at N.J.A.C. 19:31-22.3(e)1 replaces "or" with "and" pertaining to the requirement for a plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business's new and retained full-time employees. An additional change would delete the subsection (c) requirement that a project that is eligible based upon retained full-time jobs has to meet a requirement of accommodating all of the retained full-time employees at the facility.

The proposed amendments at N.J.A.C. 19:31-22.3(e)2 replace "authorized agent of the owner" with "chief executive officer" of the business "or an equivalent officer"; and replaces the term "or" with "and," as it pertains to a certification that certain withholdings of new and retained full-time jobs are, and will be, subject to the New Jersey Gross Income Tax Act.

The proposed amendment at N.J.A.C. 19:31-22.3(f) replaces "owner" and "authorized agent of the owner" with "chief executive officer" and "equivalent officer" of the business regarding the certification of certain factual representations.

N.J.A.C. 19:31-22.4 Restrictions

The proposed amendment at N.J.A.C. 19:31-22.4(a) replaces "an incentive" with "a commitment" agreement.

N.J.A.C. 19:31-22.5 Application submission requirements

At N.J.A.C. 19:31-22.5(a)1x, which pertains to a written certification of substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury, 1. replace "owner" and "authorized agent of the owner" with "chief executive officer" and "an equivalent officer"; and 2. add that contractors or subcontractors that will perform work at the qualified business facility are registered as required pursuant to the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

The proposed amendment at N.J.A.C. 19:31-22.5(a)2iv(1) replaces "owner" and "authorized agent of the owner" with "chief executive officer" and "an equivalent officer," as it pertains to the net positive economic benefit certification required therein.

The proposed amendment at N.J.A.C. 19:31-22.5(a)2ix replaces "current" with "proposed" as pertains to in-State locations relating to certain documents to be provided.

The proposed amendment at N.J.A.C. 19:31-22.5(a)3i deletes the requirement for a written certification by the owner of the eligible business, or an authorized agent of the owner that the eligible positions that are the subject of the application will be at, or associated with, the qualified business facility.

The proposed amendment at N.J.A.C. 19:31-22.5(a)3ii replaces "at, or associated with, the qualified business facility" with "in the State."

The proposed amendment at N.J.A.C. 19:31-22.5(a)4i replaces "at, or associated with, the qualified business facility" with "in the State."

The proposed amendment at N.J.A.C. 19:31-22.5(d) replaces "owner" and "authorized agent of the owner" with "chief executive officer" and "equivalent officer," regarding the certification of certain information provided as part of an amended application or additional or supplemental factual representations prior to approval.

N.J.A.C. 19:31-22.6 Fees

Proposed new N.J.A.C. 19:31-22.6(a)4, (c)4, (d)4, (e)4, (f)4, (g)4, (h)4, and (i)4 establish new fees for mega projects that are defined as certain projects of special economic importance, resulting in creation of 500 or more new full-time jobs, capital investment of at least \$ 50,000,000 in a targeted industry and provision of opportunities to leverage leadership in a high-priority targeted industry.

The proposed amendments at N.J.A.C. 19:31-22.6(i) replace "incentive" with "commitment" agreement as referenced in the existing provision regarding the termination fee.

N.J.A.C. 19:31-22.7 Review of completed application

The proposed amendment at N.J.A.C. 19:31-22.7(c) replaces "will" with "shall" and deletes "compliance by being in," as it pertains to the confirmation of substantial good standing with certain State agencies, as listed.

The proposed amendment at N.J.A.C. 19:31-22.7(c)3ii replaces "owner" and "authorized agent of the owner" with "chief executive officer" and "equivalent officer," as it pertains to the certification to be included in the non-binding letter of intent.

The proposed amendment at N.J.A.C. 19:31-22.7(e) replaces "owner" and "authorized agent of the owner" with "chief executive officer" and "an equivalent officer," as it pertains to the certification as set forth at N.J.A.C. 19:31-22.5(a)2iv.

N.J.A.C. 19:31-22.8 Determination of grant amount; bonus award

In general, N.J.A.C. 19:31-22.8 provides for increased bonus amounts above the base tax credit for eligible businesses that meet any of several criteria.

At N.J.A.C. 19:31-22.8(d)1, the word "distress" would be inserted to create a full reference to the Municipal Revitalization index score.

The proposed amendments at N.J.A.C. 19:31-22.8(d)2 would reduce the bonus for additional investment from \$ 1,000 to \$ 500.00 per year for each additional amount of investment that exceeds the amount for eligibility by 40 percent, and reduces the maximum bonus to \$ 1,500 from \$ 3,000 per year.

At N.J.A.C. 19:31-22.8(d)3, proposed amendments replace "commitment" with "eligibility" period.

At N.J.A.C. 19:31-22.8(d)3iii, "\$ 1000" to is revised to "1,000."

The proposed amendments at N.J.A.C. 19:31-22.8(d)6 replace "that" with "with" and insert "in" as pertains to a business with certain employees in full-time positions at the project. Additional proposed amendments reduce the bonus relating to salary levels at the qualified project from \$ 250.00 to \$ 200.00 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. The maximum increase would be reduced from \$ 1,500 to \$ 1,000 per year.

N.J.A.C. 19:31-22.8(d)7, which provides a \$ 500.00 per year bonus for an eligible business with a qualified business facility located in a qualified incentive tract, would be deleted.

Recodified N.J.A.C. 19:31-22.8(d)11 relates to eligible businesses that participate in a re-entry program for inmates. The proposed amendments would replace "agreement" with "active partnership" and clarifies that the \$ 500.00 per year bonus is also available to those that have previously entered an active partnership. In either case, the business must hire at least one full-time employee" from the re-entry program.

Recodified N.J.A.C. 19:31-22.8(d)14 would be amended to add geo-thermal, wind, and any other renewable or distributed energy to the type of onsite energy that would qualify for a bonus of \$ 500.00 per year, provided it meets 50 percent of the business facility's electric supply needs.

Proposed new language at recodified N.J.A.C. 19:31-22.8(d)17 would clarify that the \$ 500.00 bonus would apply "for each new or retained full-time job" in eligible businesses where a third or more of the members of the governing board self-identify as members of an under-represented community.

The proposed amendments at N.J.A.C. 19:31-22.8(f) would: 1. replace "at or associated with, the qualified business facility" with "subject to the project agreement"; 2. add language authorizing the percentage reduction of credits for a project in a government-restricted municipality where the median salary of the jobs subject to the agreement is less than the median salary in the municipality, based on how far below median the new jobs are; and 3. add language allowing the Authority to withhold credits entirely where the jobs otherwise subject to the project agreement are 30 percent more below median salary for full-time workers in the county or government-restricted municipality at issue.

The proposed amendment at N.J.A.C. 19:31-22.8(h) replaces "current" with "proposed," as it pertains to the reference to certain in-State locations.

N.J.A.C. 19:31-22.9 Approval letter and commitment agreement

The proposed amendment at N.J.A.C. 19:31-22.9(b)2 replaces "an incentive" with "a project," as it pertains to phase agreement and "incentive" with "commitment" agreement, respectively.

The proposed amendments to the requirement at N.J.A.C. 19:31-22.9(b)8, that the eligible business must meet agreement requirements at P.L. 2020, c. 156, clarify that the "good standing" representations refer to "the Department of Environmental Protection, Department of Labor and Workforce Development, and the Department of the Treasury." The proposed amendments also add language requiring "a practical corrective action plan" with the departments, where the Department deems appropriate. The amendments delete the language "or meets the agreement requirements at 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."

At N.J.A.C. 19:31-22.9(b)10, new language has been added to make clear that the Authority may confirm with the referenced agencies, "that each contractor or subcontractor performing work at the qualified business facility is registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury."

At N.J.A.C. 19:31-22.9(b)11, which pertains to certain instances in which the eligible business is not in good standing nor entered into an agreement with the agencies referenced above and has been given written notice thereof, the proposed amendment replaces "Authority" and "suspend" with "eligible business" and "forfeit" regarding the issuance of tax credits pending the resolution of the "underlying" violations "or other issues" and deletes "or noncompliance, or if the violation(s) or noncompliance remain unresolved and the suspension continues for two years, then, at the Authority's sole option, the eligible business may forfeit the tax credit for those years; relating thereto."

The proposed amendment at N.J.A.C. 19:31-22.9(c)6i would revise two cross-references from N.J.A.C. 19:31-22.10(a)5 to (a)3.

The proposed amendment at N.J.A.C. 19:31-22.9(c)8, which pertains to the instance that an eligible business shall not be required to enter into a community benefits agreement if the eligible business submits certain documentation to the Authority that documents that the local government agrees that there is already an equivalent agreement in place, replaces "redevelopment agreement" with "approval letter from the Authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement" and adds that the approval letter or redevelopment agreement "includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer pursuant to rules adopted by the Authority."

The proposed amendments at N.J.A.C. 19:31-22.9(d) replace "completion" with "certification," as it relates to the date upon which certification shall occur following any extensions for certifications following approval of the application.

The proposed amendment at N.J.A.C. 19:31-22.9(g) would replace "owner" with "chief executive officer" and "authorized agent of the owner" with "equivalent officer," pertaining to any submission required by the Authority pursuant to the approval letter or certifications at N.J.A.C. 19:31-22.9(f).

N.J.A.C. 19:31-22.10 Reporting requirements and annual reports

The proposed amendments at N.J.A.C. 19:31-22.10(a)1i and ii replace "at, or associated with, the qualified business facility" with "in the State" regarding certain information to be provided in the annual report submitted by the business.

Proposed new N.J.A.C. 19:31-22.10(a)3 provides that, as part of the annual report, the eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required by the Public Works Contractor Registration Act, has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

The proposed amendments at N.J.A.C. 19:31-22.10(c) would replace "owner" with "chief executive officer" and "authorized agent of the owner" with "equivalent officer" regarding certain information to be certified to pursuant to subsection (a).

N.J.A.C. 19:31-22.11 Tax credit amount; application and allocation of the tax credit

The proposed amendments at N.J.A.C. 19:31-22.11(f) clarify that the provision that 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, in addition to other requirements, applies when "the credit certificate or credit transfer certificate has not been sold or assigned previously."

N.J.A.C. 19:31-22.14 Reduction and forfeiture of tax credits

Consistent with other amendments, the proposed amendments at N.J.A.C. 19:31-22.14(b) and (c) replace "at, or associated with, the qualified business facility," with "subject to the project agreement" and "commitment" with "project" pertaining to the provision for certain new full-time employees employed by the eligible business that, if reduced as detailed in the subsection, may result in the reevaluation of the net positive economic benefit of the project and reduction of the size of the award accordingly.

The proposed amendments at N.J.A.C. 19:31-22.14(h) clarify that any funds recaptured pursuant to this section, including penalties and interest, shall be net of costs incurred by the Authority.

N.J.A.C. 19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility

The proposed amendments at N.J.A.C. 19:31-22.15(b) revise the exemption that shall be applied for a small business to delete "or an eligible business engaged primarily in a targeted industry with less than 50 employees at application" as the term "small business" is already defined as being engaged primarily in a targeted industry, and the 50 employees cap was deleted by P.L. 2021, c. 160. In addition, the term "new cost benefit analyses" would be replaced with "cost comparison of the originally approved location and the alternate qualified business facility," as required for certain instances wherein an eligible business may change the location of the qualified business facility before certification of the capital investment.

N.J.A.C. 19:31-22.16 Affirmative action and prevailing wage

Proposed new N.J.A.C. 19:31-22.16(a), (b), and (c) replaces the existing section to: 1. more accurately delineate the Authority's requirements related to affirmative action and prevailing wage, making clear that they apply for two years after the first certificate of compliance is issued; and 2. clarify that during the commitment period, the application of the prevailing wage shall apply to building services at the qualified business facility pursuant to N.J.A.C. 19:31-22.3(b)8.

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

Social Impact

The proposed amendments, new rule, and repeal, which revise the Emerge program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State, are intended to have a positive social impact.

The Emerge program is a key component of the State's broader economic development plan, which balances economic impact, for example, stimulating high-quality job growth and private sector investment, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the Economic Recovery Act of 2020's overall approach, which establishes or amends 15 different programs with varying development objectives. While the Emerge program is primarily focused on job creation, other programs more directly address areas, such as community development, small and micro business support, and other critical social issues, such as food security. Attracting high-quality jobs and private sector investments into the State helps bolster long-term revenues and deepens the State's base of responsible corporate partners, all of which will reinforce the State's social initiatives.

In addition, within the Emerge program, there are a number of features that directly focus on social improvement. For example, the program includes policy-tied bonuses to incentivize companies to establish prisoner re-entry programs, provide subsidized childcare for employees, and support local workforce development. The program also requires community benefits agreements for all projects over \$ 10,000,000, fostering stronger relationships between companies and their communities and supporting programs, such as youth development, workforce training, and free services to underserved communities in and around the project location. Further, the program creates a Recovery Infrastructure Fund where businesses can meet their capital investment requirement by contributing to a fund for local infrastructure projects in the municipality hosting the project.

The program also includes fiscal protections to ensure transparency, equity, and faithful stewardship of taxpayer dollars; including, an inducement provision that enables the Authority to size awards to the amount necessary to induce the project to be sited in New Jersey.

Economic Impact

The proposed amendments, new rule, and repeal are intended to bolster the State's economy by stimulating new high-quality economic development. The Emerge program is the primary job creation and large-scale retention tool in the New Jersey Economic Recovery Act of 2020. It specifically encourages economic development in the State's priority sectors, which have a high economic spill-over effect into other parts of the economy. In other words, these sectors tend to sell goods and services outside of the State's borders, thereby bringing cash into the State and fueling broader economic growth and vibrancy.

In addition, most projects participating in the Emerge program will have a minimum requirement for private capital investment. This private capital investment is, by definition, a durable and sustainable investment in the State's economic infrastructure. These investments will support long-term job creation opportunities after tax credits have been fully utilized, even if a given project does not meet its full potential.

Further, the proposed amendments, new rule, and repeal require that the only projects that will provide the State a positive long-term economic benefit can participate in the Emerge program. This means that while taxpayers may provide short-term tax credits to attract a project to the State, that project is committed to operating in the State long

enough to pay back two to four times the value of those credits through State payroll, sales, and other taxes. Additionally, the fact that jobs must be created and capital improvements completed before tax credits are provided to approved businesses, along with robust recapture and repayment provisions if the businesses fail to meet their long-term obligations, ensure substantial economic protections within the program.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments, new rule, and repeal are not subject to any Federal requirements or standards.

Jobs Impact

The core focus of the Emerge program is to attract new private sector jobs into the New Jersey economy. In addition, the proposed amendments, new rule, and repeal provide for the ability to also support projects that would retain a significant amount of private sector jobs that are at risk of being relocated to another state. The capital investment requirements of the program, which focus on new construction and refurbishment of industrial, office, and research and development properties, also ensure that participating projects will stimulate job growth in the building trades.

The Emerge program is a pay-for-performance program where tax credits are only provided to applicants once a project is fully executed, including completing required capital investments and creating jobs.

The Economic Recovery Act of 2020 creates a shared program cap between the Emerge program and the Aspire program of \$ 1.1 billion per year; however, actual cap usage will primarily be driven by the volume of approved applicants and individual per-job caps within the program. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the Emerge program; but the Act and the rules provide a series of transparency measures to ensure regular reporting of the number of jobs created, including bi-annual program evaluation reports.

Agriculture Industry Impact

The proposed amendments, new rule, and repeal may have a positive impact on the agricultural industry, which includes aquaculture and fisheries, through the targeted industry inclusion of the non-retail food and beverages industry. Specifically, an eligible business of the Emerge program may be within the agricultural industry through involvement with research and development activities that advance agricultural food innovation technologies. As a result, new or advanced technologies may benefit the State's agricultural industry operations for the production, processing, preservation, and distribution of raw agricultural goods into consumer food products.

Regulatory Flexibility Analysis

The proposed amendments, new rule, and repeal may impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., however, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed fees for the program are intended to ensure a source of necessary administrative fee revenue for NJEDA to more fully cover the costs of the program.

Further, the proposed amendments, new rule, and repeal create significant new flexibilities and supports for small businesses to participate in the program, as compared to the State's previous jobs-based tax credit programs. For example, businesses in targeted industries with less than 100 full-time equivalent employees at the time of application do not have minimum capital investment requirements, have lower minimum job requirements, and can more easily move their project's location to support accelerated growth.

In addition, the proposed amendments, new rule, and repeal provide new features that allow approved applicants to use third-party, independent certified public accounting firms to support the tax credit certification process. This

change is meant to improve regulatory compliance processes for all businesses and the Authority. The specific reporting, recordkeeping, and compliance requirements are discussed in the Summary above.

Housing Affordability Impact Analysis

The proposed amendments, new rule, and repeal will not have an impact on the affordability of housing in the State and will not impact the amount or cost of housing units, including multi-family rental housing and for-sale housing in the State. The proposed amendments, new rule, and repeal revise the Emerge program, which provides incentives to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State.

Smart Growth Development Impact Analysis

The proposed amendments, new rule, and repeal will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments, new rule, and repeal revise the Emerge program which provides incentives to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments, new rule, and repeal will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

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

SUBCHAPTER 22. EMERGE [PROGRAM RULES]

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 (Act), sections 68 through 81 of P.L. 2020, c. 156, **as amended by P.L. 2021, c. 160**. 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 Authority Board may approve the award of tax credits to a business upon application of the business demonstrating its eligibility under the Act and this subchapter and following the execution of a letter of intent and the payment of fees, subject to the limitations set forth in this 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] **at** 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.

...

["Authorized agent of the owner" means the chief executive officer or equivalent officer for North American operations of the business.]

...

"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 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5, or is 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 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 full-time employees of the affiliate, provided any successor must execute the [incentive] **commitment** 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] **commitment** agreement are jointly and severally liable under the [incentive] **commitment** agreement; and an acknowledgment that the tax credit will be allocated to each party to the [incentive] **commitment** agreement in accordance with the number of full-time employees that each employs [at, or associated with, the qualified business facility].

"Capital investment" means expenses that a business or an affiliate of the business incurs, **or is incurred, on behalf of the business or affiliate by its landlord, which may be demonstrated through an executed letter of intent or lease**, 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.-3. (No change.)

...

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

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] **Development and Redevelopment** Plan and adopts rules to revise this definition;

2.-3. (No change.)

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, **or any combination 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. (No change.)

"Enhanced area" means **a municipality that contains** an urban transit hub, as defined at 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.-iii. (No change.)

iv. Who is a resident of another state, and would be eligible pursuant to subparagraphs 1i, ii, or iii above, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., **due to a reciprocity agreement with the other state**; or

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 subparagraphs 1i, ii, or iii above. A "full-time employee" shall include, but shall not be limited to, an employee who 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] **in the State** 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 pursuant to paragraph 1 above who, [except for purposes of the Statewide workforce, and] as evidenced by documentation acceptable to the Authority, [:

i. Is] **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 \$ 15.00 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.-4. (No change.)

...

"Incentive area" means:

1.-2. (No change.)

3. A distressed municipality or [transit hub municipality or] **enhanced area**;

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.-9. (No change.)

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. (No change.)

ii. A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State [Strategic] **Development and Redevelopment** Plan and adopts rules to revise this definition as it pertains to Statewide Planning Areas;

iii.-v. (No change.)

11. (No change.)

...

"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.

...

"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 by the Board pursuant to the Emerge 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 details of the respective phase.

...

"Quality child care facility" means a child care center licensed by the Department of Children and Families **or a family child care home registered with the Department of Human Services**, operating continuously, which has not been subject to an enforcement action, and which has and maintains a [total] licensed capacity [of at least 60] **for children age [six] 13 years or younger who attend for less than 24 hours a day.**

...

"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.

...

"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. Further, "Statewide workforce" shall not include full-time employees at any final point-of-sale retail facilities unless the project, as approved by the Board, includes full-time employees engaged in final point-of-sale retail.

"Substantial environmental remediation" means the completion of the necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the capital investment in a qualified business facility.

...

"Technology startup company" means a for-profit business that has been in operation fewer than seven years at the time that it initially occupies or expands in a qualified business facility and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which proprietary technology or business method the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

...

19:31-22.3 Eligibility criteria

(a) (No change.)

(b) The Authority shall make the determination that an applicant has met the criteria for eligibility for a tax award and shall determine the amount of the award. In order for a business to be eligible for tax credits under the program, [a business's authorized agent of the owner,] **the chief executive officer of the business or an equivalent officer** 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 at (c) below;

2. The business will create or retain new and retained full-time jobs [at, or associated with, the qualified business facility] **in the State** in an amount equal to or greater than the applicable minimum number of new or retained full-time jobs required to be eligible as set forth at (d) below. To qualify 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 the individual's work time in this State and that the eligible position requires an employee to have the individual's primary place of work in this State;

3.-4. (No change.)

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, as calculated by the Authority, to the State equaling at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below. For a phased project, the requested tax credit allocation amount for the initial phase shall equal at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below, and, for each phase thereafter, the cumulative net positive economic benefit shall equal at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below. The net positive economic benefit 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. The net positive economic benefit may be based on the benefits generated 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 (b)5iv below.

i. An award of tax credits to a business for a qualified business facility located in a distressed municipality or [transit hub municipality] **an enhanced area** 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.-iii. (No change.)

iv. A business may elect a period of extended commitment [after] **beyond** the commitment period for which time the economic benefits shall be creditable by the Authority to the determination of the net positive economic benefit of the project. In no event, shall the period for which the net positive economic benefit be determined, including any extended commitment period, exceed 20 years. [If the business makes this election, the net positive economic benefits calculated shall be additionally discounted by the Authority to reflect the uncertainty of the business's

location after the commitment period expires.] 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, the Authority may adjust, prospectively, the respective percentage thresholds by which the benefits must exceed the requested tax credit allocation amount set forth pursuant to this paragraph to ensure consistent application of the respective percentage thresholds. Any modification to the methodology shall be applied prospectively. Prospective application means using the modified methodology or respective percentages to pending applications and to projects that have been previously approved if the business requests a modification, or this subchapter or the [incentive] **commitment** agreement requires or authorizes the Authority to conduct a reevaluation of the net positive economic benefit;

6.-7. (No change.)

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 the Department 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.).

i. The payment of prevailing wage pursuant to this paragraph shall not apply if:

(1) (No change.)

(2) The landlord is a party to the construction contract, [or] building services contract, **or both**; and

(3) (No change.)

ii. 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)] **(2)** of subsection a. of section [71] **77** of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

iii. (No change.)

(c) The minimum capital investment required to be eligible pursuant to (b)1 above shall be the sum of (c)1 through 5 below, as applicable, provided that to the extent a business's qualified business is comprised of more than one of the uses at (c)1, 2, 3, or 4 below, the minimum investment for common areas will be in proportion to the other areas. [If a business qualifies on the basis of retained full-time jobs, the new construction or rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises by the business qualifying on the basis of retained full-time jobs shall be equal in size to no less than the space occupied by the business's retained full-time jobs at the time of application.]

1.-6. (No change.)

(d) The minimum number of new or retained full-time jobs required to be eligible pursuant to (b)2 above shall be as set forth at (d)1 through 5 below. A business may be eligible for a tax credit award for both new and retained full-time jobs if the business separately satisfies the corresponding minimum number for new and retained full-time jobs.

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 that the eligible business will hire each year of the eligibility period [at, or associated with, the qualified business facility;] **in the**

State 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.-3. (No change.)

4. For a business eligible for new full-time jobs pursuant to (d)2 or 3 above, the business shall also be eligible for retained full-time jobs in addition to the new full-time jobs if the business will retain: 150 retained full-time jobs when locating in a government-restricted municipality; 250 retained full-time jobs when locating in a qualified incentive tract or enhanced area municipality; or 500 retained full-time jobs when locating anywhere else in the State;

[4.] **5. For a business not eligible pursuant to (d)2, 3, or 4 above, which is** locating in a qualified incentive tract, **enhanced area**, or government-restricted municipality, the greater of 500 [new] **retained** full-time jobs or the business's retained full-time jobs at the time of application; and

[5.] **6. For any business not set forth at [(d)4] (d)5 above, the greater of 1,000 [new] retained** full-time jobs or the business's retained full-time jobs at the time of application.

(e) In addition to the requirements at (b), (c), or (d) above, a business shall provide **and adhere to** the following. The requirements set forth in this subsection 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:

1. A plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business's new [or] **and** retained full-time employees as approved, as determined by the Authority in its sole discretion by considering square footage allocable to eligible positions. The business shall adhere to such plan to complete its project. [If a business is approved for retained full-time jobs, the business shall also satisfy the space requirements at (c)4 and 5 above if a business is receiving tax credits for any retained full-time jobs.]

2. A certification by the [authorized agent of the owner] **chief executive officer** of the business **or an equivalent officer**, under the penalty of perjury, that not less than 80 percent of the withholdings of new [or] **and** retained full-time jobs are, and will be, subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

(f) The [owner] **chief executive officer** of the business, or an [authorized agent of the owner] **equivalent officer**, shall certify that all factual representations made by the business to the Authority pursuant to (b), (c), and (d) above are true under the penalty of perjury.

(g)-(j) (No change.)

19:31-22.4 Restrictions

(a) The Authority shall not enter into [an incentive] **a commitment** 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] **commitment** agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

(b)-(e) (No change.)

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. Information on the business, including all affiliates contributing either full-time employees or capital investment, or both, to the project, which shall include the following:

i.-ix. (No change.)

x. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the owner or business is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The business shall also submit a written certification by the [owner] **chief executive officer** of the eligible business or [authorized agent of the owner] **an equivalent officer** stating that the business applying for the program satisfies the criteria at N.J.A.C. 19:31-22.7(c)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury[.]; **that contractors or subcontractors that will perform work at the qualified business facility are registered as required pursuant to the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in 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.-xiv. (No change.)

2. Project information, which shall include the following:

i.-iii. (No change.)

iv. 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(b)5, taking into account the criteria listed at N.J.A.C. 19:31-22.3(b)5i through v, and a statement that the applicant understands and acknowledges it may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

(1) In relation to whether a proposed capital investment will yield a net positive economic benefit, the business shall submit a certification by the business's [owner] **chief executive officer** or [authorized agent of the owner] **an equivalent officer** stating:

(A)-(C) (No change.)

v.-viii. (No change.)

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] **proposed** 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.-xv. (No change.)

3. Employee information, which shall include the following:

i. [A written certification by the owner of the eligible business, or an authorized agent of the owner that the eligible positions that are the subject of the application will be at, or associated with, the qualified business facility, and evidence] **Evidence** to the Authority's satisfaction that demonstrates that 80 percent of each eligible position's work time 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] **in the State**; and

iii. (No change.)

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] **in the State**;

ii.-vii. (No change.)

(b)-(c) (No change.)

(d) If circumstances require an eligible business to amend its application to the Authority or to provide additional or supplemental factual representations prior to approval, then the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify to the Authority that the information provided in its amended application and any other factual representations made in support of and to demonstrate the eligibility requirements at N.J.A.C. 19:31-22.3(b), (c), (d), and (e) are true under the penalty of perjury.

19:31-22.6 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. (No change.)

2. For projects with 100 to 249 new and retained full-time jobs, the fee to be charged at application shall be \$ 10,000; [and]

3. For projects with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee to be charged at application shall be \$ 15,000[.]; **and**

4. For applicants that are seeking a mega project, the fee to be charged at application shall be \$ 25,000.

(b) (No change.)

(c) A non-refundable fee shall be charged prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. (No change.)

2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$ 75,000; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$ 165,000[.]; **and**

4. For each project considered a mega project, the fee shall be \$ 250,000.

(d) A business shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate, as follows:

1. (No change.)

2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$ 100,000; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$ 200,000[.]; **and**

4. For each project considered a mega project, the fee shall be \$ 300,000.

(e) A business shall pay to the Authority an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the business 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(f), and for the duration of the commitment period and any period of extended commitment pursuant to N.J.A.C. 19:31-22.3(b)5iv. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, as follows:

1. (No change.)

2. For each project with 100 to 249 new and retained full-time jobs, the annual servicing fee shall be \$ 25,000; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the annual servicing fee shall be \$ 60,000[.]; **and**

4. For each project considered a mega project, the annual servicing fee shall be \$ 90,000.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-22.12 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. (No change.)

2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$ 10,000, and \$ 5,000 for each additional request made annually; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$ 15,000, and \$ 7,500 for each additional request made annually[.]; **and**

4. For each project considered a mega project, the fee shall be \$ 20,000, and \$ 10,000 for each additional request made annually.

(g) A business shall pay, to the Authority, a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and, a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1.-2. (No change.)

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, a non-refundable fee of \$ 7,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval[.]; **and**

4. For each project considered a mega project, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 35,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for the first six-month extension to the date by which the business shall submit the certification with respect to 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(f); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. (No change.)
2. For each project with 100 to 249 new and full-time retained jobs, the fee shall be \$ 10,000 for the first six-month extension and \$ 15,000 for each subsequent extension; [and]
3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$ 15,000 for the first six-month extension and \$ 25,000 for each subsequent extension[.]; **and**
- 4. For each project considered a mega project, the fee shall be \$ 20,000 for the first six-month extension and \$ 30,000 for each subsequent extension.**

(i) A business seeking to terminate an existing [incentive] **commitment** agreement in order to participate in [an incentive] **a commitment** agreement authorized pursuant to the Emerge program shall pay, to the Authority, a non-refundable fee as follows:

1. (No change.)
2. For each project with 100 to 249 new and retained full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 5,000, and \$ 15,000 for each termination that requires extensive staff time and Board approval; [and]
3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 7,500, and \$ 25,000 for each termination that requires extensive staff time and Board approval[.]; **and**
- 4. For each project considered a mega project, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 10,000, and \$ 35,000 for each termination that requires extensive staff time and Board approval.**

19:31-22.7 Review of completed application

(a)-(b) (No change.)

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

1. The Authority [will] **shall** 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 statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i.-ii. (No change.)

2. (No change.)

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.

i. (No change.)

ii. The letter of intent will also include a certification from the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer** 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. (No change.)

(d) (No change.)

(e) In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-22.3(b)5 and as certified by the business's [owner] **chief executive officer**, or [authorized agent of the owner] **an equivalent officer**, 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)-(g) (No change.)

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

(a)-(c) (No change.)

(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 pays less than \$ 15.00 per hour or 120 percent of the minimum wage fixed [under] **at** 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 **distress** 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(c), an increase of [\$ 1,000] **\$ 500.00** 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] **\$ 1,500** 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] **eligibility** period, the increases shall be in accordance with the following schedule:

i.-ii. (No change.)

iii. If the number of new full-time jobs is between 601 and 800, [\$ 1000] **\$ 1,000** per year;

iv.-v. (No change.)

4.-5. (No change.)

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 government-restricted municipality, a business [that] **with** employees **in** 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 [\$ 250.00] **\$ 200.00** 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] **\$ 1,000** per year;

[7. For an eligible business with a qualified business facility located in a qualified incentive tract, an increase of \$ 500.00 per year;]

Recodify existing 8.-11. as **7.-10.** (No change in text.)

[12.] **11.** For an eligible business that enters, **or has previously entered**, into an [agreement] **active partnership** 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 **as a full-time employee**, an increase of \$ 500.00 per year;

Recodify existing 13.-14. as **12.-13.** (No change in text.)

[15.] **14.** For an eligible business with a project that generates solar, **geo-thermal, wind, or any other renewable or distributed** 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 \$ 500.00 per year;

Recodify existing 16.-17. as **15.-16.** (No change in text.)

[18.] **17.** 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 **for each new or retained full-time job**. The Authority shall work with the State's Chief Diversity Officer or other State entities to ensure that the bonus provided [under] **pursuant to** this paragraph is implemented faithfully and in compliance with the law.

(e) (No change.)

(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] **subject to the project agreement** is less than the existing median salary for full-time workers residing in the county in which the qualified business facility is located **or for a project located in a government-restricted municipality, if the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is less than the existing median salary for the municipality 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] **subject to the project agreement** is below the existing median salary for full-time workers residing in the county **or government-restricted municipality** 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] **that would otherwise be subject to the project agreement** is 30 percent or more below the **relevant** existing median salary for full-time workers residing in the county **or government-restricted municipality** in which the qualified business facility is located.

(g) (No change.)

(h) Notwithstanding the provisions [of] **at** (a) through (g) above 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] **proposed** 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) (No change.)

(b) Upon satisfaction of the 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] **at** section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and shall include, but shall not be limited to, the following:

1. (No change.)

2. For a phased project, [an incentive] **a project** 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] **commitment** agreement when each phase is to begin and be completed, with the awarding of tax credits under the [incentive] **commitment** agreement to be predicated on the number of full-time jobs created through the fulfillment of each [incentive] **project** phase agreement;

3.-7. (No change.)

8. Representations that the eligible business is in substantial good standing **with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury** or [meets the agreement requirements described at 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] **has entered into an agreement with the departments that includes a practical corrective action plan**, and that the project complies with all applicable laws, and specifically, that the project does not violate any environmental law, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

9. (No change.)

10. 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, as defined at N.J.A.C. 19:31-22.7(c), or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable; **and that each contractor or subcontractor performing work at the qualified business facility is registered as required pursuant to the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;**

11. A provision providing that if the eligible business is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-22.7(c), and has been given written notice thereof, including opportunity to be heard or to contest the determination, by the respective department, then the [Authority] **eligible business** may [suspend] **forfeit** the issuance of tax credits pending the resolution of the **underlying** violation(s) [or noncompliance, or if the violation(s) or noncompliance remain unresolved and the suspension continues for two years, then, at the Authority's sole option, the eligible business may forfeit the tax credit for those years] **or other issues;**

12.-21. (No change.)

(c) 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 below:

1.-5. (No change.)

6. The community advisory committee shall produce an annual report, including an evaluation of 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] **22.10(a)3** 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. Absent extenuating circumstances and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the eligible business shall be based on the certification from the eligible business pursuant to N.J.A.C. 19:31-[22.10(a)5] **22.10(a)3**.

ii.-iii. (No change.)

7. (No change.)

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 from the Authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement [that] is certified by the chief executive of the municipality in which the project is located and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer pursuant to rules adopted by the Authority.**

(d) 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 of the program and the project agreement relating to the capital investment, employment, and other eligibility requirements, including, but not limited to, withholdings. If applicable, the certifications shall evidence that the eligible business has satisfied the requirements related to a mega project. The business must submit supporting evidence satisfactory to the Authority. Absent extenuating circumstances and the written approval of the Authority, the eligible business shall submit the certifications as described at (h) below within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline. However, the date of [completion] **certification** shall not occur later than four years following the date of approval of the application. The Authority may grant one additional extension of no more than one year, taking the date of completion to five years past the date of approval of the application, but only if:

1.-2. (No change.)

(e)-(f) (No change.)

(g) In any submission required by the Authority pursuant to the approval letter or the certifications at (f) above, the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify that the information provided is true under the penalty of perjury.

(h) (No change.)

19:31-22.10 Reporting requirements and annual reports

(a) An eligible business that 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 to maintain the number of new and retained full-time jobs and provides the salaries specified in the commitment agreement, including, but not limited to:

1. A certification, made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-22.9(f)3, containing the following:

i. The number of full-time employees and new or retained full-time jobs employed [at, or associated with, the qualified business facility] **in the State**;

ii. The list of affiliates that contributed to the full-time employees [at, or associated with, the qualified business facility] **in the State**;

iii.-v. (No change.)

2. 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; [and]

3. The eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required pursuant to the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury; and

[3.] 4. (No change in text.)

(b) (No change.)

(c) An eligible business shall explain, in the certified report required pursuant to (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 Development. The [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, 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)-(j) (No change.)

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

(a)-(e) (No change.)

(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 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5, 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 **and the credit certificate or credit transfer certificate has not been sold or assigned previously**, in a form and manner prescribed by the Director.

19:31-22.14 Reduction and forfeiture of tax credits

(a) (No change.)

(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,] **subject to the project agreement** or the salaries of the new full-time employees, 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] **project** 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 pursuant to (f) below.

(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,] **subject to the project agreement** 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] **project** agreement or the [incentive] **project** 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] **subject to the project agreement** to 80 percent of the withholdings and number of jobs specified in the [commitment] **project** agreement or [incentive] **project** phase agreement or the restoration of 80 percent of the salaries specified in the [commitment] **project** agreement is reviewed and approved by the Authority.

(d)-(g) (No change.)

(h) Any funds, **net of costs incurred by the Authority**, recaptured pursuant to this section, 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) (No change.)

(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 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) (No change.)

(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. The Authority shall require a [new cost benefit analysis] **cost comparison of the originally approved location and the alternate qualified business facility** illustrating the economics of the occupancy at the alternate proposed qualified business facility location for the remaining duration of the commitment period compared to the economics of continuing occupancy at the qualified business facility proposed to be vacated. The alternate proposed qualified business facility must be 90 percent or more of the aggregate cost of the qualified business facility proposed to be vacated. If less than 90 percent, the Authority shall review the business's decision to relocate, including supporting documentation evidencing the reasons for relocation, to determine if the relocation to the alternate qualified business facility is consistent with the Board's approval of the application for the qualified business facility to be vacated. The Authority shall recalculate 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. 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)-(d) (No change.)

19:31-22.16 Affirmative action and prevailing wage

[The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 and prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-3, and 19:31-22.3(b)8 will apply to projects undertaken in connection with financial assistance received under the program.]

(a) The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to construction contracts at the qualified business facility undertaken in connection with financial assistance received under the program. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.

(b) The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-4, and 19:31-22.3(b)8 shall apply to construction work at the qualified business facility by the business or construction work incurred on behalf of the business by the landlord, as follows:

1. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and

2. Construction contracts for work undertaken in connection with financial assistance received under the program. 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.

(c) During the commitment period, prevailing wage shall apply to building services at the qualified business facility pursuant to N.J.A.C. 19:31-22.3(b)8.

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