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RULE ADOPTIONS

OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

44 N.J.R. 1784(c)

Adopted Amendments: ***N.J.A.C. 19:31-4.2, 4.4, 4.5, 9.2, 9.3, 9.4, 9.5, 9.7, 9.9, 10.2, 10.4, 10.7, 14.2, 14.3, 14.6, 14.10*, and *14.11***

Adopted New Rules: N.J.A.C. 19:31-18

Economic Redevelopment and Growth Program, Urban Transit Hub Tax Credit Program, Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, and Grow New Jersey Assistance Program

Proposed: February 21, 2012 at *44 N.J.R. 434(a)*.

Adopted: May 23, 2012 by the New Jersey Economic Development Authority, Caren S. Franzini, Chief Executive Officer.

Filed: May 24, 2012 as R.2012 d.118, **with substantial and technical changes** not requiring additional public notice and comment (see *N.J.A.C. 1:30-6.3*).

Authority: P.L. 2011, c. 149 (*N.J.S.A. 34:1B-242* et seq.).

Effective Date: June 18, 2012.

Expiration Date: November 9, 2017.

Summary of Public Comment and Agency Response:

COMMENT: Stephen M. Rosario, CAE, Senior Director, Northeast Region, American Chemistry Council, and Thomas A. Leach, Director of Government Relations, Chemistry Council of New Jersey.

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 buildings under ASHRAE 90.1-2010 (the American Society of Heating, Refrigerating and Air-Conditioning Engineers), as well as the 2009 International Energy Conservation Code (IECC) for both residential and commercial buildings.

RESPONSE: The concerns expressed by both commentors will be addressed in subsequent proposed amendments to rules implementing the Grow New Jersey program, as well as the Economic Redevelopment and Growth Program and Urban Transit Hub Tax Credit Program, establishing green building requirements within the EDA's rules pursuant to the recently-completed New Jersey Green Building Manual prepared by the Department of Community Affairs.

Summary of Agency-Initiated Changes:

At N.J.A.C. 19:31-18.4(a), the names of the grants authorized under P.L. 1996, c. 25 and 26 are corrected.

At N.J.A.C. 19:31-18.10(b)3, references to "commitment period" are corrected as "commitment duration," which term is defined in N.J.A.C. 19:31-18.2.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rules 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 proposals indicated in brackets with asterisks *[thus]*):

(**Agency Note**: The adopted text of *N.J.A.C. 19:31-10.4(c)* and *14.2* "capital investment" published below incorporates amendments proposed at *44 N.J.R. 665(a)* and adopted elsewhere in this issue of the New Jersey Register.)

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.

. . .

"Fiscal impact analysis" means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State. For the purposes of determining if the applicant fulfills the net positive economic benefit requirement, the analysis needs to demonstrate that the project's net positive economic benefit equals at least 110 percent of the amount of grant assistance, for the period equal to 75 percent of the useful life of the project not to exceed 20 years. The analysis will be an econometric model that uses project data provided by the developer, including, but not limited to: new and retained jobs, amount of capital investment, type of project, occupancy characteristics and location; and by using this information, shall generate an estimate of direct and indirect economic output, as deemed reasonable by the Authority, and projected eligible revenues. This information may be supplemented by the use of industry accepted estimates, that is, U.S. Department of Commerce Regional Input-Output Modeling System data, when specific data is not available.

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

. . .

19:31-4.4 Application submission requirements for State incentive grants

(a) (No change.)

(b) A developer seeking a State incentive grant shall submit to the Authority the following information in its application:

1.-12. (No change.)

13. A written certification by the chief executive officer, or equivalent officer for North American operations, stating:

i. That the business applying for the program is not in default with any other program administered by the State of New Jersey; and

ii. That he or she has reviewed the application information submitted and that the representations contained therein are accurate;

14.-22. (No change.)

19:31-4.5 Financing gap and fiscal impact analysis

(a) (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 redevelopment project will result in net positive economic benefits equaling 110 percent of the amount of grant assistance, to the State for a period equal to 75 percent of the useful life of the project not to exceed 20 years.

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

SUBCHAPTER 9. URBAN TRANSIT HUB TAX CREDIT PROGRAM

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.

. . .

"Eligibility period" means the 10-year period in which a business may claim an urban transit hub tax credit, beginning with the tax period in which the Authority first certifies that the business has met the capital investment and employment qualifications, if any, of the Program.

. . .

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority. For the purpose of calculating the number of new full-time employees, a position shall not be considered a new full-time position unless it is in addition to the number of full-time employees in the business's Statewide workforce in the last tax accounting or privilege period prior to the tax credit amount approval.

. . .

"Rail station" means a rail station, including light rail stations, of the New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation, but shall not include any rail station located at an international airport, except that any property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation rail station platform area at an international airport upon which a qualified business facility is constructed or renovated commencing after the effective date of P.L. 2011, c. 149 shall be deemed an urban transit hub, excluding any property owned or controlled by the Port Authority of New York and New Jersey.

. . .

"Urban transit hub" means property located within a one-half mile radius surrounding the mid point of a New Jersey Transit Corporation, Port Authority Transit Corporation or Port Authority Trans-Hudson Corporation rail station platform area, including all light rail stations; property located within a one-mile radius of the mid point of the platform area of such a rail station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1* et seq.) or in an area that is the subject of a Choice Neighborhoods Transformation Plan funded by the Federal Department of Housing and Urban Development; the site of the campus of an acute care medical facility located within a one-mile radius of the mid point of the platform area of such a rail station; the site of a closed hospital located within a one-mile radius of the mid point of the platform area of such a rail station; property located within a one-half mile radius surrounding the mid point of one of up to two underground light rail stations' platform areas that are most proximate to an interstate rail station; and property adjacent to, or connected by rail spur to, a freight rail line if, as part of its regular course of business, as determined by the Authority, the business utilizes that freight rail line for loading and unloading freight cars on trains delineated by the Authority pursuant to subsection e. of section 3 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-3e). A property, which is partially included within the radius, shall only be considered part of the hub if over 50 percent of its land area falls within the radius. In the case of a rail station with multiple rail lines, a separate midpoint shall be determined for each such rail line. Once the hubs have been delineated, the Authority will post eligible rail stations and corresponding midpoints on the website at www.newjerseybusiness.gov. The posting will be updated if the eligible rail stations change and to reflect changes in station midpoints.

. . .

19:31-9.3 Eligibility criteria

(a) In order to be eligible to be considered for an urban transit hub tax credit:

1. (No change.)

2. If the business is a tenant in a qualified business facility:

i.-iv. (No change.)

v. Except for tenants of a qualified business facility for which the owner has previously demonstrated a net positive benefit and received approval of the project site or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit, equaling at least 110 percent of the requested tax credit allocation amount, to both the State and the eligible municipality for the period equal to 75 percent of the useful life of the term of the tenant's lease, not to exceed 20 years. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment, but not from employees other than those referenced in (a)2iii above.

3.-5. (No change.)

(b)-(i) (No change.)

19:31-9.4 Restrictions

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

(d) Capital investments in a qualified business facility must be incurred after the effective date of P.L. 2007, c. 346, which is January 13, 2008, and must be submitted within five years of January 13, 2008. 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. 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 eighth 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. Capital investments in a qualified residential facility must be incurred after the effective date of P.L. 2009, c. 90, which is July 28, 2009, and be applied for within five years of July 28, 2009. A residential developer must submit its documentation for approval of its credit amount within eight years after July 28, 2009. The credit amount allowed for a tax period ending after July 28, 2017 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.

(e) (No change.)

19:31-9.5 Application submission requirements

(a) Each application to the Authority made by an owner, tenant or residential developer shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

i.-ix. (No change.)

x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi.-xv. (No change.)

2.-3. (No change.)

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

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

(a) (No change.)

(b) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be deemed complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project. The review will determine whether the applicant:

1.-3. (No change.)

(c)-(h) (No change.)

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

(a) The amount of tax credit allowed shall be equal to the lesser of the amount which satisfies the net benefit test pursuant to *N.J.A.C. 19:31-9.7(c)*, or either the capital investment made by the business or the capital investment represented by the business's leased area, or area owned by the business as a condominium, subject to any reduction or disqualification provided in the Act and this subchapter and, provided that in no event will the amount of tax credits exceed the amount of tax credits previously approved by Board or, in the case of a residential developer, the maximum percentage amount of allowed tax credits approved by the Board for the business's capital investment in a qualified residential project as follows:

1.-2. (No change.)

(b) For the 10 consecutive years following the notification pursuant to *N.J.A.C. 19:31-9.7(h)*, a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, beginning with the tax period in which the business is first certified by the Authority as having met the investment capital and employment qualifications, subject to the provisions of the Act and this subchapter.

(c)-(f) (No change.)

(g) 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*) (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.

SUBCHAPTER 10. BUSINESS EMPLOYMENT INCENTIVE PROGRAM

19:31-10.2 Definitions

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

. . .

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

. . .

19:31-10.4 Amount/term of grant

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

(c) The following criteria shall be considered when determining the grant amount and term that a business will be eligible to receive:

1.-17. (No change.)

18. Whether the business is working cooperatively with a public or non-profit university on research and development;

19.-21. (No change.)

(d)-(h) (No change.)

19:31-10.7 Application procedures

(a) A business shall apply to the Authority for a grant on a form prescribed by the Authority which requires the following:

1.-9. (No change.)

10. A written certification by the chief executive officer, or equivalent officer for North American operations, stating:

i. The amount, date received and provider of any grant received under State law, including the Business Retention and Relocation Assistance Grant Program; and

ii. That the business applying for the program is not in default with any other program administered by the State of New Jersey, and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

11.-21. (No change.)

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

SUBCHAPTER 14. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

19:31-14.2 Definitions

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

. . .

"Capital investment" means expenses that the business incurs following its submission of an application to the Authority pursuant to section 5 of P.L. 1996, c. 25 (*N.J.S.A. 34:1B-116*), but prior to the Capital Investment Completion Date, as shall be defined in the project agreement, for: the site preparation and construction, renovation, improvement, equipping of, or obtaining and installing fixtures and machinery, apparatus or equipment in, a newly constructed, renovated or improved building, structure, facility, or improvement to real property in this State; and obtaining and installing fixtures and machinery, apparatus or equipment in a building, structure, or facility in this State. Provided, however, that "capital investment" shall not include soft costs such as financing and design, furniture or decorative items such as artwork or plants, or office equipment if the office equipment is property with a recovery period of less than five years. The recovery period of any property, for purposes of this definition, shall be determined as of the date such property is first placed in service or use in this State by the business, determined in accordance with *section 168 of the Federal Internal Revenue Code of 1986 (26 U.S.C. § 168).* For the purposes of this definition, cubicles and cubicles that include office equipment shall constitute capital investment. 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, as the case may be.

. . .

"Full-time employee at the qualified business facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time at the site, or who spends any other period of time generally accepted by custom or practice as full-time employment at the site, as determined by the Authority.

. . .

19:31-14.3 Eligibility criteria

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

(d) A business shall demonstrate to the Authority, at the time of application, that the grant of tax credits and resultant retention of full-time jobs and any capital investment will yield a net positive benefit to the State equaling at least 110 percent of the requested tax credit allocation amount during the commitment duration. The net benefit resulting from the retention of full-time jobs and any capital investment by a business that has had grant pre-application meetings with the Authority and has executed contracts relating to the new business location during the period commencing May 1, 2010 until January 6, 2011, shall be calculated from the date of the initial grant pre-application meeting.

(e) (No change.)

19:31-14.6 Application submission requirements

(a) Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Business information shall include the following:

i.-ix. (No change.)

x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for this program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi. (No change.)

Recodify existing xiii. and xiv. as xii. and xiii. (No change in text.)

2.-3. (No change.)

19:31-14.10 Project agreement

(a) All applicants shall execute an approval letter and a project agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of a project agreement.

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

(d) (No change in text.)

19:31-14.11 Tax credit applicable; when effective; when adjusted

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

(c) The total value of the grants of tax credits approved by the Authority pursuant to this program that may be applied against tax liability for any tax period shall not exceed an aggregate annual limit of $ 20,000,000. If the approval of a grant of tax credits pursuant to *N.J.A.C. 19:31-14.8(a)* would exceed the $ 20,000,000 aggregate annual limit, the Authority may award a smaller grant of tax credits, no grants of tax credits or may assign credits to be issued in subsequent years, as necessary to comply with the aggregate limit.

(d) (No change.)

SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

19:31-18.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority ("EDA" or "Authority") to implement the Grow New Jersey Assistance Act, P.L. 2011, c. 149 (the "Act"). The Act establishes the Grow New Jersey Assistance Program ("the Program"), administered by the Authority, to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State. To implement this purpose, and to the extent that funding for the program is available, the program may provide tax credits to eligible businesses which make, acquire or lease a capital investment of at least $ 20,000,000 at a qualified business facility at which it will employ at least 100 full-time employees in retained full-time jobs or create at least 100 new full-time jobs in an industry identified by the EDA as desirable for the State to maintain or attract. In addition, the capital investment and resultant retention and creation of eligible positions will yield a net positive benefit to the State; and, with one exception, 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. Qualified eligible businesses would receive a base tax credit of $ 5,000 per job, per year, for 10 years with no distinction between retained or new jobs. The tax credit term of 10 years includes an annual compliance review for credit issuance. In addition, a bonus credit of up to $ 3,000 per job, per year may be received by an eligible business that, as determined by the Authority: is in an industry identified by the EDA as desirable for the State to maintain or attract; locates or relocates to a location adjacent to, or within walking distance or short-distance shuttle service of, a public transit facility as determined by the Authority; creates jobs using full-time employees whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the salary of the average worker employed in this State; or is negatively impacted by the approval of a "qualified business facility," under the Urban Transit Hub Tax Credit program. Businesses may apply for the tax credits by July 1, 2014 shall submit its documentation indicating that it has met the capital investment employment requirements specified in the project agreement for certification of its credit amount no later than July 28, 2017. The program provides for performance requirement "claw backs" if a business receiving assistance under the program does not meet an 80 percent Statewide job maintenance and 15-year job maintenance (10-year term plus additional five) requirements.

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.

"Act" means the Grow New Jersey Assistance Program Act, P.L. 2011, c. 149.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to *section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563)* or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of *section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414).* A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L. 2007, c. 346 (*N.J.S.A. 34:1B-209*).

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (*N.J.S.A. 34:1B-4* et seq.).

"Board" means the Board of the New Jersey Economic Development Authority.

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2* and *54:18A-3*), section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*) or *N.J.S.A. 17B:23-5*, or is a partnership, an S corporation, or a limited liability corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate.

"Capital investment" in a qualified business facility means expenses incurred after application, but before the earlier of the end of the 10th year after the effective date of P.L. 2011, c. 149 or July 28, 2017, whichever is sooner for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property; and 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, 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 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. A business that acquires or leases a qualified business facility, pursuant to N.J.A.C. 19:31-18.16, shall also be deemed to have acquired the capital investment made or acquired by the seller or landlord.

"Commitment duration" means the tax credit term and five years from the end of the tax credit term specified in the project agreement entered into pursuant to section 4 of P.L. 2011, c. 149 and pursuant to this subchapter.

"Eligible position" means a full-time position retained or created by a business in this State for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c. 146 (*N.J.S.A. 17B:27-54*), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (*N.J.S.A. 17B:27A-17*), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes.

"Full-time employee" means a person employed by the 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 a person 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 an employee 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. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

"Grow New Jersey tax credit transferee" or "tax credit transferee" means if the business transfers its tax credits, pursuant to N.J.A.C. 19:31-18.13, the purchaser of the tax credits, including any subsequent purchasers of the tax credits.

"New full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

"Partnership" means an entity classified as a partnership for Federal income tax purposes.

"Professional employer organization" means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (*N.J.S.A. 34:8-67* et seq.).

"Program" means the Grow New Jersey Assistance Program established pursuant to P.L. 2011, c. 149 and provided in this subchapter.

"Public transit facility" means a rail station, light rail station, or bus hub.

"Qualified business facility" means any building, complex of buildings or structural components of buildings, and all machinery and equipment located within a qualified incentive area, used in connection with the operation of a business.

"Qualified incentive area" means an area designated pursuant to P.L. 1985, c. 398 (*N.J.S.A. 52:18A-196* et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or any urban, regional, or town designated center under the State Development and Redevelopment Plan; an area zoned for development pursuant to a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (*N.J.S.A. 13:17-6*) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section

20 of P.L. 1968, c. 404 (*N.J.S.A. 13:17-21*); 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*); a pinelands regional growth area, a pinelands town management area, a pinelands village, or a military and Federal installation area established pursuant to the Pinelands Comprehensive Management Plan adopted pursuant to P.L. 1979, c. 111 (*N.J.S.A. 13:18A-1* et seq.); an area designated for development, redevelopment, or economic growth within the Highlands Region; Federally owned land approved for closure under any Federal Base Closure and Realignment Commission action; or any property consisting of 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 is 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*).

"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. 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.

"Soft costs" means all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.

"Tax credit term" means the 10-year period of time commencing in the year that the tax credits are issued in which the recipient of a grant of tax credits is eligible to apply the tax credits pursuant to section 5 of P.L. 2011 c. 149.

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 will:

1. Make, acquire, or lease a capital investment totaling not less than $ 20,000,000.

2. Employ not fewer than 100 full-time employees in retained full-time jobs at the qualified business facility, or create at least 100 new full-time jobs at the qualified business facility in an industry identified by the Authority as desirable for the State to maintain or attract; and

3. Demonstrate to the Authority that:

i. The proposed capital investment and the resultant retention and creation of eligible positions will yield a net positive 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); and

ii. 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.

(b) The Authority may determine as eligible for tax credits any business that is required to respond to a request for proposals and to fulfill a contract with the Federal government although the business's chief executive officer or equivalent officer for North American operations has not demonstrated to the Authority that the award of tax credits will be a material factor in the business's decision to retain at least 100 full-time jobs, as otherwise required by (a)3ii above. The Authority may, in its discretion, consider the economic benefit of the retained jobs servicing the contract in conducting the net benefit analysis required by (a)3i above. For the purposes of this subsection, "retained jobs" includes jobs that are at risk of being eliminated. Applications to the Authority for eligibility pursuant to this subsection shall be completed by March 31, 2012. Submission of a proposal to the Federal government prior to Authority approval shall not disqualify a business from the program.

(c) Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of $

20,000,000. If the owner uses space in a qualified business facility, in order to determine the amount of the owner's capital investment that may be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified business facility not leased to tenants and the denominator of which is the total net leaseable area.

(d) In order to determine whether the tenant's leasable area of the qualified business facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of $ 20,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of $ 20,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified business facility.

(e) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(f) The capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.

(g) A business shall be treated as owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

19:31-18.4 Restrictions

(a) Except as set forth in (f) below, a business shall not be allowed Grow New Jersey tax credits if the business participates in a *[Business Employment Incentive Program grant]* ***Business Retention and Relocation Assistance Grant Program grant*** pursuant to P.L. 1996, c. 25 (*N.J.S.A. 34:1B-112* et seq.) or *[Business Retention and Relocation Assistance Grant Program grant]* ***Business Employment Incentive Program grant*** pursuant to P.L. 1996, c. 26 (*N.J.S.A. 34:1B-124* et seq.) relating to the same capital investment and employees that qualify the business for Grow New Jersey tax credits.

(b) Except as set forth in (f) below, a business shall not qualify for a tax credit based upon capital investment and employment of full-time employees, if that capital investment or employment was the basis for which tax credits were provided to the business pursuant to the Urban Transit Hub Tax Credit Act, P.L. 2007, c. 346 (*N.J.S.A. 34:1B-207* et seq.).

(c) Except as set forth in (f) below, a business that is allowed a tax credit shall not be eligible for incentives authorized by the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1* et al.).

(d) 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. 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.

(e) Capital investments in a qualified business facility must be incurred after the effective date of P.L. 2011, c. 149, which is January 5, 2012, and the tax credit must be submitted prior to July 1, 2014 except as set forth at N.J.A.C. 19:31-18.3(b). An approved business must submit its documentation for approval of its credit amount no later than July 28, 2017, except as otherwise set forth at N.J.A.C. 19:31-18.3(b). The credit amount allowed for a tax period ending after July 28, 2017 during which documentation of a business's credit amount remains uncertified by the Authority, shall be forfeited, although credit amounts for the remainder of the 10 years shall remain available to it.

(f) If a business participating in a Business Employment Incentive Program grant or receiving assistance from the Business Retention and Relocation Assistance Grant Program, Urban Transit Hub Tax Credit Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act for the same capital investment and employees, seeks to qualify for Grow New Jersey 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, Urban Transit Hub Tax Credit Program, or Municipal Rehabilitation and Economic Recovery Act, as applicable.

(g) Notwithstanding the provisions of (a) and (b) above, the amount of tax credits available to be applied by the business annually shall not exceed the lesser of one tenth of the capital investment certified by the Authority pursuant to section 6 of P.L. 2011, c. 149 or $ 4,000,000, and the number of new full-time jobs for which a business receives a tax credit shall not exceed the number of retained full-time jobs for which a business receives a tax credit, unless the business qualifies by creating at least 100 new full-time jobs in an industry identified by the Authority as desirable for the State to maintain or attract.

(h) The amount of credit allowed shall not exceed the capital investment made by the business or the capital investment represented by the business's leased area, as certified by the Authority pursuant to (b) above, as having met the capital investment and employment qualifications, subject to any reduction or disqualification as provided by N.J.A.C. 19:31-18.15 and 18.16 as determined by annual review by the Authority. In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

(i) The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business's total lease payments for occupancy of the qualified business facility for the tax period.

19:31-18.5 Application submission requirements

(a) Each application to the Authority made by an owner or tenant shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

i. The name of the business;

ii. The contact information of the business;

iii. The prospective future address of the business (if different);

iv. The type of the business;

v. The principal products and services and three-digit North American Industry Classification System number;

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of employees in New Jersey;

ix. The total list of New Jersey operations;

x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;

xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidizes are tax benefits from programs authorized under P.L. 2004, c. 65; P.L. 1996, c. 26; and P.L. 2002, c. 43;

xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of Treasury by such time and with such information as the Director may require; and

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

2. Project information shall include the following:

i. An overall description of the proposed project;

ii. A description of the capital investments planned by the business, if other than a tenant at the proposed qualified business facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified business facility, and financial information demonstrating ability to complete the capital investment;

iii. The estimated value of the capital investment;

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, equaling 110 percent of the requested tax credit allocation amount, to the State, for the period equal to 75 percent of the useful life of the improvement or 75 percent of the term of the tenant's lease, both not to exceed 20 years, 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 any existing jobs are at risk of leaving the State and that any projected creation of new full-time jobs would not occur but for the provision of tax credits under the program, and that the business's chief executive officer has reviewed the information submitted to the Authority and that the representations contained therein are accurate. 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. A description of how the green building standards to be set forth in the green building manual or addendum prepared by the Department of Community Affairs, pursuant to section 1 of P.L. 2007, c. 132 (*N.J.S.A. 52:27D-130.6*) are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

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;

vii. A project schedule that identifies projected move dates for the proposed qualified business facility;

viii. A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

ix. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants and total net leasable area) and/or details of the purchase or building of the proposed project facility; and, if an application involves intra-State job transfers, a full economic analysis of all locations under consideration by the business, as well as all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist;

x. The total number of anticipated new full-time positions that would be created in New Jersey and occupy the qualified business facility and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity; and

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

3. Employee information shall include the following:

i. A written certification that the employees that are the subject of this application will be full-time employees at the qualified business facility and are subject to withholding as provided in the New Jersey Gross Income Tax Act;

ii. The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified business facility;

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; and

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

(b) Any tenant seeking an approval of tax credits for a qualified business facility so approved will be required to submit the information required pursuant to (a)1, 2iv through ix, and 3 above.

(c) The business applying to the program shall submit an application fee set forth at N.J.A.C. 19:31-18.6(a).

19:31-18.6 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee of $ 5,000, with payment in the form of a check, payable to the "New Jersey Economic Development Authority."

(b) In addition to the application fee above, for a qualified business facility, a business shall pay to the Authority the full amount of direct costs of an analysis by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee of .5 percent of the approved tax credit, not to exceed $ 200,000, shall be charged by the Authority upon the approval of the tax credit.

(d) A non-refundable fee of .5 percent of the tax credit, not to exceed $ 200,000, shall be paid prior to the receipt of the tax credit certificate.

(e) A business 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 investment and employment 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 letter of compliance. The annual review fee shall be $ 2,500 per year.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-18.13 shall pay to the Authority a fee of $ 2,500.

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

(a) A business seeking an approval of tax credits for a qualified business facility shall apply for tax credits prior to July 1, 2014, except as set forth at N.J.A.C. 19:31-18.3(b), and shall submit its documentation indicating that it has met the capital investment and employment requirements specified in the project agreement for certification of its credit amount no later than July 28, 2017.

(b) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be deemed complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project. The review will determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and

3. Provides adequate information for the subject application.

(c) In determining whether the company meets the net economic benefits test, 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 for the period equal to 75 percent of the useful life of the improvement or 75 percent of the term of the tenant's lease, both not to exceed 20 years, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits to be granted and, promptly notify the applicant and the Director of the Division of Taxation of the determination. When considering an application involving intra-State job transfers, after staff's review of the materials submitted by the applicant, testing the validity of financial information and assumptions through the use of computer models and, to the extent necessary, seeking input from third-party consultants, the cost which will be paid by the applicant, the Board shall make a separate determination to verify and confirm by way of making a factual finding by separate vote that the jobs are at risk of leaving the State. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. 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 requirements regarding 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 project agreement, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the Grow New Jersey tax credits.

2. In the approval letter to the business, the Authority shall set a date by which its approval will expire.

(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. 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 six months of the date of application approval, 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 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. The certification with respect to the capital investment shall not be increased regardless of additional capital investment in the qualified business facility, provided, however that in no event will the amount of capital investment exceed the amount of capital investment previously approved by the Board. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The certification with respect to the employees shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional employees located at the qualified business facility, and in no event will the number of employees exceed the number of employees previously approved by the Board. 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 shall be submitted within six months of receipt of a temporary certificate of occupancy. Absent extenuating circumstances and the written approval of the Authority, the certification with respect to employment shall be submitted to the Authority no later than two years after the business's receipt of a temporary certificate of occupancy for the site, but in no event later than July 28, 2017.

4. The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

(g) Once the Authority accepts the certification of the business that it has satisfied the capital investment and employment requirements, if any, of the program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance issued by the Authority.

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

(a) The value of each tax credit for an eligible business shall be equal to $ 5,000 per job, per year for a period of 10 years for each new or retained full-time job determined by the Authority pursuant to N.J.A.C. 19:31-18.3 to be located at the qualified business facility.

(b) In addition to any grant of tax credits determined pursuant to (a) above, a bonus award of up to an additional $ 3,000 per job, per year of the amount of the original tax credits may be made to any eligible business as determined by the Authority. In making a bonus award to an eligible business, the Authority shall consider the following factors, such that whether the business:

1. Is an industry identified by the Authority as desirable for the State to maintain or attract;

2. Locates or relocates to a location within a qualified incentive area adjacent to, or within one-half mile walking distance or active short-distance shuttle service of, a public transit facility, as determined by the Authority;

3. Creates jobs using full-time employees in eligible positions whose annual salaries, according to the Department of Labor and Workforce Development, are greater than the average full-time salary in this State; or

4. Is locating to a project site that is or 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*).

(c) Notwithstanding the provisions of (a) and (b) above, the amount of tax credits available to be applied by the business annually shall not exceed the lesser of one-tenth of the capital investment certified by the Authority pursuant to P.L. 2011, c. 149 or $ 4,000,000 and the number of new full-time jobs for which a business receives a tax credit shall not exceed the number of retained full-time jobs for which a business receives a tax credit, unless the business qualifies by creating at least 100 new full-time jobs in an industry identified by the Authority as desirable for the State to maintain or attract.

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

(a) For the 10 consecutive years following the notification pursuant to N.J.A.C. 19:31-18.7(g), a business may apply 10 percent of the total credit amount per each tax accounting or privilege period, subject to the provisions of the Act and this subchapter.

(b) The business may apply the credit against the tax liability otherwise due 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*. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the program shall be applied on the basis of the allocation(s) submitted pursuant to the application, provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the business facility or employees at the business facility during the tax period for which the tax credits are issued.

(c) The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter, provided that the value of all credits approved by the Authority against tax liabilities pursuant to P.L. 2011, c. 149, in any fiscal year shall not exceed $ 150,000,000 and the combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 (*N.J.S.A. 34:1B-207* et seq.) and P.L. 2011, c. 149 shall not exceed $ 1,500,000,000.

19:31-18.10 Project agreement

(a) All approved applicants shall execute an approval letter and a project agreement with the Authority to establish the terms and the conditions of the grant of tax credits. The approval letter will be subject to conditions subsequent that must be met in order to retain the award of tax credits. Such conditions shall include, but not be limited to, the execution of a project agreement.

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

1. A detailed description of the proposed project which will result in job creation or retention, and the number of full-time employees;

2. The term of the tax credits, and the first year for which the tax credits may be claimed;

3. A requirement that the applicant maintain the project at a location in New Jersey for at least 1.5 times the number of years of the term of the tax credits, with at least 100 full-time employees or 80 percent of the number of new and retained jobs specified in the project agreement, as required by section 6 of P.L. 2011, c. 149, and a provision to permit the Authority to recapture all or part of any tax credit awarded, at its discretion, if the business does not remain at the site for the commitment *[period]* ***duration*** with at least 80 percent of the number of full-time employees certified pursuant to N.J.A.C. 19:31-18.7(f), reduces the total number of full-time employees below 100, or during the commitment *[period]* ***duration*** 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 State workforce in the last tax period prior to the credit amount approval. The Authority may pursue recapture at any time during the commitment *[period]* ***duration***, including during any period in the tax credit term in which the tax credits are forfeited pursuant to N.J.A.C. 19:31-18.15;

4. Personnel information that will enable the Authority to administer the program;

5. A requirement that a certification by a certified public accountant relating to the amount of eligible capital investment, the number of employees at the time of submission of the certification and, if applicable, the amount of the annual lease payment with supporting evidence satisfactory to the Authority shall be submitted by the business or, in the case

of a tenant, the landlord prior to the commencement of the tax credit term. Provided that such certification and supporting evidence are satisfactory to the Authority, the tax credit certificate will be issued within 90 days of submission;

6. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

7. Certifications by the business, including the following: the State's financial support will yield a net positive benefit to the State; and, eligibility for the program and participation in the program as a material factor in the business's decision not to relocate outside of New Jersey and to relocate the project in the State;

8. Requirements on maintaining the existence of the business and not relocating the project;

9. Annual reporting requirements for the number of full-time employees for which the tax credits are to be made;

10. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

11. Audit of the payroll records, as deemed necessary by the Authority;

12. Indemnification and insurance requirements;

13. Limitations on the grant of tax credits;

14. A provision which permits the Authority to amend the agreement;

15. Default and remedies; and

16. Reporting requirements.

(c) The project agreement shall further provide that the Authority is not liable in damages for the issuance or use of the tax credits; and that there is no guarantee that legislation will not be enacted that would cause further changes to P.L. 2011, c. 149.

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 a certified public accountant 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 full-time positions employed at the qualified business facility, the number pertaining to the business's Statewide employment, 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; and

2. A certification indicating whether or not the business is aware of any condition, event, or act which would cause the business not to be in compliance with the approval, the Act, or this subchapter.

(b) The tax credit certificate may provide for additional reporting requirements.

(c) Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate will be valid without the letter of compliance issued for the relevant tax privilege period. The letter of compliance will indicate whether the business or the tax credit holder may take all or a portion of the credits allocable to the tax privilege period.

19:31-18.12 Tax credit certificate

(a) The tax credit certificate shall set forth the following terms:

1. The starting date of the tax period and the commitment duration;

2. The amount of the tax credits;

3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;

4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and or capital investment requirements of the program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period the proposed allocation of tax credits by the business;

5. Events that would trigger reduction and forfeiture of tax credit amounts; and

6. Reporting requirements and the requirement for an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200.

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, 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 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. The total amount transferred for any single tax period shall be at least $ 1,000,000 in tax credits. 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. 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.

(c) In the event that the business is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners which has previously been submitted to the Director of the Division of Taxation in the Department of Treasury pursuant to N.J.A.C. 19:31-18.5(a)1xiv.

(d) Following an initial transfer of tax credits by a business that originally applied for and was allowed the credits, transferees and subsequent transferees of such credits may also make subsequent transfers to 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 transferee may, upon notice to the Director of the Division of Taxation in the Department of Treasury and the Authority, effectuate a subsequent tax credit transfer, in the same amount and for the same tax periods set forth in such transferee's tax credit transfer certificate, in lieu of the transferee being allowed any amount of the credits against the tax liability of the transferee. Such subsequent transfer shall occur by means of endorsement of the tax credit transfer certificate to the subsequent transferee. The provisions of (b) and (c) above shall not apply to such subsequent transfers.

(e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

19:31-18.14 Cap on total credits

The value of all credits approved by the Authority pursuant to P.L. 2011, c. 149 shall not exceed $ 200,000,000. Based on application and allocation activity and if sufficient credits are available, the Authority may direct that the $ 200,000,000 cap be exceeded if the Board determines the credits to be reasonable, justifiable, and appropriate; provided, however, the combined value of all credits approved by the Authority pursuant to P.L. 2007, c. 346 and P.L. 2010, c. 57 (*N.J.S.A. 34:1B-207* et seq.) shall not exceed $ 1,500,000,000.

19:31-18.15 Reduction and forfeiture of tax credits

(a) If, in any tax period during the tax credit term, 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.

(b) If, in any tax period during the tax credit term and five years thereafter, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 100 full-time employees or 80 percent of the number of new and retained full-time jobs specified in the project agreement, 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 100.

(c) The restrictions set forth at N.J.A.C. 19:31-18.4(g) through (i) shall also apply on an annual basis.

(d) The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business's total lease payments for occupancy of the qualified business facility for the tax period.

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

(a) If the qualified business facility is sold in whole or in part during the 10-year 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 tenants shall remain unaffected.

(b) If a tenant subleases its tenancy in whole or in part during the 10-year 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.

19:31-18.17 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.