



NEW JERSEY REGISTER  
Copyright © 2016 by the New Jersey Office of Administrative Law

VOLUME 48, ISSUE 11

ISSUE DATE: JUNE 6, 2016

**RULE ADOPTIONS**

**OTHER AGENCIES**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

*48 N.J.R. 977(b)*

**Adopted Amendments: *N.J.A.C. 19:31-18.2, 18.4, 18.5, 18.7, 18.8, 18.11, 18.15, and 18.16***

**Authority Assistance Programs**

**Economic Redevelopment and Growth Program and Grow New Jersey Assistance Program**

Proposed: September 21, 2015, at *47 N.J.R. 2341(a)*.

Adopted: May 12, 2016, by the New Jersey Economic Development Authority, Melissa Orsen, Chief Executive Officer.

Filed: May 12, 2016, as R.2016 d.059, **with a nonsubstantial change not requiring additional public notice and comment (see *N.J.A.C. 1:30-6.3*), and with the proposed amendments to *N.J.A.C. 19:31-4.1, 4.2, 4.3 and 4.5 through 4.9* not adopted.**

Authority: P.L. 2009, c. 90 and P.L. 2011, c. 149.

Effective Date: June 6, 2016.

Expiration Date: November 9, 2017.

**Summary of Public Comment and Agency Response:**

The Economic Development Authority (Authority) received a comment on the notice of proposal from Julie Tattomi, Windels Marx Lane & Mittendorf, LLP.

COMMENT: In order to encourage start-up technology companies and existing biotechnology and bio-pharmaceutical companies to collaborate with an in-State research institution, teaching hospital, college, or university to develop cutting edge technologies, products, and research, the following should be added to the definition of "qualified incubator facility" under the Grow New Jersey Assistance (Grow NJ) Program:

"Businesses that are tenants of a qualified incubator facility may contribute to meeting the qualified investment and/or full-time employees required for the qualified incubator facility for credits under the program, without regard to whether the tenants or subtenants are affiliates of the operator of the qualified incubator facility. Tenants of a qualified incubator facility are not required to establish that they are affiliates of the operator or with other tenants of the qualified incubator facility. An operator of a qualified incubator facility may lease the premises for the qualified incubator facility from an owner or master tenant of the premises and may sublease space within the qualified incubator facility to the businesses, including technology startup companies that will operate within the qualified incubator facility."

RESPONSE: The proposed amendments establish certain parameters for the administration of applications and awards for qualified incubator facilities pursuant to the Grow New Jersey Assistance Act, P.L. 2011, c. 149 (*N.J.S.A. 34:1B-242* through 250), as amended by the Economic Opportunity Act of 2014, Part 3, P.L. 2014, c. 63. Specifically, the Grow NJ statute incents technology employment growth in New Jersey by creating an authorization for jobs of tenant businesses located at qualified incubator facilities, without regard to affiliation, by allowing an organization operating an incubator to apply on behalf of a business that meets the requirements for the tax credit, or a group of non-qualifying businesses or positions located at a qualified business facility that shall be considered a unified project for purposes of the incentives, as provided in existing *N.J.A.C. 19:31-18.5(d)*. Therefore, because there is no requirement for affiliation, there is no need to make the suggested change. To demonstrate that it is applying "on behalf" of the tenant businesses, proposed new *N.J.A.C. 19:31-18.5(d)2ii* requires the organization operating a qualified incubator facility to submit its business model and a detailed explanation as to how the business model will ensure that the benefit from the award of tax credits will inure to the businesses and position on whose behalf the application is made. Finally, under the statutory definition of "capital investment" and at *N.J.A.C. 19:31-18.2*, provision is made for a business that acquires or leases a qualified business facility to be deemed to have acquired the capital investment made or acquired by the seller or landlord; and, the sublease of space at a qualified incubator facility to business, including technology startup companies, is not prohibited.

COMMENT: With regard to proposed new *N.J.A.C. 19:31-18.4*, to accommodate qualified incubator facilities, an interpretation is requested as to whether a qualified incubator may count the full-time positions of the operator and technology startup in the Grow NJ application submitted by the operator of a qualified incubator facility, and if so, whether those entities shall also be required to submit CEO certifications under *N.J.A.C. 19:31-18.5(a)2iv(1)(A)* and/or (B).

RESPONSE: As required by *N.J.A.C. 19:31-18.5(a)2iv(1)*, the CEO of the operator must submit a certification. The Authority will accept that certification for new full-time jobs or positions employed by any entity at the qualified incubator facility. With regard to retained full-time jobs and positions, proposed new *N.J.A.C. 19:31-18.5(a)2iv(3)* provides that those jobs or positions will be counted only if employed by a business other than the operator or a technology startup company and if the operator submits certifications under *N.J.A.C. 19:31-18.5(a)2iv(1)(A)* and (B) by the CEO of the business employing the retained jobs or positions. In all cases, all eligible new and retained full-time jobs and positions are subject to the restriction in new *N.J.A.C. 19:31-18.4(d)*.

#### Summary of Agency-Initiated Change:

The New Jersey Economic Development Authority is not adopting the proposed amendments at *N.J.A.C. 19:31-4.1, 4.2, 4.3, and 4.5* through *4.9*, pertaining to mixed use parking projects pursuant to P.L. 2015, c. 69, due to subsequent statutory revisions contained in recent enactments, specifically P.L. 2015, c. 217, P.L. 2015, c. 242, and P.L. 2015, c. 252, all of which will be addressed in a future rulemaking.

#### 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 (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

**(Agency Note:** The text of *N.J.A.C. 19:31-18.5* and *18.7* and *18.11* below reflect the adoption of amendments effective May 16, 2016 and December 21, 2015, respectively.)

#### 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.

...

"Qualified incentive area" means an aviation district, a port district, a distressed municipality, urban transit hub 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 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.)

"Qualified incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (*N.J.S.A. 13:20-3*).

"Qualified incubator facility" means a commercial building located within a qualified incentive area: that contains 50,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with a research institution, teaching hospital, college, or university, which is evidenced by a written agreement that demonstrates this collaboration; and within which, at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period. The restricted space may be comprised of non-contiguous areas, and its location within the qualified incubator facility may change from time to time.

...

"Technology startup company" means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which 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.

...

#### 19:31-18.4 Restrictions

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

(c) (Reserved)

(d) For a qualified incubator facility, the maximum number of positions 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 employed by technology startup companies.

#### 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) In determining whether a proposed capital investment will yield a net positive benefit, the business's chief executive officer, or equivalent officer for North American operations, shall submit a certification indicating that:

Recodify existing (1) and (2) as (A) and (B) (No change in text.)

(C) The business's chief executive officer, or equivalent officer for North American operations, has reviewed the information submitted to the Authority and that the representations contained therein are accurate;

(2) In satisfaction of (a)2iv(1)(A) and (B) above, the certification with respect to a project in a Garden State Growth Zone that qualifies under 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 which 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 indicate that the provision of tax credits under the program is a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1 et seq.*) or in a Garden State Growth Zone which 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. If the site was acquired within 24 months prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site;

(3) For a qualified incubator facility, the certifications in (a)2iv(1)(A) and (B) above regarding projected retention of full-time jobs shall be certified by the business employing the full-time jobs to be retained and shall not include full-time jobs employed by the operator or a technology startup company. To demonstrate that such certifications and the certification in (a)2iv(1)(B) above regarding the creation of new full-time jobs employed by any business at the qualified incubator facility 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.

(4) The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project.

v. (No change.)

vi. Identification of the site of the proposed qualified business facility, including the block and lot of the site as indicated upon the local tax map. For purposes of determining geographical location of contiguous buildings that extend over more than one geographical location, the contiguous buildings shall be considered in the geographical location in which the \*[qualified business facility is]\* \*contiguous buildings are\* located with the most beneficial total tax credit amount. For a qualified incubator facility, common areas that are shared by the entire building in which the qualified incubator facility is located and not exclusive to the qualified incubator facility shall not be counted as part of the qualified incubator facility, but the size of the space restricted for use by technology startup companies may include the pro-rata share of any common areas within the qualified business facility;

vii.-xi. (No change.)

3. Employee information shall include the following:

i.-ii. (No change.)

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

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

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

(b) (No change.)

(c) A business shall be allowed to assign their ability to apply for the tax credit for a project located in a Garden State Growth Zone under this subchapter to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone, as determined by the Author-

ity. The non-profit organization may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified business facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

(d) An organization operating a qualified incubator facility may make an application on behalf of a business which meets the requirements for the tax credit, or a group of non-qualifying businesses or positions, located at a qualified incubator facility, that shall be considered a unified project for the purposes of the incentives provided under this section.

1. For purposes of this subsection, "positions" mean full-time employees who are employed by a business at a qualified incubator facility and who spend at least 16 hours a week at the qualified incubator facility and must spend at least 80 percent of his or her time, or any other period of time generally accepted by custom or practice as determined by the Authority, in this State. A position at a qualified incubator facility shall be considered a full-time job under this program.

2. In addition to the information required pursuant to (a) above, the organization operating a qualified incubator facility shall be required to submit:

i. The names, contact information, New Jersey employer identification, and Federal employer identification number of any party on whose behalf it is making the application to the extent known at the time of application; and

ii. The organization's business model and a detailed explanation as to how the business model will ensure that the benefit from the award of tax credits will inure to the businesses and positions on whose behalf the application is made and how the businesses and full-time employees filling positions will be informed of the award and the benefits from the award.

(e) (No change.)

(f) In addition to the information required pursuant to (a) above, any applicant authorized pursuant to (c) and (e) above shall be required to submit:

1.-6. (No change.)

(g) (No change.)

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

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

(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.-3. (No change.)

4. An organization operating a qualified incubator facility shall provide written evidence that the qualified business facility continues to qualify as a qualified incubator facility and that the benefit from the award of tax credits will inure to the businesses and positions on whose behalf the application was made.

5. (No change in text.)

(g) (No change.)

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

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

(c) 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 if the qualified business facility meets any of the following priority criteria or other additional or replacement criteria determined by the Authority from time to time in response to evolving economic or market conditions, provided that (c)5, 6, 8, and 10 below shall not apply to a qualified incubator facility:

1.-17. (No change.)

(d)-(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. (No change.)

2. For an organization operating a qualified incubator facility that applied on behalf of businesses or positions, the number of full-time employees or positions in the space restricted for use by technology company startup companies and the number of full-time employees or positions outside of the space restricted for use by technology company startup companies. The annual report shall demonstrate that at least 50 percent of the qualified business incubator remains restricted for such use and that any company in the restricted space continues to qualify as a technology startup company.

3. (No change in text.)

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

19:31-18.15 Reduction and forfeiture of tax credits

(a) (No change.)

(b) If, in any tax period during the eligibility period, the number of full-time employees employed by the business at the qualified business facility, or, for a qualified incubator facility, the number of full-time employees and positions employed by the operator or the businesses on whose behalf the operator applied, located within a qualified incentive area drops below 80 percent of the number of new and retained full-time jobs specified in the certification approved by the Authority pursuant to *N.J.A.C. 19:31-18.7(g)*, 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 number of full-time employees employed by the business at the qualified business facility to 80 percent of the number of jobs specified in the certification approved by the Authority pursuant to *N.J.A.C. 19:31-18.7(g)*.

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

19:31-18.16 Effect of sale or lease of qualified facilities

(a) If the qualified business facility is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that any credits of the business shall remain unaffected. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.

(b) (No change.)