

were originally promulgated. Accordingly, pursuant to N.J.S.A. 52:14B-5.1.c(1), the rules are readopted and shall continue in effect for a seven-year period, with the following technical changes to correct a typographical error and to delete a cross-reference to a statute that has been repealed. Specifically, the following technical change is made:

At N.J.A.C. 11:13-8.4(b)1 the change deletes the cross-reference to N.J.S.A. 17:30A-8a(9), which was deleted by legislation.

Full text of the technical change follows (deletion indicated in brackets [thus]):

SUBCHAPTER 8. COMMERCIAL LINES INSURANCE:
PROSPECTIVE LOSS COSTS FILING
PROCEDURES

11:13-8.4 Prospective loss costs filing requirements for insurers

(a) (No change.)

(b) Insurers may vary expense loads by individual lines, sublines or classifications of insurance. Insurers may use variable or fixed expense loads or a combination of these to establish their expense loadings.

1. An insurer's loss cost multiplier based on its expenses plus any profit provision shall not include the surtax or the Property-Liability Insurance Guaranty Association's assessments on private passenger automobiles pursuant to N.J.S.A. [17:30A-8a(9) and] 17:33B-49.

(c)-(e) (No change.)

TRANSPORTATION

(a)

DIVISION OF MULTIMODAL SERVICES

Notice of Readoption Transportation Utilities

Readoption: N.J.A.C. 16:65

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-12, 48:2-13, 48:12-35.1, 48:12-125.1, and 52:14B-3; and the October 5, 1978 Executive Reorganization Plan.

Authorized By: Diane Gutierrez-Scaccetti, Commissioner,
Department of Transportation.

Effective Date: April 12, 2022.

New Expiration Date: April 12, 2029.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1.c, the rules found at N.J.A.C. 16:65 were scheduled to expire on July 2, 2022. Pursuant to N.J.S.A. 52:14B-5.1.c(1), the Department of Transportation readopts these provisions without change.

The rules provide a regulatory scheme for uniformly safe, proper, and adequate service by transportation utilities throughout the State. These utilities include railroads, street railways, traction railways, and subways, and are identified collectively as "transportation utilities."

The rules are necessary, reasonable, adequate, and responsive for the purpose for which they were originally promulgated. The Department of Transportation has reviewed the rules and determined that they should be readopted without change. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

OTHER AGENCIES

(b)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs Emerge Program Rules

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

Adopted Amendments: N.J.A.C. 19:31-22.1 through 22.8, 22.10, 22.11, and 22.14

Proposed: January 18, 2022, at 54 N.J.R. 124(a).

Adopted: March 24, 2022, by the New Jersey Economic

Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: April 13, 2022, as R.2022 d.058, **without change, but with the proposed amendments at N.J.A.C. 19:31-22.9 and 22.15 not adopted, but still pending.**

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

Effective Date: May 16, 2022.

Expiration Date: May 8, 2025.

Take notice that the New Jersey Economic Development Authority ("NJEDA" or "Authority") proposed amendments to the rules implementing the EmERGE program pursuant to recently enacted statutory revisions at P.L. 2021, c. 160 (approved July 2, 2021), at 54 N.J.R. 124(a). The public comment period ended March 19, 2022.

The NJEDA, as noted in the "Filed:" line above, is not adopting sections from the original proposal at N.J.A.C. 19:31-22.9 and 22.15, but is proposing to make substantial changes to those sections to be adopted, as published elsewhere in this issue of the New Jersey Register.

Summary of Public Comment and Agency Response:

No public comments were received.

Federal Standards Statement

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

Full text of the adopted amendments and new rule follows:

SUBCHAPTER 22. EMERGE

19:31-22.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the EmERGE Program Act (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 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.

...

"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. 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 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 commitment agreement are jointly and severally liable under the commitment agreement; and an acknowledgment that the tax credit will be allocated to each party to the commitment agreement in accordance with the number of full-time employees that each employs.

"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, or until the State Planning Commission revises and readopts New Jersey's State 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 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, as evidenced by documentation acceptable to the Authority, 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

3.-4. (No change.)

...

"Incentive area" means:

1.-2. (No change.)

3. A distressed 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;

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 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. 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" 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" 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 licensed capacity for children age 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. 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 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, 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 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 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 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. 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 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, 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 (2) of subsection a. of section 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.

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 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;

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 retained full-time jobs or the business's retained full-time jobs at the time of application; and

6. For any business not set forth at (d)5 above, the greater of 1,000 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 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.

2. A certification by the 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 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 chief executive officer of the business, or an 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 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 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 chief executive officer of the eligible business or 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 chief executive officer or 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 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. 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 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 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 chief executive officer of the eligible business, or an 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;

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;

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;

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;

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;

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;

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 commitment agreement in order to participate in 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;

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 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 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 chief executive officer of the eligible business, or an 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 chief executive officer, or 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 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 \$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 \$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 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, \$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 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 \$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 \$1,000 per year;

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

11. For an eligible business that enters, or has previously entered, into an active partnership with a 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.)

14. For an eligible business with a project that generates solar, geothermal, 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.)

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 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 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 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 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 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 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.

19:31-22.10 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 in the State;

ii. The list of affiliates that contributed to the full-time employees 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;

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

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 chief executive officer of the eligible business, or an 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 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 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 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 project agreement or the 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 subject to the project agreement to 80 percent of the withholdings and number of jobs specified in the project agreement or project phase agreement or the restoration of 80 percent of the salaries specified in the 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.

19:31-22.16 Affirmative action and prevailing wage

(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.