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RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

47 N.J.R. 2178(b)

Adopted Amendments: *N.J.A.C. 19:31-4.2, 4.6, 4.8, 4.9, 4.11, 9.10, 18.2, 18.3, 18.4, 18.5, 18.7, 18.8, 18.9, 18.10, 18.11, 18.13, and 18.16*

Authority Assistance Programs

Economic Redevelopment and Growth Program; Urban Transit Hub Tax Credit Program; and Grow New Jersey Assistance Program

Proposed: January 20, 2015, at *47 N.J.R. 258(a)*.

Adopted: July 17, 2015, by the New Jersey Economic Development Authority, Melissa Orsen, Chief Executive Officer.

Filed: July 17, 2015, as R.2015 d.132, **with a non-substantial change** not requiring additional public notice and comment (see *N.J.A.C. 1:30-6.3*), **but with the proposed amendment at *N.J.A.C. 19:31-18.3(a)3ii* not adopted but still pending.**

Authority: P.L. 2013, c. 161 and P.L. 2014, c. 63.

Effective Date: August 17, 2015.

Expiration Date: November 9, 2017.

Summary of Public Comments and Agency Responses:

Charles B. Liebling, Windels Marx Lane & Mittendorf, LLP.

COMMENT: In order to attract other highly impactful industrial-scale operations that would generate a substantial economic benefit to the State, the definition for "industrial premises" should be revised to give access to bonus tax credits awarded for extra capital investment in "industrial premises for industrial use," that is, for the operations of a regional distribution or logistics center that qualifies as a mega project and satisfies at least four the following categories: a) project is located in a port district; b) project is located in an area in need of redevelopment pursuant to *N.J.S.A. 40A:12A-1* et seq., or other State statute; c) business(es) located at the project create(s) at least 1,000 full-time employees, the average salary of which is two times the State minimum wage; d) project has a capital investment in excess of \$ 50 million; e) project consists of new construction; and/or f) project, property, or complex of properties of which the project constitutes all or a portion requires or has required environmental remediation at a cost in excess of \$ 50 million.

RESPONSE: The Economic Development Authority (EDA) declines the proposed revision, which would provide a bonus increase through a change in definition rather than a revision to the bonus provisions. At this time, the EDA is not revising the bonus provisions but is comprehensively reviewing all such bonus increases "in response to evolving or market conditions," pursuant to *N.J.A.C. 19:31-18.8(c)*.

Jeffrey H. Oakman, Director of Project Development, Community Investment Strategies, Inc.

COMMENT: The proposed amendment to the definition for "qualified residential project" contained in *N.J.A.C. 19:31-4.2* should be rescinded. However, to the extent it is determined that such amendments should be adopted, additional language should be added to clarify that the prohibition is intended to cover only housing units that are intended to provide only temporary housing for homeless or transient populations - permanent housing for formerly-homeless persons should remain eligible for tax credit awards under the residential Economic Redevelopment and Growth (ERG) Program.

RESPONSE: The EDA does not concur with the revision, as suggested, due to the existence of other programs, which are better suited to serve transitional or homeless housing needs.

Stephen M. Rosario, CAE, Senior Director, Northeast Region, American Chemistry Council

COMMENT: The definition of "capital investment" should be amended to include, along with Leadership in Energy & Environmental Design (LEED), other nationally recognized energy efficient rating systems, including, but not limited to, the energy efficiency standards for commercial building under the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1-2013, as well as the 2015 International Energy Conservation Code (IECC) for both residential and commercial buildings.

RESPONSE: The existing definition of "capital investment" specifies the expenses that qualify toward the minimum capital investment requirements for eligibility under the Grow NJ Program. While the definition specifically recognizes certain capital investment required to attain the level of silver rating or above in the Leadership in Energy & Environmental Design (LEED) Green Building Rating System, the definition does not exclude otherwise eligible capital investment expended to comply with other environmental standards. Additionally, pursuant to the provision at *N.J.A.C. 19:31-18.5(a)2v* relating to the requirement that eligible projects meet minimum environmental standards, the EDA has adopted a policy available at www.njeda.com that incorporates various standards to apply the principles of the New Jersey Green Building Manual depending on project type.

Summary of Agency-Initiated Change:

The reference to "real estate commissions" is corrected in the definition for "soft costs" at *N.J.A.C. 19:31-18.2*.

Federal Standards Statement

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

Full text of the adoption follows (addition to proposal indicated in boldface with asterisks ***thus***; deletion from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

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.

...

"Equity" means cash, development fees, costs for project feasibility incurred within the 12 months prior to application, Federal or local grants, Federal tax credits, property value less any mortgages, and any other investment by the developer in the project deemed acceptable by the Authority in its sole discretion. Property value shall be valued at the lesser of either the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12

months of application, or the value as determined by a current appraisal acceptable to the Authority. For a qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity means the portion of the developer's fee that is delayed for a minimum of five years.

...

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality 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.

...

"Project financing gap" means the part of the project costs that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital or equity or other contributed capital or equity, which shall not be less than 20 percent of the eligible project cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of-way, subject to review by the State Treasurer, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis, and except for final point of sale retail businesses, including, but not limited to, retail, educational, hospital, and hotel projects, the amount by which total project costs exceed the cost of a viable alternative location for the out-of-State redevelopment project in the event the business's chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of leaving the State and that the project would not occur, but for the provision of the incentive grant under the program. When calculating the project financing gap, the factors set forth at *N.J.A.C. 19:31-4.6(a)4*, including, but not limited to, internal rate of return on developer's contributed capital, and net profit margin, will be considered. The project financing gap may be increased by the cost of capital necessary to raise an amount of current capital sufficient to complete the project when combined with all other sources of capital in recognition that the incremental eligible revenues will be reimbursed over an estimated period of years. A qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency (NJHMFA) will be determined to have a project financing gap if the developer cannot achieve the fee authorized by NJHMFA within five years after the project is placed in operation, provided that in no event shall the sum of the tax credits awarded under this subchapter and the State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency exceed ninety percent of the total development cost.

...

"Qualified residential project" means a redevelopment project for which a developer must submit a temporary certificate of occupancy by July 28, 2018, that is predominantly residential and includes multi-family residential units for purchase or lease, or dormitory units for purchase or lease, having a total project cost of at least \$ 17,500,000, if the project is located in any municipality with a population greater than 200,000 according to the latest Federal decennial census, or having a total project cost of at least \$ 10,000,000 if the project is located in any municipality with a population less than 200,000 according to the latest Federal decennial census, or is a disaster recovery project, or having a total project cost of \$ 5,000,000 if the project is in a Garden State Growth Zone. A qualified residential project shall not include transitional or homeless units.

...

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. (No change.)

2. For a redevelopment project involving rehabilitation or improvement of an existing building(s), the costs of land acquisition and rehabilitation shall not exceed 100 percent of the replacement cost for new construction, exclusive of any environmental remediation costs. When evaluating a redevelopment project involving rehabilitation or improvement of existing building(s), if a developer spends more than 100 percent of the total cost of acquisition of the building(s) on such rehabilitation or improvement, then the cost of acquisition shall be included in the eligible project costs. With respect to the Authority's evaluation of a redevelopment project pursuant to the requirements of *N.J.A.C. 19:31-4.3(a)2i*, a developer's future expenditures will have to be at least 100 percent of the project costs previously expended as of its application date in order for the Authority to include the costs expended prior to the application date to be included in the project costs;

3. (No change.)

4. The project financing gap analysis shall include, but not be limited to, an evaluation of the project costs, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, internal rate of return on developer's contributed capital, and return on investment, or, in the Authority's sole discretion, in comparison to alternative financing structures for a comparable project available to the developer or its tenants; and

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, 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.)

19:31-4.8 State incentive grant agreement

(a) Except for qualified residential projects that receive 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 that receive 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.-14. (No change.)

15. Reporting requirements, as required pursuant to *N.J.S.A. 52:27D-489f*, and other reporting requirements that may be required by law or agreement, such as an annual report and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200 (*N.J.S.A. 52:39-1 et seq.*);

16. Requirement to demonstrate that the project continues to be eligible for any increase of reimbursement pursuant to *N.J.A.C. 19:31-4.7(e)*; and

17. To the extent the project consists of newly-constructed residential units, the approval letter will require that the 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*.

(c) (No change.)

19:31-4.9 Tax credits for qualified residential projects

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

(c) Upon receipt of a recommendation from the Authority staff on the qualified residential facility 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, 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 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) (No change.)

(e) No later than July 28, 2018, 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.

(f)-(k) (No change.)

19:31-4.11 Pledge, assignment, transfer, or sale of grant amount

(a) (No change.)

(b) A developer may apply to the Director of the Division of Taxation and the Chief Executive Officer of the Authority for a tax credit transfer certificate, if the developer is awarded a tax credit pursuant to *N.J.A.C. 19:31-4.8* or *4.9*, covering one or more years, in lieu of the developer being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2* and 3), section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*), or *N.J.S.A. 17B:23-5*. The certificate provided to the developer shall include a statement waiving the developer's right to claim that amount of the credit against the taxes that the developer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this subsection shall not be exchanged for consideration

received by the developer of less than 75 percent of the transferred credit amount before considering any further discounting to present value which may be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the developer who originally applied for and was allowed the credit.

SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

19:31-9.10 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, in an amount not less than \$ 25,000 of tax credits, pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2* and *54:18A-3*), pursuant to section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*), or pursuant to N.J.S.A. 17B:23-5. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business' right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

(b) The initial sale or assignment of any amount of tax credits allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted.

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

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.

...

"Capital investment" in a qualified business facility means expenses by a business or any affiliate of the business incurred after application for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; obtaining and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the *Federal Internal Revenue Code* (26 U.S.C. §§ 168 and 179), for the operation of a business on real property in a building, structure, facility, or improvement to real property, including associated soft costs; and receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (*N.J.S.A. 13:20-13*); or any of the preceding. 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 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, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. In a Garden State Growth Zone, the following qualify as a capital investment: any and all development, redevelopment and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the Authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair. A business that acquires or leases a qualified business facility shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord if pertaining primarily to the premises of the qualified business facility, and, if pertaining generally to the qualified business facility being acquired or leased, shall be allocated to the premises of the qualified business facility on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility. The capital investment described in this definition may include any capital investment made or acquired within 24 months prior to the date of application, so long as the amount of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the qualified business facility being acquired or leased on the basis of the gross leasable area of such premises in relation to the total gross leasable area in the qualified business facility made or acquired prior to the date of application.

...

"Full-time employee" means a person: who is employed by a business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, or who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (*N.J.S.A. 34:8-67 et seq.*) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, 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 who is a resident of another state but whose income is not subject to the New Jersey Gross Income Tax Act, *N.J.S.A. 54A:1-1 et seq.*, or who is a partner of a business who 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 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.* and who, except for purposes of the Statewide workforce, is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law. With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal: the requirement that employee health benefits are to be provided shall be deemed to be satisfied if such benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent; 35 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons. For any project located 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 any project located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (*N.J.S.A. 5:12-219*) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, 30 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons, and the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. Full-time employee shall also not include any person who at the time of project application works in New Jersey for consideration for at least 35 hours per week, or who renders any other standard of service generally accepted by custom or practice as full-time employment but who

prior to project application was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality 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.

...

"Highlands development credit receiving area or redevelopment area" means an area located within a qualified incentive area and designated by the Highlands Water Protection and Planning Council for the receipt of Highlands Development Credits under the Highlands Transfer of Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (*N.J.S.A. 13:20-13*).

...

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

"Industrial use" means assembling, processing, and/or manufacturing of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity, and including farming purposes as that term is defined under *IRC section 6420(c)(3)(A)*, undertaken in an industrial space.

...

"Mega project" means:

1. (No change.)

2. A qualified business facility located in an aviation district housing a business in the aviation industry, in a Garden State Growth Zone, or in a priority area housing the United States headquarters and related facilities of an automobile manufacturer, either:

i. (No change.)

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

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; or

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.

...

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

"Priority area" means the portions of the qualified incentive area that are not located within a distressed municipality and which: are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (*N.J.S.A. 52:18A-196 et seq.*), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition; intersect with portions of a deep poverty pocket, a port district, or were Federally owned land approved for closure under a Federal Commission on Base Realignment and Closure action; are the proposed site of a disaster recovery project, a qualified incubator facility, a highlands development credit receiving area or redevelopment area, a tourism destination project, or transit oriented development; or contain a vacant commercial building having over 400,000 square feet of office, laboratory, or industrial space available for occupancy for a period of over one year; or a site that has been negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (*N.J.S.A. 34:1B-208*).

...

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

1. (No change.)

2. Located within:

i.-v. (No change.)

vi. Land approved for closure under any Federal Commission on Base Realignment and Closure action; or

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.

...

"Soft costs" means all costs associated with financing, design, engineering, legal, ***or*** real estate ***[or]*** commissions, provided they do not exceed 20 percent of total capital investment.

...

"Tourism destination project" means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the qualified incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business facility within an established Tourism District with a significant impact on the economic viability of that District.

...

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. For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development premises for continued similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$ 20.00 per square feet of gross leasable area;

ii. For the new construction of an industrial, warehousing, logistics, or research and development premises for similar use by the business in at least 51 percent of the gross leasable area of the premises, a minimum investment of \$ 60.00 per square feet of gross leasable area;

iii. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$ 40.00 per square feet of gross leasable area; and

iv. For the new construction of a premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$ 120.00 per square feet of gross leasable area. For purposes of this subparagraph, non-industrial premises shall include vacant industrial premises that are unleased and unoccupied.

2. (No change.)

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

i. (No change.)

ii. The proposed capital investment and the resultant retention and creation of full-time jobs will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to the State, as calculated pursuant to *N.J.A.C. 19:31-18.7(c)* prior to taking into account the value of the requested tax credit, and shall be based on the benefits generated during the first 20 years following the completion of the project, except that:

(1) For a mega project or a project located in a Garden State Growth Zone, the determination shall be based on the benefits generated during a period of up to 30 years following the completion of the project; and

(2) 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.), the net positive economic benefit determination shall be based on the benefits generated during a period of up to 35 years following completion of the project, and shall equal at least 100 percent of the requested tax credit allocation;

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. If, in a Garden State Growth Zone, the site was acquired or leased 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. In satisfaction of this requirement, with respect to 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 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, the award of tax credits will be 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 pursuant to P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1 et seq.*) or 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.

Recodify existing (c), (d), and (e) as (b), (c), and (d) (No change in text.)

19:31-18.4 Restrictions

(a) (No change.)

(b) A project that consists solely of point-of-final-purchase retail facilities, excluding catalog distribution centers, shall not be eligible for a grant of tax credits. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. For a qualified business facility that is a mixed-use project that includes retail facilities and that is located in a Garden State Growth Zone or the 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, retail facilities in an amount up to 7.5 percent of the mixed-use project may be included in the mixed-use project application for a grant of tax credits along with the non-retail facilities and that application may include in the aggregate the pro-rata number of full-time employees employed by any number of tenants or other occupants of the included retail facilities. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by a full-service supermarket or grocery store, located in a Garden State Growth Zone that qualified under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1 et seq.*), or a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (*N.J.S.A. 5:12-219*), or catalog distribution centers shall not be considered point-of-final-purchase retail facilities.

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)*. 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:

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

(3) 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 provided, however, that in satisfaction of (a)2iv(1) and (2) 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. 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 a qualified business facility that extends over more than one geographical location, the qualified business facility shall be considered in the geographical location with the most beneficial total tax credit amount;

vii.-xi. (No change.)

3. (No change.)

(b) (No change.)

(c) A business shall be allowed to assign their ability to apply for the tax credit 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 Authority.

(d) The non-profit organization in (c) above or 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 business 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.

(e) For any project located 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 any 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, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, a business may assign its ability to apply for the tax credit under this subsection to the developer of the facility. The developer may make an application on behalf of the business which meets the requirements for the tax credit, or a group of non-qualifying businesses located at the business facility, that shall be considered a unified project for the purposes of the incentives provided under this section, and the developer may apply for tax credits available based on the number of jobs provided by the business or businesses and the total capital investment of the business or businesses and the developer.

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

1. Evidence of the assignment to apply for the tax credit from the assignee or the party on whose behalf it is making the application;
2. The name of the assignee or the party on whose behalf it is making the application;
3. The contact information of the assignee or the party on whose behalf it is making the application;
4. The New Jersey employer identification number of the assignee or the party on whose behalf it is making the application;
5. The Federal employer identification number of the assignee or the party on whose behalf it is making the application; and
6. If the applicant is a non-profit authorized under (c) above, the mission statement of the non-profit organization.

(g) (No change in text.)

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 or retained employees, 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. 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 six 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 12 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)-(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:

1.-14. (No change.)

15. For a project located within an area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (*N.J.S.A. 40A:12A-5* and 6), and which is located within a quarter mile of at least one United States highway and at least two New Jersey State highways, an increase of \$ 1,500 per year;

16. For a project that generates solar energy on site for use within the project of an amount that equals at least 50 percent of the project's annual electric supply service needs, an increase of \$ 250.00 per year; and

17. For a qualified business facility in a vacant commercial building or campus having over 1,000,000 square feet of office or laboratory space available for occupancy for a period of over one year that the Authority designates, as listed on the Authority's website at www.njeda.com, an increase of \$ 1,000 per year.

(d) (No change.)

(e) After the determination by the Authority of the gross amount of tax credits for which a business is eligible pursuant to (d) above, the final total tax credit amount shall be calculated as follows:

1. (No change.)

2. For each retained full-time job, the business shall be allowed tax credits equaling the lesser of 50 percent of the gross amount of tax credits for each retained full-time job, or one-tenth of the capital investment, which will be the lesser of actual capital investment or the business's proposed amount approved at application, divided by the number of retained and new full-time jobs per year over the grant term of ten years, unless the jobs are part of a mega project that is the United States headquarters of an automobile manufacturer located within a priority area or a qualified business facility in a Garden State Growth Zone, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job, or unless the new qualified business facility would replace a facility that has been wholly or substantially damaged as a result of a Federally declared disaster, in which case the business shall be entitled to tax credits equaling 100 percent of the gross amount of tax credits for each retained full-time job. The per retained full-time job tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to *N.J.A.C. 19:31-18.7(g)* into the amount of capital investment in the certification accepted by the Authority pursuant to *N.J.A.C. 19:31-18.7(g)*, provided that in no event shall the gross amount of tax credits per retained full-time job exceed the gross amount calculated at the approval of the application. Based on this per retained full-time job calculation, any reduction in the number of retained full-time jobs shall proportionately reduce the amount of tax credits for that year.

(f) For each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed:

1. Thirty-five million dollars (\$ 35,000,000) and provides a net positive economic benefit to the State with respect to a qualified business facility 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 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;

2.-6. (No change.)

(g) Under (f) above, with the exception of a project located within a Garden State Growth Zone which qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1* et seq.), or 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, that divides the total capital investment of the project by the total number of full-time jobs at that project, for each application for tax credits in excess of \$ 4,000,000 annually, the amount of tax credits available to be applied by the business annually shall be the lesser of the maximum amount under the applicable paragraph or an amount determined by the Authority necessary to complete the project, with such determination made by the Authority's utilization of a full economic analysis of all locations under consideration by the business; all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations, as applicable; and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist. Based on this information, and any other information deemed relevant by the Authority, including, but not limited to, factors affecting the decision of the business to relocate, the Authority shall independently verify and confirm the amount necessary to complete the project.

(h) Notwithstanding anything to the contrary in (a) through (g) above, for a project located within a Garden State Growth Zone that qualifies for the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1 et seq.*), the total tax credit shall be:

1. For a project that creates or retains 35 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 5,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i.-ii. (No change.)

2. For a project that creates or retains 70 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 10,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i.-ii. (No change.)

3. For a project that creates or retains 100 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 15,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i.-ii. (No change.)

4. For a project that creates or retains 150 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 20,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i.-ii. (No change.)

5. For a project that creates or retains 250 or more full-time jobs new to the municipality and makes a capital investment of at least \$ 30,000,000, the total tax credit amount per new and retained full-time job shall be the greater of:

i.-ii. (No change.)

6. For projects approved under this subsection, the per full-time employee tax credit calculation will be established by dividing the number of full-time employees in the certification accepted by the Authority pursuant to *N.J.A.C. 19:31-18.7(g)* into the lesser of the amount of capital investment in the certification accepted by the Authority pursuant to *N.J.A.C. 19:31-18.7(g)* or the award of tax credits approved by the Board pursuant to *N.J.A.C. 19:31-18.7(d)*. Based on this per full-time employee calculation and provided the business continues to meet the minimum number of employees required in subparagraphs (a), (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (*N.J.S.A. 34:1B-246*), any reduction in the number of employees shall proportionately reduce the amount of tax credits for that year, that is, the number of full-time employees will be multiplied by the per full-time employee calculation done at certification.

19:31-18.9 Tax credit amount; application and allocation of the tax credit

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

(c) The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period during which it was transferred or in any of the next three successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

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

(e) (No change.)

19:31-18.10 Incentive agreement

(a) (No change.)

(b) The incentive agreement shall include, but not be limited to, the following terms or conditions as determined by the Chief Executive Officer of the Authority:

1.-2. (No change.)

3. A requirement that the applicant maintain the project at a location in New Jersey for the commitment period, with at least the minimum number of full-time employees as required by the program, which shall include consideration of bonus award(s) and net positive economic benefit test pursuant to *N.J.A.C. 19:31-18.3(a)3ii* and the amount of tax credits previously received by the business during the eligibility period, and a provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with the requirements in this paragraph for the commitment duration. Such recapture may include interest on the recapture amount at the rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties and all costs incurred by the Authority and the Division of Taxation in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. If all or part of any tax credits awarded is subject to recapture, the Authority will pursue recapture from the business and not from a tax credit transfer certificate purchaser. Tax credit transfer certificate purchasers shall be subject to all other limitations and conditions that apply to the use of the tax credits by the business, including, but not limited to, reduction and forfeiture provisions and the requirement of a letter of compliance for the relevant tax period;

4.-16. (No change.)

(c) (No change.)

19:31-18.11 Reporting requirements and annual reports

(a)-(d) (No change.)

(e) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an additional tax credit award representing an increased base credit amount for that tax period and each subsequent tax period, for each additional full-time employee added above the number of full-time employees specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this subsection; provided that the adjustment may not affect other obligations under the incentive agreement to maintain a minimum number of employees. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time

employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

(f) For a project located within a Garden State Growth Zone which qualifies under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1 et seq.*), or 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, and which qualifies for a tax credit pursuant to subparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (*N.J.S.A. 34:1B-246*), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (*N.J.S.A. 34:1B-246*), then the Authority shall recalculate the total tax credit amount per full-time employee by using the certified capital investment of the project allowable under the applicable subparagraph and the number of full-time employees certified on the date of the recalculation and applying those numbers to subparagraphs (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L. 2011, c. 149 (*N.J.S.A. 34:1B-246*), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section. To obtain this additional tax credit award, the business shall submit, in its annual report, a request to the Authority with supporting evidence documenting the additional full-time employees added above the number of full-time employees specified in the incentive agreement. Following EDA staff acceptance of the annual report, it shall notify the Director of the Division of Taxation and the business shall receive an increased tax credit certificate.

19:31-18.13 Application for tax credit transfer certificate

(a) Tax credits, upon receipt thereof by a business from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, in an amount not less than \$ 25,000 pursuant to this section, to any other person(s) that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2 and 54:18A-3*), pursuant to section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*), or pursuant to *N.J.S.A. 17B:23-5*. A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for an initial tax credit transfer covering one or more tax periods, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be transferred (amounts, tax periods), the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the business, naming the transferee. The certificate issued to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credits by the business that originally applied for and was allowed the credits.

(b) The initial sale or assignment of any amount of a tax credit allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted.

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

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

(a) (No change.)

(b) Unless otherwise permitted in this subchapter, if a tenant subleases its tenancy in whole or in part during the eligibility period, the new tenant shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods.