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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

49 N.J.R. 134(a)

Adopted Amendments: N.J.A.C. 19:31-3.1, 3.2, 4.1, 4.2, 4.3, 4.5 through 4.9, 9.1, 9.2, 9.4, 9.7, 9.9, 18.2 through 18.8, 18.11, 18.15, and 19.2 through 19.5

Authority Assistance Programs

Direct Loan Programs; Economic Redevelopment and Growth Program; Urban Transit Hub Tax Credit Program; Grow New Jersey Assistance Program; and Angel Investor Tax Credit Program

Proposed: October 3, 2016, at 48 N.J.R. 2031(a).

Adopted: December 7, 2016, by the New Jersey Economic Development Authority, Melissa Orsen, Chief Executive Officer.

Filed: December 7, 2016, as R.2017 d.010, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2007, c. 346, P.L. 2009, c. 90, P.L. 2011, c. 149, P.L. 2015, c. 69, P.L. 2015, c. 72, P.L. 2015, c. 217, P.L. 2015, c. 242, and P.L. 2015, c. 252.

Effective Date: January 3, 2017.

Expiration Date: November 9, 2017.

Summary of Public Comment and Agency Response:

No public comments were received.

Summary of Agency-Initiated Change:

The existing rules, at N.J.A.C. 19:31-18.3(a)3iii and (a)3iii(1) require, as an eligibility criteria, that the business demonstrate that the award of tax credits will be a material factor in the business's decision to create or retain jobs in the State based, except in extraordinary circumstances, on an analysis of the in-State and out-of-State alternatives. Under recodified N.J.A.C. 19:31-18.3(a)3iii(4), for projects in Garden State Growth Zones that qualify under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or that contain a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, the business satisfies the requirement if it demonstrates that the award will be a material factor to locate the capital investment and jobs in the Garden State Growth Zone.

By referring to the material factor to retain employees "in the State," the originally proposed amendment refers to the material factor in the business's decision to create or retain jobs in the State and excludes the material factor in N.J.A.C. 19:31-18.3(a)3iii(4) for projects in Garden State Growth Zones that qualify under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or that contain a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

The agency-initiated change, therefore, does not change the nature, scope, or impact of the originally proposed amendment but, instead, elucidates the meaning of the originally proposed amendment by clarifying the reference to the material factor to retain employees "in the State."

Federal Standards Statement

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

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***):

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

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

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

1.-5. (No change.)

6. For the Edison Innovation Angel Growth Fund, the Authority may award up to \$ 250,000 in convertible debt financing to leverage private angel investments, on a two to one angel matching fund requirement, to a business that has generated a minimum of \$ 250,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, the Authority may award up to \$ 1 million in convertible debt financing to leverage institutional venture backed investments or strategic investments that may be made by a variety of sources, including, but not limited to, commercial or institutional entities, nonprofit organizations with a similar focus, or universities, all of whom are interested in providing funding to advance the business in which they invest, on a one to one matching fund requirement, to a business that has generated a minimum of \$ 500,000 or for the Edison Innovation Angel Growth Fund a minimum of \$ 250,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, the Authority may award up to \$ 500,000 in convertible debt financing, on a one to one matching fund requirement, to a business that has generated a minimum of \$ 2 million in prior 12-month commercial revenues. Except as otherwise provided, the total amount of assistance that a business may receive under the various programs funded by the Edison Innovation Fund, or any similar assistance provided by any other State agency, shall not exceed \$ 1 million dollars. Notwithstanding the foregoing, any amount received by a business under the Edison Innovation Growth Stars Fund, Edison Innovation Clean Energy Manufacturing Fund, and Edison Innovation Green Growth Fund, shall not be considered in the \$ 1 million dollar limit.

7.-8. (No change.)

(c)-(k) (No change.)

19:31-3.2 Eligibility standards

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

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

1. A commercially available product that meets the Authority's programmatic requirements in revenue thresholds, that is, for the Edison Innovation Angel Growth Fund, a minimum \$ 250,000 in prior 12-month commercial revenues; for the Edison Innovation VC Growth Fund, a minimum \$ 500,000 in prior 12-month commercial revenues; and, for the Edison Innovation Growth Stars Fund, a minimum of \$ 2 million in prior 12-month commercial revenues;

2.-7. (No change.)

(e) (No change.)

SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

19:31-4.1 Applicability and scope

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

(b)-(d) (No change.)

19:31-4.2 Definitions

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

...

"Developer" means any person who enters or proposes to enter into a redevelopment incentive grant agreement or an approval letter pursuant to the provisions of the Economic Redevelopment and Growth (ERG) Program, or its successors or assigns, including, but not limited to, a lender that has been approved by the Authority and the State Treasurer and that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project, a municipal redeveloper, or Rutgers, the State University of New Jersey.

...

"Eligibility period" means 10 years for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits or, for all other redevelopment projects, the period of time specified in a redevelopment incentive grant agreement for the payment of reimbursements to a developer, which period shall not exceed 20 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

...

"Infrastructure improvements in the public right-of-way" mean public structures or improvements located in the public right-of-way that are located within a project area or that constitute an ancillary infrastructure project and may include, but not be limited to, signalization and new interchanges, public parking structures, and pedestrian, bi-cycle-oriented, and mass transit improvements; and public utilities such as water, sewer, electric, and gas, either of which are dedicated to or owned by a governmental body or agency upon completion, or any required payment in lieu of the structures, improvements, or projects or any costs of remediation associated with the structures, improvements, or projects, and that are determined by the Authority, in consultation with applicable State agencies, to be consistent with and in furtherance of State public infrastructure objectives and initiatives.

...

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

...

"Municipal redeveloper" means an applicant for a redevelopment incentive grant agreement, which applicant is a municipal government, a municipal parking authority, or a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3); or a developer of a mixed use parking project, provided that the parking component of the mixed use parking project is operated and maintained by a municipal parking authority for the term of any financial assistance grant pursuant to P.L. 2015, c. 69.

...

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

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

...

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" means an aviation district, a port district, a distressed municipality, or an area:

1. (No change.)

2. Located within:

i. (No change.)

ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4), including the sports complex, that is, the 750-acre sports and exposition site located in the Borough of East Rutherford under the jurisdiction of the New Jersey Sports and Exposition Authority as of February 5, 2015, the effective date of P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.), and such additional property that is owned and controlled by the New Jersey Sports and Exposition Authority as may be designated by the Meadowlands Regional Commission, as established by P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), and section 6 of P.L. 2015, c. 19 (N.J.S.A. 5:10A-6) from time to time as part of the sports complex;

iii.-vii. (No change.)

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in the Highlands Water Protection and Planning Act, P.L. 2004, c. 120 (N.J.S.A. 13:20-1 et seq.).

...

"Redevelopment project" or "project" means a specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, leased, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved, undertaken by a developer, owner or tenant, or both within a project area and any ancillary infrastructure project including infrastructure improvements in the public right-of-way, as set forth in an application to be made to the Authority. The use of the term "redevelopment project" in sections 3 through 18 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489c et seq.) shall not be limited to only redevelopment projects located in areas determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6) but shall also include, but not be limited to, any work or undertaking in accordance with the Redevelopment Area Bond Financing Law, sections 1 through 10 of P.L. 2001, c. 310 (N.J.S.A. 40A:12A-64 et seq.) or other applicable law, pursuant to a redevelopment plan adopted by a State entity, or as described in the resolution adopted by a public entity created by State law with the power to adopt a redevelopment plan or otherwise determine the location, type, and character of a redevelopment project or part of a redevelopment project on land owned or controlled by it or within its jurisdiction, including, but not limited to, the New Jersey Meadowlands Commission established pursuant to P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), the New Jersey Sports and Exposition Authority established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), and the Fort Monmouth Economic Revitalization Authority created pursuant to P.L. 2010, c. 51 (N.J.S.A. 52:27I-18 et seq.).

...

"SDA municipality" means a municipality in which an SDA district is situated.

...

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

...

19:31-4.3 Eligibility criteria

(a) In order to be eligible for a State or local incentive grant the following must apply:

1.-4. (No change.)

5. For a State incentive grant, except for a qualified residential project, a mixed use parking project, or a project involving university infrastructure, pursuant to a fiscal impact analysis, the overall public assistance provided to the project will result in net benefits to the State.

19:31-4.5 Fees

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

(c) For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a non-refundable fee of .5 percent of the approved incentive grant or tax credit, not to exceed \$ 300,000, shall be charged by the Authority prior to the approval of the tax credit. For all other incentive grants, a

non-refundable fee of .5 percent of the approved incentive grant, not to exceed \$ 500,000, shall be charged by the Authority prior to the approval of the incentive grant. The fee shall be refunded if the Authority does not approve the incentive grant or tax credit.

(d) For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a non-refundable fee of .5 percent of the tax credit, not to exceed \$ 300,000, shall be charged upon the receipt of the tax credit certificate. For all other incentive grants, a non-refundable fee of .5 percent of the incentive grant, not to exceed \$ 500,000, shall be charged upon execution of the incentive grant agreement.

(e) For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a developer shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual report. The annual review fee shall be \$ 2,500 per year.

(f) For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-4.10 or permission to pledge a tax credit transfer certificate purchase agreement as collateral, a developer shall pay to the Authority a fee of \$ 5,000 and \$ 2,500 for each additional request made annually.

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

19:31-4.6 Financing gap and fiscal impact analysis

(a) The Authority, in consultation with the State Treasurer, shall review the proposed project costs and evaluate and validate the project financing gap estimated by each developer applying for a State incentive grant, as follows:

1. The Authority will evaluate proposed project costs against reasonable costs as noticed on the EDA website at www.njeda.com for the standard of review, which shall include, but not be limited to, construction, tenant fit out, consultants, rental rates, rates of return and vacancy allowances. For a project involving university infrastructure, in validating the project financing gap, the Authority may rely on a certification of the Chief Financial Officer of the university that, based on current university budget projections, a financing gap exists;

2.-5. (No change.)

(b) The Authority, in consultation with the State Treasurer, shall undertake the fiscal impact analysis by determining whether the overall public assistance provided to the proposed project, except with regard to a qualified residential project, mixed use parking project, or project involving university infrastructure, will result in net positive economic benefits equaling no less than 110 percent of the amount of grant assistance, to the State for a period not to exceed 20 years.

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

19:31-4.7 Approval of application for State incentive grant

(a) The Authority and the State Treasurer may, except in the case of a qualified residential project, mixed use parking project, or project involving university infrastructure, approve an application only if they make a finding that the State revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for the portion of the project financing gap allocable to the State incentive grant. This finding may be made by an estimation based upon the professional judgment of the Chief Executive Officer of the Authority and the State Treasurer.

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

(d) Except for a local redevelopment incentive grant agreement with a municipal redeveloper or with the developer of a redevelopment project solely with respect to the cost of infrastructure improvements in the public right-of-way, includ-

ing any ancillary infrastructure project in the public right-of-way, in no event shall the base amount of the combined reimbursements under the redevelopment incentive grant agreements with the State and municipality exceed 20 percent of the total project cost, except in a Garden State Growth Zone, which shall not exceed 30 percent. The maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 30 percent of the total project cost, except for projects located in a Garden State Growth Zone, in which case the maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 40 percent of the total project cost or mixed use parking projects, in which case the maximum amount of any redevelopment incentive with respect to a mixed use parking project shall be up to 100 percent of the total project costs allocable to the parking component of the project and shall be up to 40 percent, including any increase in the amount of reimbursement under (e) below, of the total project cost allocable to the non-parking component of the project.

(e) (No change.)

19:31-4.8 State incentive grant agreement

(a) Except for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits, upon approval of the application by the Authority and the State Treasurer, the Authority and the developer will execute a commitment letter providing information specific to the grant amount and containing conditions that must be met prior to receiving the grant. Within one year following the date of approval, the developer shall submit progress information indicating that the developer has financing, copies of all required State and Federal government approvals and all local planning and zoning board approvals, and site control of and site plan approval for the redevelopment project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval. Upon a receipt of evidence from the developer that it has control of the redevelopment project site and offers of financing, which may be conditioned upon execution of the grant agreement, and that it has met any other conditions set forth in the commitment letter, the Authority and the State Treasurer may enter into a State redevelopment incentive grant agreement with a developer for the reimbursement of incremental State revenues directly realized from businesses operating on the redevelopment project premises.

(b) Except for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits, the Chief Executive Officer of the Authority, in consultation with the State Treasurer, shall negotiate the terms and conditions of any State redevelopment incentive grant agreement. The State redevelopment incentive grant agreement shall include, but not be limited to, the following terms and conditions as determined by the Authority:

1.-17. (No change.)

(c) (No change.)

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

(a) In the case of a qualified residential project, mixed use parking project, or project involving university infrastructure, if the Authority determines that the estimated amount of incremental revenues pledged towards the State portion of an incentive grant is inadequate to fully fund the amount of the State portion of the incentive grant, then in lieu of an incentive grant based on such incremental revenue, the developer shall be awarded tax credits equal to the full amount of the incentive grant, which shall be taken over a 10-year period, at the rate of one-10th of the total amount for each tax accounting or privilege period of the developer. For (a)1 through 4 below, not more than \$ 40,000,000 of credits shall be awarded to any qualified residential project in a deep poverty pocket or distressed municipality and not more than \$ 20,000,000 of credits shall be awarded to any other qualified residential project. The value of all credits approved by the Authority pursuant to this subsection shall not exceed \$ 628,000,000, of which:

1. \$ 250,000,000 shall be restricted to qualified residential projects within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties, of which, \$ 175,000,000 of the credits shall be restricted to quali-

fied residential projects located in a Garden State Growth Zone located within the aforementioned counties and mixed use parking projects located in a Garden State Growth Zone or urban transit hub located within the aforementioned counties; and \$ 75,000,000 of credits shall be restricted to qualified residential projects in municipalities with a 2007 Municipal Revitalization Index of 400 or higher as of the date of enactment of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161;

2. \$ 250,000,000 shall be restricted to the following categories of projects:

i. Qualified residential projects located in urban transit hubs that are commuter rail in nature that otherwise do not qualify under (a)1 above;

ii. Qualified residential projects located in Garden State Growth Zones that do not qualify under (a)1 above;

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

iv. Qualified residential projects that are disaster recovery projects that otherwise do not qualify under (a)1 above; or

v. Qualified residential projects in SDA municipalities located in Hudson County that were awarded State Aid in State Fiscal Year 2013 through the Transitional Aid to Localities program and otherwise do not qualify under (a)1 above;

3. \$ 87,000,000 shall be restricted to the following categories of projects: qualified residential projects located in distressed municipalities, deep poverty pockets, highlands development credit receiving areas or redevelopment areas, otherwise not qualifying pursuant to (a)1 or 2 above; and mixed use parking projects that do not qualify under (a)1 and 2 above and which are used by an independent institution of higher education, a school of medicine, a nonprofit hospital system, or any combination thereof; provided, however, that \$ 20,000,000 of the \$ 87,000,000 shall be allocated to mixed use parking projects that do not qualify under (a)1 or 2 above;

4. \$ 16,000,000 shall be restricted to qualified residential projects that are located within a qualifying economic redevelopment and growth grant incentive area otherwise not qualifying under (a)1, 2, or 3 above; and

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

(b) In developing a recommendation for allocating tax credits to qualified residential projects, mixed use parking projects, or projects involving university infrastructure, the Chief Executive Officer of the Authority shall take into account, together with the factors set forth at N.J.A.C. 19:31-4.7(b):

1. An evaluation of the developer's pro forma analysis;

2.-5. (No change.)

(c) Upon receipt of a recommendation from the Authority staff on the qualified residential facility, mixed use parking project, or project involving university infrastructure application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, mixed use parking project, or project involving university infrastructure, and promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits, including the same financial and related analysis, the same term of the grant, and same mechanism for administering the credits as if such credits had been awarded to the developer pursuant to section 35 of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3). An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and the requirement that the minimum

environmental and sustainability standards, are incorporated into the proposed project including the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment required for the tax credits. The approval letter will require that the qualified residential project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.

2. (No change.)

(d) Within one year following the date of Board approval by the Authority, each approved developer of a qualified residential facility, mixed use parking project, or project involving university infrastructure, if the project has been approved for tax credits shall submit progress information indicating that the developer has site plan approval, financing for, and site control of the qualified business facility, qualified residential project, mixed use parking project, or project involving university infrastructure. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.

(e) No later than July 28, 2019, each approved developer of a qualified residential facility that has been approved for tax credits after September 18, 2013, the effective date of P.L. 2013, c. 161 shall submit evidence of a temporary certificate of occupancy. The developer of a mixed use parking project or project involving university infrastructure seeking an award of credits towards the funding of its incentive grant agreement pursuant to (a)3 above and if approved after January 11, 2016, the effective date of P.L. 2015, c. 217, shall submit a temporary certificate of occupancy no later than July 28, 2021.

(f) Upon completion of the capital investment and receipt of the occupancy permit or other event evidencing project completion indicated in the approval letter, the developer shall submit a certification of an independent certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the developer has satisfied the conditions relating to the capital investment requirements.

1. Once accepted by the Authority, the certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified residential facility, mixed use parking project, or project involving university infrastructure, and in no event will the amount of tax credits exceed the maximum percentage amount of allowed tax credits approved by the Board for the developer's capital investment in a qualified residential project, a mixed use parking project, or a project involving university infrastructure.

2. (No change.)

(g) (No change.)

(h) After notification, either the developer, the owner of the project, or a tax credit transferee shall furnish to the Authority an annual report in a format as may be determined by the Authority, which shall contain the following information:

1.-2. (No change.)

3. Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by an MAI appraiser or governmental official;

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

5. (No change in text.)

(i)-(k) No change.)

SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

19:31-9.1 Applicability and scope

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

19:31-9.2 Definitions

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

...

"Capital investment" in a qualified business facility and a qualified residential project means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs. Capital investment includes obtaining and installing furnishings and machinery, apparatus or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings or other environmental components required to attain the level of silver rating or above in the LEED(R) building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified business facility or qualified residential project site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. With respect to commercial development, to be included the capital investment must be commenced after January 13, 2008, the effective date of P.L. 2007, c. 346. For applications submitted to and approved

by the Authority prior to September 18, 2013, the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L. 2013, c. 161, the applicant shall incur expenses and submit its documentation for approval of its credit amount by January 13, 2016, the eighth anniversary of the effective date of P.L. 2007, c. 346, and for commercial development applications approved on or after September 18, 2013, and on or before December 31, 2013, the applicant shall incur expenses and submit its documentation for approval of its credit amount no later than April 26, 2019. With respect to residential development, the capital investment must be commenced after July 28, 2009, the effective date of P.L. 2009, c. 90, to be included and developers shall incur expenses and submit their documentation to support the amount of their capital investment no later than April 26, 2019. For purposes of this subchapter, "commenced" shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

...

19:31-9.4 Restrictions

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

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

2. (No change.)

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

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

(e) If a business participating in a Business Employment Incentive Program agreement for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for urban transit hub tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, InvestNJ Business Grant Program or Municipal Rehabilitation and Economic Recovery Act, as applicable.

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

(a)-(f) (No change.)

(g) Upon completion of the capital investment and employment requirements of the program, the business shall submit a certification of a certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements.

1.-2. (No change.)

3. For project applications for a qualified business facility approved in the fifth year that the Act is in effect but prior to September 18, 2013, the certification shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For developer applications approved in the fifth year that the Act is in effect but prior to September 18, 2013, any tenant's application and certification relating to a qualified business facility so approved shall be submitted no later than eight years after the effective date of the Act (that is, by January 13, 2016). For project applications approved on or after September 18, 2013, and on or before December 31, 2013, the certification shall be submitted no later than April 26, 2019, and the credit amount for any tax period ending after July 28, 2019, during which the documentation of the business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it. Residential developers shall submit their documentation to support the amount of their capital investment no later than April 26, 2019. Other documentation may be submitted after that date, but the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2019, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

4. (No change.)

(h) (No change.)

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

(a)-(f) (No change.)

(g) For applications submitted to and approved by the Authority prior to September 18, 2013, the amount of credit for any tax period ending eight years after the effective date of P.L. 2007, c. 346 (N.J.S.A. 34:1B-207) (that is January 13, 2008) during which the documentation of a business' credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year eligibility period shall remain available to it. For commercial development applications approved on or after September 18, 2013, and on or before December 31, 2013, the credit amount for any tax period ending after July 28, 2019, during which the documentation of the business's credit amount remains uncertified shall be forfeited, although credit amounts for the remainder of the years of the 10-year credit period shall remain available to it. With respect to residential development, the credit amount for any tax period during which the documentation of the business's credit amount remains uncertified after July 28, 2019, shall be forfeited, although credit amounts for the remainder of the years shall remain available to it.

SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

19:31-18.2 Definitions

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

...

"Mega project" means:

1.-2. (No change.)

3. A qualified business facility located in an urban transit hub housing a business of any kind, having a capital investment in excess of \$ 50,000,000, and at which more than 250 full-time employees of a business are created or retained;

4. A project located in an area designated in need of redevelopment, pursuant to P.L. 1992, c. 79 (N.J.S.A. 40A:12A-1 et seq.), prior to the enactment of P.L. 2014, c. 63, within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties having capital investment in excess of \$ 20,000,000, and at which more than 150 full-time employees of a business are created or retained; or

5. For applications submitted after July 1, 2016, a qualified business facility primarily used by a business principally engaged in research, development, or manufacture of a drug or device, as defined in N.J.S.A. 24:1-1, or primarily used by a business licensed to conduct a clinical laboratory and business facility pursuant to the "New Jersey Clinical Laboratory Improvement Act," P.L. 1975, c. 166 (N.J.S.A. 45:9-42.26 et seq.), either:

i. Having a capital investment in excess of \$ 20,000,000, and at which more than 250 full-time employees of such business are created or retained; or

ii. At which more than 1,000 full-time employees of such business are created or retained.

...

"Retained full-time job" means an eligible position that currently exists in New Jersey 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 eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority, "retained full-time job" shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.) or in the Garden State Growth Zone that contains a Tourism District as established pursuant to P.L. 2011, c. 18, § 5 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority. For the purposes of the certifications and annual reports required pursuant to the incentive agreement, N.J.S.A. 34:1B-245.e or 247.b(2), to the extent an eligible position that was the basis of the award no longer exists, a business shall include as a retained full-time job a new eligible position that is filled by a full-time employee as set forth in N.J.A.C. 19:31-18.4(d).

...

19:31-18.3 Eligibility criteria

(a) In order to be considered for a Grow New Jersey tax credit, the chief executive officer of a business shall demonstrate at the time of application that the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to or greater than, the applicable capital investment required in (a)1 below at which it will retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable number in (a)2 below.

1. For all projects approved after September 18, 2013, the effective date of P.L. 2013, c. 161, the minimum capital investment required shall be reduced by one-third (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties:

i.-iv. (No change.)

v. The minimum capital investment shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion, and have the same minimum investment per square feet of gross leasable area. Proximate

buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. Notwithstanding that buildings in a complex of buildings may have different minimum capital investment requirements, the capital investment in a complex of buildings shall be aggregated for purposes of qualifying as a mega project or for an award pursuant to N.J.A.C. 19:31-18.8(h). The following are examples:

(1)-(3) (No change.)

2. (No change.)

3. The business shall also demonstrate to the Authority that:

i.-ii. (No change.)

iii. The award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, consistent with the following, as applicable:

(1) (No change.)

(2) Except for (a)3iii(4) below, the award of tax credits shall not be considered a material factor in the creation or retention of full-time jobs filled by employees providing professional services, as defined in N.J.S.A. 14A:17-3(1), and their direct administrative support staff, unless as of the date of the business's application, the full-time job is filled by an employee whose primary business office is located outside of the State. Direct administrative support staff shall not include employees in information technology, human resources, or employee relations positions.

Recodify existing (2) and (3) as (3) and (4) (No change in text.)

iv. (No change.)

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

(d) Pursuant to P.L. 2013, c. 161, a business may apply for tax credits under the program for more than one project pursuant to one or more applications. Notwithstanding this subsection, the Authority may, in its sole discretion, consider two or more applications as one application based on factors including, but not limited to, the location of the qualified business facilities, the types of jobs proposed, and the business's financing and operational plans.

19:31-18.4 Restrictions

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

(c) For a qualified incubator facility, the maximum number of positions and full-time jobs employed by businesses that are not technology startup companies that are included in the calculation of the total tax credit amount shall not exceed twice the number of positions and full-time jobs employed by technology startup companies. No position or full-time job employed by the operator or a technology startup company may be included in the application as a retained position or full-time job.

(d) For the purposes of the certifications and annual reports required pursuant to the incentive agreement and set forth in N.J.A.C. 19:31-18.7(f) and 18.11(a), if a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs. To the extent an eligible retained full-time job that was the basis of the award no longer exists, the business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award. If a qualified business facility comprises a complex of buildings with different factors affecting the tax credit calculation, the business shall meet the employment requirements related to the retained full-time jobs at each building before receiving benefits for new full-time jobs at any building. The business shall include as a retained full-time job a new eligible position that is filled by a full-time employee, regardless of the location of such position, provided that the position is included in the

order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new eligible position filled by a full-time employee or the tax credit for the retained full-time job that no longer exists. The following are examples:

1. A project is approved for 38 new full-time jobs and 53 retained full-time jobs. The business submits a certification that it created 38 new full-time jobs and retained 50 full-time jobs. Because three eligible positions that were the basis of the award no longer exist, three of the new eligible positions shall be included as retained full-time jobs. The jobs in the certification shall be considered as 35 new full-time jobs and 53 retained full-time jobs for the term of the grant. If, in an annual report, retained full-time jobs fall to 45, the jobs in the annual report shall be considered as 30 new full-time jobs and 53 retained full-time jobs.

2. A project consisting of a complex of two buildings is approved for 50 new full-time jobs and 100 retained full-time jobs. The total tax credit amount is calculated separately for jobs at each building because building A is in a transit-oriented development and building B is not. The calculation, based on 50 new full-time jobs and 50 retained full-time jobs in building A and 50 retained full-time jobs in building B, results in \$ 3,625 per retained full-time job in building A and \$ 2,219 per retained full-time job in building B. The business submits a certification that it created 50 new full-time jobs and retained 47 full-time jobs in building A and retained 45 full-time jobs in building B. Because eight eligible positions that were the basis of the award no longer exist, eight of the new eligible positions shall be included as retained full-time jobs with the retained full-time positions in building B filled first. The jobs in the certification shall be considered as 42 new full-time jobs and 50 retained full-time jobs in building A and 50 retained full-time jobs in building B. The five eligible positions that are allocated to building B will be paid at the rate of \$ 2,219 per position. The three eligible positions that are allocated to building A will be paid at the rate of \$ 3,625 per position. If in an annual report, the retained full-time jobs at building B fall to 40, the jobs in the annual report shall be considered as 45 new full-time jobs and 50 retained full-time jobs in building A and 50 retained full-time jobs in building B, and will be paid accordingly.

3. A manufacturing company's project is approved for 10 new full-time jobs and 30 retained full-time jobs. The business submits a certification that it created 10 new full-time jobs and retained 28 full-time jobs. Because two eligible positions that were the basis of the award no longer exist, two of the new eligible positions shall be included as retained full-time jobs. The jobs in the certification shall be considered as eight new full-time jobs and 30 retained full-time jobs. As the eight new full-time jobs are less than the minimum number of new jobs required for eligibility, only the 30 retained full-time jobs are eligible for the tax credit, regardless of any increase in new jobs in future years.

19:31-18.5 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. (No change.)

2. Project information shall include the following:

i.-iii. (No change.)

iv. Supporting evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit pursuant to N.J.A.C. 19:31-18.3(a)3ii, taking into account the criteria listed at N.J.A.C. 19:31-18.7(c).

(1)-(2) (No change.)

(3) For a qualified incubator facility, the certifications in (a)2iv(1) above shall be certified by the operator's chief executive officer or equivalent officer for North American operations, provided that to include any retained full-time job or position employed by a business that is not a technology startup company, the operator shall submit with the application the certification by that business's chief executive officer or equivalent officer for North American operations. To demonstrate that such certifications and the certification in (a)2iv(1)(A) and (B) above are satisfied, the operator shall

demonstrate that it would locate the qualified incubator facility at an out-of-State location, but for the tax credit award or that it has a project financing gap in its business model as determined by a fiscal analysis conducted by the Authority, taking into account the project's internal rate of return on the operator's contributed capital and net profit margin; and

(4) (No change.)

v.-xi. (No change.)

3.-4. (No change.)

(b)-(g) (No change.)

19:31-18.6 Fees

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

(c) A non-refundable fee of .5 percent of the approved tax credit shall be charged prior to the approval of the tax credit by the Authority as follows:

1. For each project with tax credits of \$ 1,000,000 or less annually, the fee shall not exceed \$ 50,000;
2. For each project with tax credits of \$ 1,000,000 to \$ 4,000,000 annually, the fee shall not exceed \$ 200,000; and
3. For each project with tax credits in excess of \$ 4,000,000 annually, the fee shall not exceed \$ 500,000. The fee shall be refunded if the Authority does not approve the tax credit.

(d)-(e) (No change.)

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-18.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee of \$ 5,000 and \$ 2,500 for each additional request made annually.

(g) For each project with total tax credits of \$ 5,000,000, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of \$ 5,000,000, 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 \$ 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.

(h) A non-refundable fee of \$ 5,000 shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a non-refundable fee of \$ 10,000 shall be paid for the second such six-month extension.

(i) (No change.)

19:31-18.7 Review of application and certification of project completion

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

(c) In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-18.3(a)3ii and as certified by the chief executive officer pursuant to N.J.A.C. 19:31-18.5(a)2iv, the Authority's consideration shall include, but not be limited to, the local and State taxes paid directly by and generated indirectly by the business, property taxes or payment in lieu of taxes paid directly by and generated indirectly by the business, taxes

paid directly or generated indirectly by new employees and retained employees for which the award of tax credits will be a material factor in the business's decision to retain the employees in the State, and peripheral economic growth caused by the business's relocation, 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. ***Retained employees in a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), or a project located in a Garden State Growth Zone that contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), and regulated by the Casino Reinvestment Development Authority shall not be included unless the business demonstrates that the award of tax credits will be a material factor to retain the employees in the State in addition to demonstrating the material factor provision in N.J.A.C. 19:31-18.3(a)3iii(4).*** For a project located in a Garden State Growth Zone, the Authority may award bonuses in its net positive economic benefit calculation including, but not limited to, full payment of taxes for a qualified business facility that receives a tax abatement pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. With regard to a project located in a Garden State Growth Zone that qualified for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.), the net positive economic benefits test may utilize the value of those property taxes subject to the provisions of section 24 of P.L. 2013, c. 161 (N.J.S.A. 52:27D-489s) or the value of those property taxes that would have been assessed on the new construction, improvements, or substantial rehabilitation of structures on real property if the structures were not exempt because they are on real property owned by a public entity and incremental sales and excise taxes that are derived from activities within the area and which are rebated or retained by the municipality pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.) or any other law providing for such rebate or retention.

(d) (No change.)

(e) Within 12 months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, committed financing for and site control of the qualified business facility, except that a business shall have 24 months to submit such progress information for a mega project or for a qualified business facility that consists of new construction. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within the required period of time, or if progress as indicated has not been achieved.

(f) Upon completion of the capital investment and employment requirements of the program, the business shall submit certifications evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements with supporting evidence satisfactory to the Authority.

1. (No change.)

2. The business shall submit a certification of the chief financial officer of the business, which certification shall be acceptable to the Authority, evidencing that the business has satisfied the conditions relating to any employment requirements. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional jobs located at the qualified business facility, and, except as set forth in N.J.A.C. 19:31-18.11(e), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in N.J.A.C. 19:31-18.4(d). In the event the number of new and/or retained full-time jobs is reduced below the number of new and/or retained full-time jobs in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

3. Absent extenuating circumstances and the written approval of the Authority, the certification with respect to capital investment and employment shall be submitted within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline, however, in no event, shall the incentive effective date occur later than four years following the date of approval of an application by the Authority, except that:

i. As of January 19, 2016, the effective date of P.L. 2015, c. 252, a business that applied for the tax credit prior to July 1, 2014, under P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.), and was required to submit its documentation no later than July 28, 2017, shall submit its documentation to the Authority no later than July 28, 2018, indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount; and

ii. The Authority may grant additional extensions for projects located in a Garden State Growth Zone with a capital investment greater than \$ 100,000,000 and a total tax credit award greater than \$ 100,000,000 as a result of force majeure that will be recognized under the following circumstances, which shall be demonstrated by the business to the satisfaction of the Authority:

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

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

(3) The business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay;

(4) The business provides timely notice to the Authority of the delay, not to exceed 30 days after the business's actual or constructive knowledge of the delay; and

(5) The business provides periodic reports, not less than every 30 days, of the status of the delay and the steps being taken to mitigate or overcome the delay.

4.-5. (No change.)

(g) (No change.)

19:31-18.8 Determination of grant amount; bonus award

(a) The total amount of tax credit for an eligible business shall be for each new or retained full-time job as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period; however, except as set forth in N.J.A.C. 19:31-18.11(e), the total tax credit amount credited annually to the business shall not exceed the maximum amount determined by the Board under N.J.A.C. 19:31-18.7(d) and the amount calculated pursuant to N.J.A.C. 19:31-18.7(g), divided by the number of years in the eligibility period. The total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. The total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings. Notwithstanding that the total tax credit for jobs in different buildings may be calculated separately, forfeitures pursuant to N.J.A.C. 19:31-18.15 and defaults and recaptures included in the incentive agreement pursuant to N.J.A.C. 19:31-18.10(b) shall be based on the aggregate capital investment and eligible full-time jobs.

(b)-(h) (No change.)

19:31-18.11 Reporting requirements and annual reports

(a) After notification pursuant to N.J.A.C. 19:31-18.7(g), the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

1. The number of full-time employees and new or retained full-time positions employed at the qualified business facility, the list of affiliates that contributed to the full-time employees at the qualified business facility, the number of full-time employees in its Statewide workforce as defined in N.J.A.C. 19:31-18.15(a), the number of full-time employ-

ees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, total lease payments, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth in N.J.A.C. 19:31-18.4(d); and

2.-3 (No change.)

(b)-(f) (No change.)

19:31-18.15 Reduction and forfeiture of tax credits

(a) If, in any tax period during the eligibility period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. The Statewide workforce shall not include full-time employees at any point-of-final-purchase retail facilities, unless the award includes full-time employees engaged in final point of sale retail. The number of full-time employees in a business's Statewide workforce shall not include a new eligible position at the qualified business facility, unless the new eligible position is in addition to the number of full-time employees specified in the incentive agreement and the business is not receiving an additional tax credit award for the new eligible position pursuant to N.J.A.C. 19:31-18.11(e) or (f).

1. (No change.)

(b)-(d) (No change.)

SUBCHAPTER 19. ANGEL INVESTOR TAX CREDIT PROGRAM

19:31-19.2 Definitions

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

...

"Full-time employee" means a person who is:

1. Employed by a New Jersey emerging technology business on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, including a common law employee, which shall mean a person who is in an employer-employee relationship with the business in which the business has the right to direct and control how the person performs the services; and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or are not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides;
2. A partner of a New Jersey emerging technology business and works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross

Income Tax Act, N.J.S.A. 54A:1-1 et seq., or are not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54:A1-1 et seq., by virtue of a reciprocity agreement between New Jersey and the state in which the employee resides;

3. (No change in text.)

"Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the New Jersey emerging technology business; or any person who works as an intern, as a temporary employee, or in a temporary position.

...

19:31-19.3 Eligibility criteria

(a) (No change.)

(b) The Program applies to privilege periods and taxable years beginning on or after January 1, 2012. For qualified investments made on or before July 1, 2013, an investor must submit a completed application by July 1, 2014. For all other qualified investments, an investor must submit a completed application within six months of the date of the qualified investment.

(c)-(d) (No change.)

19:31-19.4 Application submission requirements

(a) (No change.)

(b) A completed application shall include, but not be limited to, the following:

1. (No change.)

2. New Jersey emerging technology business information, which shall include:

i. (No change.)

ii. At the time of the qualified investment and at the earliest of six months after the qualified investment or the time of application:

(1) (No change.)

(2) A list of all employees filling a position in New Jersey, whether any employee is related, as defined in Section 152(d)(2) of the Internal Revenue Code, to any other employee, shareholder, or investor, if so known, and either:

(A) (No change.)

(B) Documentation from a professional employer organization or any other entity providing common law employees summarizing W-2 forms issued for full-time employees on behalf of the business, and all entities other than the investor with control over the business or in the same controlled group as the business, for the calendar year prior to the year in which the company files its application and at the time of the application; and

iii. (No change.)

3. (No change.)

19:31-19.5 Fees

(a) A non-refundable application fee of \$ 500.00 shall accompany every application for tax credits for qualified investments of \$ 50,000 or less.

(b) A non-refundable application fee of \$ 2,500 shall accompany every application for tax credits for qualified investments of more than \$ 50,000.

(c) A fee of five percent of the approved tax credit amount for qualified investments of more than \$ 500,000, shall be paid to the Authority upon the approval of the tax credit. The application fee of \$ 2,500 required under (a) above, shall be applied toward the approval fee.

(d) A non-refundable fee of \$ 150.00 shall be paid to the Authority for each request for reissuance of a tax certificate previously issued pursuant to N.J.A.C. 19:31-19.6.