

Appendix A: Offshore Wind Economic Development Tax Credit Rules

**DRAFT**

**OTHER AGENCIES**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**Authority Assistance Programs**

**Offshore Wind Economic Development Tax Credit Program**

**Proposed Amendments: N.J.A.C. 19:31-20.1 through 20.7, 20.9, 20.10 and 20.12 through 15**

**Proposed Repeal: N.J.A.C. 19:31-20.8**

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2020, c. 156.

Calendar Referenced: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-\_\_\_\_\_.

Submit written comment by \_\_\_\_\_, 2021, to:

New Jersey Economic Development Authority  
P.O. Box 990  
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The agency proposal follows:

**Summary**

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the Offshore Wind Economic Development Tax Credit Program to implement certain statutory revisions pursuant to section 109 of the recently enacted New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156.

Specifically, the primary changes enacted by the law include: 1) adjusting the period over which tax credits are earned and paid out; 2) revising the minimum number of jobs required for the program by allowing the Authority to create a pro-rated formula to award credits to projects that create between 150-300 new full-time jobs and allowing for a project to ramp-up jobs over time; and 3) expanding the eligible geography for the program from seven counties to the entire State.

In addition to providing clarity on how to address the above statutory changes, the proposed rules also include policy updates on eligible costs, calculating net benefits test parameters, and fees.

The following summarizes the amendments proposed for the rules implementing the Offshore Wind Economic Development Tax Credit Program:

N.J.A.C. 19:31-20.1 Applicability and scope – Deletes the term “wind energy zone,” and adds the word “State” to reflect the expansion of geographic eligibility for tax credits related to qualified wind energy facilities in New Jersey.

N.J.A.C. 19:31-20.2 Definitions – The Authority is making extensive revisions to bring definitions into line with the Act and the EDA’s procedures for making awards, and to add clarity.

The definition of “approval letter” is revised to delete the phrase “10-year” pertaining to the length of the eligibility period; insert the phrases, “the process by which affiliates contributing employment or capital investment may be added,” “the requirement for the project site to remain a qualified wind energy facility”, “events that would trigger reduction and forfeiture of tax credits,” and “tax clearance certificate requirements.” Additional changes to “approval letter” would add a provision “to permit audit(s) of the business’s payroll records, and any other evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-20.7(f), the annual reports pursuant to N.J.A.C. 19:31-20.14, from time to time, as the Authority deems necessary.” These changes bring the rule language into conformance with current usage. The 10-year period was revised by the Act, and so is no longer relevant.

The definition of “capital investment” also is revised to add language specifying that “soft costs shall not exceed 20 percent of all capital investment,” to conform with Authority policy and other incentive programs. In addition to conform with the Act, the definition of “eligibility period” is amended to delete the phrase “10-year” and add the phrase “five-year,” as the period in which a business may claim an offshore wind economic development tax credit.

A new definition of “commitment period,” which is the four-year period beginning on the same date as the eligibility period,” has been added because the statute states that the credit is earned over a period of four years.

The definition of “capital investment” also is revised to add language specifying that “soft costs shall not exceed 20 percent of all capital investment,” to conform with Authority policy and other incentive programs. In addition to conform with the Act, the definition of “eligibility period” is amended to delete the phrase “10-year” and add the phrase “five-year,” as the period in which a business may claim an offshore wind economic development tax credit.

Three sets of amendments relate to employees. The portion of the definition of “full-time employee” which states that “full-time employee” shall not include residents of another state whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., “unless that state has entered into a reciprocity agreement with the State of New Jersey,” is

amended to delete the provision “provided that any employee whose work is provided pursuant to a collective bargaining agreement with a business in the wind energy zone may be included.” The change was made because the language was deleted from the prior law by the Act. The definition of “full-time employee at the qualified wind energy facility” would be revised to delete the terms “in New Jersey” and add the terms “at the facility” to be consistent with the programmatic requirements as it pertains to the eligibility requirements for capital investment in the qualified wind facilities. The third change adds a new definition of “minimum number of new, full-time employees,” which requires a graduated number starting with 100 in the first year, rising to 300 in the fourth year. The changes were required to conform with the Act.

The definition of “letter of compliance” has been amended to change the related citation from N.J.A.C. 19:31-20.14(d) to 19:31-20.13(e). The definition of “project” would be altered by deleting the phrase “within a designated wind energy zone,” reflecting its elimination from the prior statute by the Act. Amendments also revise the definition of “qualified offshore wind project” to include “which is a wind turbine electricity generation facility in the Atlantic Ocean and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the New Jersey Board of Public Utilities, or any successor entity, pursuant to section 3 of P.L. 2010, c. 57 (N.J.S.A. 48:3-87.1).” The addition is identical to the language in N.J.S.A. 48:3-51, and is intended for ease of reference.

A new definition of “prorated minimum number of new, full-time employees” for projects that are not expected to result in employment of 300 new, full-time employees, has been added. This definition addresses the requirement in the Act that businesses with between 150 and 300 new, full-time jobs may receive an award based on a pro-rated formula developed by the Authority.

A new definition of “prorated annual minimum number of new, full-time employees” for projects that are not expected to result in employment of 300 new, full-time employees, has been added. This definition builds upon the new definition of “prorated minimum number of new, full-time employees” and details what the annual obligations shall be as the project ramps up.

The definition of “qualified wind energy facility” has been amended to delete the phrase “and that are located in a wind energy zone because the Act eliminated that requirement. The definition adds that “to the extent a qualified wind energy facility requires improvements to existing non-wind facilities, only the improvements shall be part of the qualified wind energy facility.” This amendment was made to clarify that the qualified wind facility shall not include facilities that existed prior to the construction of the qualified wind facility, such as a quay, but may include improvements to an existing facility to accommodate the qualified wind facility, such as improvements that strengthen the capacity of a quay.

The definition of “soft costs” would be changed by deleting the existing provision “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.” That phrase is replaced with “all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and

freight and shipping delivery but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs”. The change is intended to clarify what the Authority will not allow in its evaluation of soft costs that may be included in determining investment size and potential tax credit awards.

N.J.A.C. 19:31-20.3 Eligibility criteria – N.J.A.C. 19:31-20.3(a) deletes the phrase “to be considered” regarding eligibility for an offshore wind economic development tax credit for a qualified wind energy facility in order to delete excess verbiage.

N.J.A.C. 19:31-20.3(a)1i revises the term “indicate” to “indicates.” N.J.A.C. 19:31-20.3(a)1ii deletes “300” and replaces “300” with “the minimum number of” as pertains to the requirement to employ certain new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement and adds “except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award,” in order to comply with the Act.

N.J.A.C. 19:31-20.3(a)2i deletes the terms “as calculated” pertaining to certain capital investments in the qualified wind energy facility in order to delete excess verbiage N.J.A.C. 19:31-20.3(a)2ii inserts the terms “qualified wind energy” before “facility” for clarity’s sake. N.J.A.C. 19:31-20.3(a)2iii deletes the terms “at least 300,” replacing them with “the minimum number of” as pertains to the employment requirement of new full-time employees for a business that is a tenant in a qualified wind energy facility. in order to comply with the Act. New language adds “except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award” in order to comply with the Act.

N.J.A.C. 19:31-20.3(a)2iv, which states that a business shall lease a qualified wind energy facility is amended to allow the business to own the facility. In addition, the language on how long the business must lease or own the qualified facility is amended to delete “10 years” while adding “the commitment period.” The changes bring the sentence in line with the Act.

At N.J.A.C. 19:31-20.3(a)2v, the term “economic” is added in reference to the net positive economic benefit and “wind” in reference to the qualified wind energy facility for clarity. Similarly, at N.J.A.C. 19:31-20.3(c) the term “economic” as pertains to net positive benefit is added. Amendments also revise the time required for calculating net positive economic benefit by deleting “10 years” and adding “the commitment period,” reflecting the language of the Act. Language making clear that the award of tax credits is subject to the recoupment provisions included in the approval letter, has been added for clarity. In addition, new language has been added to state that “the letter of intent shall also include a certification from the chief executive officer, or equivalent officer for North American operations, of the business that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury” and that “the Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.” These changes conform the program to other incentive programs and emphasize the Authority’s policies that: i) any grantee certification is made upon penalty of perjury and ii) the letter of intent is subject to the Open Public Records Act.

At N.J.A.C. 19:31-20.3(f), the word “or” is added to clarify that a business shall be treated as owner of a qualified wind energy facility if it holds title to the facility or if it ground leases the land underlying the facility for at least 50 years.

N.J.A.C. 19:31-20.4 Restrictions – At both N.J.A.C. 19:31-20.4(a) and (b), the term “allowed” is deleted and the word “awarded” added for clarity in regard to both instances in which offshore wind economic development tax credits are not available, and to the prohibition on receiving both a tax credit and certain other incentives authorized by the “Municipal Rehabilitation and Economic Recovery Act,” P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

N.J.A.C. 19:31-20.5 Application submission requirements – N.J.A.C. 19:31-20.5(a)1xiv, which pertains to the allocation of certain revenue realized from the sale of the tax credits by a partnership, is deleted because it repeats N.J.A.C. 19:31-20.9(e). In addition at N.J.A.C. 19:31-20.5(a)2ix, which addresses required project information, an amendment replaces New Jersey “positions” with “employees” in relation to what must be counted, and adds language stating that the count is for “each of the years of the commitment period” of the award and adds “that would” occupy the qualified wind energy facility. These changes bring the provision into conformance with the Act.

N.J.A.C. 19:31-20.6 Application and servicing fees – The proposed amendments revise the subsection as follows. At N.J.A.C. 19:31-20.6(a) the terms “of \$5,000 with payment in the form of a check, payable to the “New Jersey Economic Development Authority,” would be deleted, as various means of payment other than by check are available, and the Authority is moving away from a single fee. New language establishes a fee for projects with a total of 150 to 299 new full-time employees listed in the application, in the amount of \$10,000, and a fee for projects with a total of 300 or more new full-time employees listed in the application, in the amount of \$15,000.

N.J.A.C. 19:31-20.6(b) deletes the terms “[i]n addition to the application fee in (a) above” as all other fees in the subsection are in addition to the application fee.

N.J.A.C. 19:31-20.6(c) deletes the existing fee of “0.5 percent of the tax credit, not to exceed \$500,000” which shall be paid at the time of execution of the non-binding letter of intent pursuant to N.J.A.C. 19:31-20.3(c), which is replaced with a new fee for projects with a total of 150 to 299 new full-time employees proposed for consideration by the Board, of \$150,000, and a new fee for projects with a total of 300 or more new full-time employees proposed for consideration by the Board, of \$300,000.

N.J.A.C. 19:31-20.6(d) deletes the amount of the existing fee of 0.5 percent of the tax credit, not to exceed \$500,000 paid prior to the receipt of the tax credit certificate, and establishes a new fee for projects with a total of 150 to 299 new full-time employees approved by the Board, of \$150,000, and a new fee for projects with a total of 300 or more new full-time employees approved by the Board, of \$300,000;

N.J.A.C. 19:31-20.6(e) clarifies that the annual servicing fee shall be paid to the Authority for the duration of the “commitment” rather than the “eligibility” period and deletes the existing fee. New language creates a new fee for projects with a total of 150 to 299 new full-

time employees approved by the Board, of \$50,000 per year, and a new fee for projects with a total of 300 or more new full-time employees approved by the Board, of \$75,000 per year.

N.J.A.C. 19:31-20.6(f) corrects a citation in the subsection and deletes the amount of the existing fee for a tax credit transfer certification or permission to pledge a tax credit transfer certificate, which is “\$5,000 and \$2,500 for each additional request made annually.” Amendments add a new fee for each project with a total of 150 to 299 new full-time employees approved by the Board, of \$10,000 and \$5,000 for each additional request made annually, and a new fee for each project with a total of 300 or more new full-time employees approved by the Board, of \$15,000 and \$7,500 for each additional request made annually.

The existing language at N.J.A.C. 19:31-20.6(g) which concerns the fee that a business shall pay for certain administrative and major changes, additions, or modifications to the tax credit such as those requiring extensive staff time and Board approval is deleted in its entirety. New N.J.A.C. 19:31-20.6(g) creates a nonrefundable fee for “each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee” for “any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval” at two different levels. For “each project with a total of 150 to 299 new full-time employees approved by the Board,” the fee shall be \$5,000 for each request for any administrative changes, additions, or modifications and \$15,000 for any major changes, additions, or modifications, and for “each project with a total of 300 or more new full-time employees approved by the Board,” \$7,500 for each request for any administrative changes, additions, or modifications, and \$25,000 for any major changes, additions, or modifications.

Amendments at N.J.A.C. 19:31-20.6(h) delete the existing \$5,000 fee for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and the employment requirements and the existing \$10,000 fee for any subsequent six-month extension. Added language establishes new fees for each project with a total of 150 to 299 new full-time employees approved by the Board, of \$10,000 for the first six-month extension and \$15,000 for each subsequent six-month extension, and for each project with a total of 300 or more new full-time employees approved by the Board, \$15,000 for the first six-month extension and \$25,000 for each subsequent six-month extension.

Additional amendments, under N.J.A.C. 19:31-20.6(i), establish a new non-refundable fee for certain terminations, i.e., for each project with a total of 150 to 299 new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$5,000 and \$15,000 for terminations that require extensive staff time and Board approval, and for each project with 300 or more new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$7,500 and \$25,000 for terminations that require extensive staff time and Board approval.

N.J.A.C. 19:31-20.7 Review of allocation and certification of project completion – N.J.A.C. 19:31-20.7(a) revises the date by which a business seeking an approval of tax credits must apply for tax credits from July 1, 2024 (which is deleted) to July 1, 2025 (which is added). Further, this subsection revises the date by which a business shall submit its documentation for

approval of its tax credit amount from July 1, 2027 (which is deleted) to July 1, 2028 (which is added).

N.J.A.C. 19:31-20.7(c) inserts the term “positive” pertaining to the net economic benefits test for clarity, and adds language stating that the Authority’s consideration as to whether the company meets the test shall include “direct benefits to the State.” Amendments also delete the terms “and State” pertaining to taxes “that may benefit the State”, and deletes the provision as “paid directly by the business, property taxes, or payment in lieu of taxes paid directly by the business, and taxes paid directly by new employees.” Additionally, the term “may” is deleted and replaced with “shall” pertaining to the Authority’s consideration as to whether the company meets the net positive economic benefits test. New language is added to make clear that the Authority shall consider indirect benefits in evaluating the project. Related amendments delete the language stating the Authority “at its discretion, (may evaluate) local and State taxes generated indirectly by the business, property taxes or payment in lieu of taxes generated indirectly by the business, taxes generated indirectly by new employees, or peripheral economic growth.” Further the phrase “wind energy zone” is deleted, and “New Jersey” added to reflect the changes to prior law in the Act. New language states that “the Authority will not consider indirect benefits if a business is including new full-time employees resulting from an equipment supply coordination agreement in the calculation of its new full time employees”, regarding the relocation of the business because such employees are traditionally considered part of the indirect benefit and the Authority seeks to avoid double counting the indirect benefit. An additional amendment deletes the provision that the Authority may increase the net economic benefit, at its discretion, if the business demonstrates to the Authority's satisfaction commitment(s) to contribute to non-financial community objectives. New language provides that the Authority may also consider “induced benefits derived from construction,” reflecting Authority policy that recognizes the immediate peripheral benefits created during construction. The provision that the determination “shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority” is deleted.

N.J.A.C. 19:20.7(d) is modified to provide more specificity as to when prevailing wage and affirmative action apply to the project. Prevailing wage applies to all eligible capital investment, as all such capital investment is now included when determining whether the project yields a net positive economic benefit. Affirmative action applies to projects commencing with the effectivity of these rule amendments.

N.J.A.C. 19:31-20.7(d)2 deletes the term “notice” which is replaced with “letter” pertaining to the form for notice of approval to the business, reflecting current practice at the Authority. N.J.A.C. 19:31-20.7(e) revises the period in which each business shall submit certain progress information from six to twelve months and adds “except that projects consisting of new construction shall have twenty-four months” in order to reflect the time required to achieve the stated milestones. N.J.A.C. 19:31-20.7(f) clarifies that the certification of the capital investment and employment shall be from a “qualified independent” certified public accountant which reflects the Authority’s decision to qualify certain public accountants, as further explained in N.J.A.C. 19:31-20.7(f)(4). In addition, new language makes clear that the Authority may require other certifications concerning completion of all project “eligibility requirements” if, as it

administers the program, the Authority determines that certain information requires additional certifications.

N.J.A.C. 19:31-20.7(f)1 deletes the terms “tax credits” and “incentive grant,” which are replaced with the addition of “capital investment”, “application”, and “award” respectively, reflecting the Act and current Authority practice.

N.J.A.C. 19:31-20.7(f)2 clarifies that the certification with respect to employment shall also apply to employees employed through an equipment supply coordination agreement in addition to those employed at the qualified wind energy facility. The term “new full-time positions” is deleted. The word “jobs” in reference to the number of new full-time jobs, is deleted, replaced with the addition of the word “employees”, bringing it into conformance with usage in the Act. The terms “incentive grant” and “grant” are deleted, replaced with the addition of “application” and “award” respectively. Similarly, the phrase “minimum eligibility requirement” has been deleted, and the phrase “number of new full-time employees for the first year of the award” added, in the sentence pertaining to the certification of employment and the loss of tax credit eligibility for failure to meet the terms of the award, to make it clear that this sentence applies to both applications for 300 new full-time employees, which the Act defines as the “minimum” number of new, full-time employees and applications with less than 300 new full-time employees and at least 150 new full-time employees.

Proposed new N.J.A.C. 19:31-20.7(f)4 provides that the Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants from which the business may select which is consistent with Authority policy and other incentive programs. Recodified N.J.A.C. 19:31-20.7(f)5 revises the date by which the employment certification shall be submitted from July 1, 2027 to July 1, 2028, in conformance with the Act. N.J.A.C. 19:31-20.7(g) adds “and any other eligibility requirements” to the conditions listed for certification upon completion of the capital investment and employment requirements to be consistent with N.J.A.C. 19:31-20.7 (f) (4) and deletes and replaces “other” with “all” pertaining to the necessary requirements for the program for clarity.

N.J.A.C. 19:31-20.9 Tax credit amount; application and allocation of the tax credit – N.J.A.C. 19:31-20.9(a) is proposed for numerous amendments, all of which update the provisions to bring them into conformance with the Act. Specifically, the term “allowed” is deleted and replaced with “awarded” pertaining to the amount of the credit pursuant to the Program. Additionally, the subchapter is revised to apply to projects creating 300 or more new, full-time employees during the eligibility period, clarify that the amount of the credit shall be equal to the capital investment “previously approved by the Board,” and delete the term “one-tenth,” replacing it with “one-fifth” as pertains to the rate of the total amount of the business’ credit for each tax accounting or privilege period of the business. Other amendments add “and any other eligibility requirements” to those first approved by the Authority, and provide that the amount of the credit allowed pursuant to the Program for projects creating less than 300 new, full-time employees and at least 150 new full-time employees shall, except as otherwise provided, be equal to certain percentages of the capital investment corresponding to the prorated minimum number of new full-time employees as proposed by the business. For example, a project proposing a \$100 million in capital investment and creating 300 or more new, full-time employees would qualify for a total tax-credit award of \$100 million. Conversely, a project

making the same \$100 million capital investment but creating only 150 new, full-time employees would qualify for a total tax-credit award of \$50 million. Furthermore, this same capital investment but where the project was subsequently creating either 200 or 250 new, full-time employees would result in total tax-credit awards of \$65 million and \$85 million respectively.

N.J.A.C. 19:20.9(b)1 deletes the term “business” replacing it with the addition of the term “wind energy,” clarifying that the provision relates to the qualified wind energy facility. Similarly, N.J.A.C. 19:20.9(c) inserts the term “qualified” in the reference to the wind energy facility and deletes and replaces the term “business” with “qualified wind energy” in the reference to the qualified wind energy facility. N.J.A.C. 19:20.9(d) deletes and replaces the term “allowed” with “awarded” as pertains to the amount of credit for a tax period to certain business that is a tenant in a qualified business facility; and, N.J.A.C. 19:31-20.9(e) deletes and replaces the term “allowed” with “awarded” as pertains to certain restriction on a business that is a partnership from receiving a credit under the Program. These changes bring the rule language into conformance with current usage and the Act.

N.J.A.C. 19:31-20.10 Application for tax credit transfer certificate – The proposed amendments, at N.J.A.C. 19:20.10(a), delete the term “allowed”, and the term “awarded” added in the provision that pertains to application for a tax credit transfer certificate and the sale or assignment of any amount of a tax credit transfer certificate as provided for in each subsection, for the same reasons as in the other places the terms have been replaced. At N.J.A.C. 19:20.10(f), language is added indicating that the Authority will make publicly available information relating to the sale of tax credits including the seller and the buyer and any consideration provided to the seller.

N.J.A.C. 19:31-20.12 Reduction and forfeiture of tax credits – N.J.A.C. 19:31-20.12(a) revises the subsection to provide that the provisions apply in any tax period “during the commitment period.” N.J.A.C. 19:31-20.12(b) makes the same amendment. In addition, amendments to the subsection delete “300,” adding in its place “with “the minimum number of new full-time employees or prorated minimum number of new full time employees, as applicable” with the regard to forfeiture of credits for a tax period or periods. The same amendment is made to the provision pertaining to the aggregate number of new full-time employees at the qualified wind energy facility and resulting from an equipment supply coordination agreements that return the project to compliance with the applicable minimum number, which “has been reviewed and approved by the Authority for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed. The changes update the language to comply with the Act. The terms “but shall not include any employees resulting from an equipment supply coordination agreement” is added to this section to make clear that a company with which the recipient has an equipment supply coordination agreement for purposes of meeting the minimum number of new full-time employees or prorated minimum number of new full time employees is not considered an affiliate.

N.J.A.C. 19:31-20.12(d) deletes the phrase “require repayment of,” and adds “recapture” and “or a portion of” to clarify that tax credits received by the business as a result of the business providing willfully false or misleading information or failing to submit relevant information in the application will be recaptured in whole or in part by the Authority.

N.J.A.C. 19:31-20.12(e) clarifies that the subsection applies to projects with a commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the commitment period. It does so by deleting the term “eligibility” and adding “commitment” period instead. It also deletes the provision “that was included in the calculation of the net positive economic benefit pursuant to N.J.A.C. 19:31-20.3(c)” which is replaced with “based on a recoupment schedule in the approval letter.” The change is based on current Authority practice. Other new language makes clear that a business will have twelve months to retore the new full-time maintained jobs to 300 or the applicable prorated minimum number of new full-time employees before the Authority may recoup any amount of tax credits.

N.J.A.C. 19:31-20.13 Effect of sale or lease of qualified facilities – N.J.A.C. 19:31-20.13(a) and N.J.A.C. 19:31-20.13(a)2 have been revised to clarify that any disposition of property, including leasing, may lead to forfeiture of tax credits. Additionally, a provision has been added to N.J.A.C. 19:31-20.13(a)2 to add three exceptions from forfeiture arising from the lease or sublease of a whole or part of the qualified wind energy facility. These exceptions are: if the lease or sublease is to a tenant that is a party to an equipment supply coordination agreement; the total amount leased or subleased to other tenants is five percent or less of the qualified wind energy facility; or the lease or sublease is to a tenant that also uses the premises to support offshore wind.

N.J.A.C. 19:31-20.14 Annual review reporting requirements; letter of compliance – N.J.A.C. 19:31-20.14(a) deletes the requirement that the annual review report shall be furnished by a “certified by a certified public accountant.”

N.J.A.C. 19:31-20.14(a)1: 1. Adds language to make clear that a “certification may be made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-20.7(f)4.” It also deletes and replaces the terms “position employed” and “jobs” with “employees.” An additional amendment clarifies that the certification with respect to employment shall also apply to employees employed through an equipment supply coordination agreement in addition to those employed at the qualified wind energy facility. Other changes insert the term “agreement” pertaining to an equipment supply coordination agreement; delete the term “independent” as relates to the certification “pursuant to N.J.A.C. 19:31-20.7(f);” delete the term “grant,” replacing it with the term “award;” and delete and replace the terms “apply” with “take” and “one-tenth” with “one-fifth” as relates to the total tax credit amount for the business as approved by the Authority. In addition, amendments delete the provision that “in the event the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year or the independent certification if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly”. At N.J.A.C. 19:31-20.14(a)2, the term “letter” pertaining to the approval referenced in the paragraph has been added, and at N.J.A.C. 19:31-20.14(c) the term “tax credit certificate” has been deleted, and the term “approval letter” added in its place.

N.J.A.C. 19:31-20.15 Appeals – N.J.A.C. 19:31-20.15(a) deletes the phrase “on applications” as relates to the Board’s action; and N.J.A.C. 19:31-20.15(b) inserts the term “effective” pertaining to the date of the Board’s action based on current Authority policy.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1-30-3.3(a)5.

### **Social Impact**

The proposed amendments and repeal, which expand the financial assistance available under the Offshore Wind Economic Development Tax Credit Program and thereby spur private capital investment and employment growth in major, land-based offshore wind industry projects, is anticipated to have a positive social impact. The types of facilities, namely manufacturing, that the tax credit would incentivize have the potential to reinvigorate their local economies, particularly areas that have experienced historic disinvestment since the decline of manufacturing in the state. Likewise, the high-quality, long-term jobs – which are mostly blue collar – would support economic mobility and security for each facility’s workers. Thus, the Authority anticipates the tax credit and the resulting job creation to have a positive social impact.

### **Economic Impact**

Under the Offshore Wind Economic Development Tax Credit Program, the NJEDA is authorized to approve up to \$100 million, except as may be increased by the Authority, in tax credits for the development of certain qualified wind energy facilities; therefore, the proposed amendments and repeal are intended to have a positive economic impact in New Jersey. The program is carefully targeted to attract major projects that will spur job creation in the short-term, and yield a net positive economic benefit to the State, while paving the way for long-term economic growth by anchoring a broad offshore wind manufacturing supply chain in New Jersey, as well as supporting the use of clean, sustainable energy. Due to the capital investment and job creation requirements, the tax credit will likely incentivize manufacturing facilities including offshore wind nacelles, blades, foundations, towers, and transition pieces manufacturing. The proposed rules require that only projects that will provide the State a positive long-term economic benefit can participate in the program. This means that while taxpayers may provide short-term tax credits to attract a project to the State, that project is committed to operating in the state long enough to pay back two to four times the value of those credits via State payroll, sales, and other taxes. Additionally, the fact that jobs must be created and capital improvements completed before tax credits are provided to approved businesses, along with robust recapture and repayment provisions if the businesses fail to meet their long-term obligations, ensure substantial economic protections with the program.

### **Federal Standards Statement**

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

### **Jobs Impact**

The proposed amendments and repeal will result in stimulating the creation of a significant amount of new private sector jobs and/or maintaining private sector jobs in New Jersey. The tax credit's emphasis on jobs, with the ultimate goal of at least 150 jobs for a qualifying facility, is critical to attracting companies that not only make large capital investments, but will also create high-quality, long-term jobs. These jobs, mostly manufacturing and assembly, tend to not require college degrees with much of the training being learned on the job or through apprenticeships such as machining and welding; thus, these high-quality jobs are more accessible and promote economic mobility. Offshore wind facilities that employ at least 150 workers tend to be key suppliers of offshore wind nacelles, blades, foundations, and substation manufacturing. Supply chain partners often follow these investments and locate their facilities nearby to capitalize on cost efficiencies. Hence, it is likely that the job benefits of this tax credit could extend beyond the applicant and its facility to lower-tier facilities that may not need or qualify for the tax credit to locate in New Jersey.

### **Agriculture Industry Impact**

The proposed amendments and repeal will have no impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

The proposed amendments and repeal will impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. should the business look to apply for the revised tax credits, however, any costs will be minimal and fully offset by the amount of financial assistance received. In addition, these amendments to the rules provide new features that allow approved applicants to use third-party, independent certified public accounting firms qualified by the Authority to support the tax credit certification process. This change is meant to improve regulatory compliance processes for all businesses and the Authority. The rules also provide exceptions to the use of Authority-qualified independent certified public accounting firms if the business demonstrates certain extenuating circumstances including, but not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business, or the business is a small business.

### **Housing Affordability Impact Analysis**

The proposed amendments and repeal will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State.

### **Smart Growth Development Impact Analysis**

The proposed amendments and repeal will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The proposed amendments and repeal will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

**Full text** of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:31-20.8.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM

##### 19:31-20.1 Applicability and scope

This subchapter is promulgated by the New Jersey Economic Development Authority (the Authority) to implement section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended (the Act), which authorizes the Authority to approve up to \$100 million, except as may be increased by the Authority, in tax credits for the development of qualified wind energy facilities in [wind energy zones] **the State**.

##### 19:31-20.2 Definitions

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

...

“Approval letter” means the letter sent by the Authority that sets forth the conditions to maintain the approval and to receive the tax credit, the forecasted schedule for completion and occupancy of the project, the date the [10-year] eligibility period is scheduled to commence, the estimated amount of tax credits, **the process by which affiliates contributing employment or capital investment may be added, the requirement for the project site to remain a qualified wind energy facility, events that would trigger reduction and forfeiture of tax credits, tax clearance certificate requirements,** and other such information that furthers the purposes of the Program. **The letter also requires the applicant to permit audit(s) from time to time, as the Authority deems necessary, of the business’s payroll records and any other evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-20.7(f) and the annual reports pursuant to N.J.A.C. 19:31-20.14.** The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

...

“Capital investment” in a qualified wind energy facility means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs, **provided soft costs shall not exceed 20 percent of all capital investment.** Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings, or other environmental components required to attain the level of silver rating or above in the LEED(R) building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified wind energy facility site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. To be included, the capital investment must be commenced after August 19, 2010, the effective date of the Act. For purposes of this subchapter, “commenced” shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

**“Commitment period” means the four-year period beginning on the same date as the eligibility period.**

...

“Eligibility period” means the [10-year] **five-year** period in which a business may claim an offshore wind economic development tax credit, beginning with the tax period in which the Authority accepts the certification of the business that it has met the capital investment and employment qualifications of the Program.

...

“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, as determined by the Authority, 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, as determined by the Authority, 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. A full-time employee is also 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 determined by the Authority as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "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 not include an employee who is a resident of another state and whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the State of New Jersey[, provided that any employee whose work is provided pursuant to a collective bargaining agreement with a business in the wind energy zone may be included].

"Full-time employee at the qualified wind energy 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 [in New Jersey] **at the facility**, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

...

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-20.[14(d)]**14(e)** that must accompany the use of the tax credit certificate.

**"Minimum number of new, full-time employees" means:**

- 1. For the first year of the award, at least a cumulative 100 new, full-time employees compared to the number of full-time employees at the time of application;**
- 2. For the second year of the award, for a privilege period or taxable year following the first year of the award, at least a cumulative 150 new, full-time employees compared to the number of full-time employees at the time of application;**
- 3. For the third year of the award, for a privilege period or taxable year following the second year of the award, at least a cumulative 200 new full-time employees compared to the number of full-time employees at the time of application; and**
- 4. For the fourth year of the award, for a privilege period or taxable year following the third year of the award, at least a cumulative 300 new full-time employees compared to the number of full-time employees at the time of application.**

...

"Project" means the employment and the capital investment in a qualified wind energy facility that is at least the employment and capital investment required by the Program [within a designated wind energy zone].

**"Prorated minimum number of new full-time employees" means the minimum number of new full-time employees pursuant to N.J.A.C. 19:31-20.9(a) for a business receiving a prorated award.**

**“Prorated annual minimum number of new full-time employees” means for projects approved with less than 300 new full-time employees:**

- 1. For the first year of the award, at least a cumulative 100 new, full-time employees compared to the number of full-time employees at the time of application;**
- 2. For the second year of the award, for a privilege period or taxable year following the first year of the award, at least a cumulative 150 new, full-time employees compared to the number of full-time employees at the time of application;**
- 3. For the third year of the award, for a privilege period or taxable year following the second year of the award, the lesser of 200 and the applicable prorated minimum number of new full-time employees, compared to the number of full-time employees at the time of application; and**
- 4. For the fourth year of the award, for a privilege period or taxable year following the third year of the award, the applicable prorated minimum number of new full-time employees compared to the number of full-time employees at the time of application.**

**“Qualified offshore wind project” means the same as the term is defined in section 3 of P.L. 1999, c. 23 (N.J.S.A. 48:3-51), which is a wind turbine electricity generation facility in the Atlantic Ocean and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the New Jersey Board of Public Utilities, or any successor entity, pursuant to section 3 of P.L. 2010, c. 57 (N.J.S.A. 48:3-87.1).**

**“Qualified wind energy facility” means any building, complex of buildings, or structural components of buildings, including water access infrastructure, and all machinery and equipment used in the manufacturing, assembly, development, or administration of component parts that is primarily used to support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the Authority[, and that are located in a wind energy zone]. To the extent a qualified wind energy facility requires improvements to existing non-wind facilities, only the improvements shall be part of the qualified wind energy facility.**

**“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] all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.**

...

["Wind energy zone" means property located in 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.).]

19:31-20.3 Eligibility criteria

(a) In order to be eligible [to be considered] for an offshore wind economic development tax credit for a qualified wind energy facility:

1. If the business is other than a tenant, the business shall:

i. Make or acquire capital investments in a qualified wind energy facility totaling not less than \$50,000,000. A business that acquires a qualified wind energy facility after August 19, 2010, the effective date of the Act, shall also be deemed to have acquired the capital investment made or acquired by the seller, subject to the disqualifications in N.J.A.C. 19:31-20.13. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of \$50,000,000 provided that the owner so [indicate] **indicates** in the owner's application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;

ii. Employ, in the aggregate, with tenants at the qualified wind energy facility, [not fewer than 300] **the minimum number of** new, full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement, **except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award;** and

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required in (c) below; and

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

i. The owner of the qualified wind energy facility shall make or acquire capital investments in the facility totaling not less than \$50,000,000 [, as calculated] in accordance with (a)1i above;

ii. The tenant shall occupy a leased area of the qualified wind energy facility that represents at least \$17,500,000 of the capital investment in the **qualified wind energy** facility, as calculated pursuant to (b) below;

iii. Employ, in the aggregate, with other tenants at the qualified wind energy facility, [at least 300] **the minimum number of** new, full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement, **except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award;**

iv. The business shall lease the qualified wind energy facility for a term of not less than [10 years] **the commitment period;** and

v. Except for tenants of a qualified wind energy facility for which the owner has previously demonstrated a net positive **economic** benefit and received approval of the qualified **wind** energy facility 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 in the amount required in (c) below. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment.

(b) (No change.)

(c) The net positive **economic** benefit required in (a)1iii and (a)2v above shall equal at least 110 percent of the approved tax credit allocation amount, to the State for the period equal to 75 percent of the useful life of the investment, not to exceed [10 years] **the commitment period**, provided that the Authority may determine, at its discretion, that the net positive economic benefit may extend to 20 years based on the length of the business's commitment to maintain the project at the qualified wind energy facility **and that the award of tax credits is subject to the recoupment provisions included in the approval letter**. To support the determination of a net positive **economic** benefit, the business shall submit to the Authority, prior to approval, a non-binding letter of intent executed between the Chief Executive Officer of the Authority and the chief executive officer, or equivalent officer for North American operations, of the business stating that the tax credits will yield a net positive economic benefit in the amount required in this subsection, taking into account the criteria listed at N.J.A.C. 19:31-20.7(c). **The letter of intent shall also include a certification from the chief executive officer, or equivalent officer for North American operations, of the business that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.**

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

(f) A business shall be treated as owner of a qualified wind energy facility if it holds title to the facility **or** if it ground leases the land underlying the facility for at least 50 years.

(g) (No change.)

19:31-20.4 Restrictions

(a) A business shall not be [allowed] **awarded** offshore wind economic development tax credits if:

1.-2. (No change.)

(b) A business that is [allowed] **awarded** a tax credit under the Program shall not be eligible for incentives authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

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

19:31-20.5 Application submission requirements

(a) Each application to the Authority made by a business that is 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.-xii. (No change.)

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; **and**

[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 the Treasury by such time and with such information as the Director may require; and]

[xv] **xiv.** Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information shall include the following:

i.-viii (No change.)

ix. The total number of anticipated new full-time [positions] **employees** that would be created in New Jersey, **for each of the years of the commitment period, and that would** occupy the qualified wind energy facility, and the total number of full-time employees that would occupy the qualified wind energy facility, and the distribution of such totals identified by business entity;

x.-xii. (No change.)

3.-4. (No change.)

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

19:31-20.6 Application and servicing fees

(a) A business applying for benefits under the 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.”] **The application fee shall be as follows:**

**1. For projects with a total of 150 to 299 new full-time employees listed in the application, the fee to be charged at application shall be \$10,000; and**

**2. For projects with a total of 300 or more new employees listed in the application, the fee to be charged at application shall be \$15,000.**

(b) [In addition to the application fee in (a) above, a] 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 0.5 percent of the tax credit, not to exceed \$500,000,] shall be paid at the time of execution of the non-binding letter of intent pursuant to N.J.A.C. 19:31-20.3(c)[.], **as follows except that the fee shall be refunded if the Authority does not approve the tax credit:**

**1. For projects with a total of 150 to 299 new full-time employees proposed for consideration by the Board, the fee shall be \$150,000; and**

**2. For projects with a total of 300 or more new employees proposed for consideration by the Board, the fee shall be \$300,000.**

(d) A non-refundable fee [of 0.5 percent of the tax credit, not to exceed \$500,000,] shall be paid prior to the receipt of the tax credit certificate **as follows:**

**1. For projects with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$150,000; and**

**2. For projects with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$300,000.**

(e) A business shall pay to the Authority an annual servicing 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] **commitment period and, if applicable, the duration of the commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the commitment period.** The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, **as follows:** [. For each project with tax credits of \$1,000,000 or less annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$20,000 per year; and for each project with tax credits in excess of \$1,000,000 annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$75,000 per year.]

**1. For projects with a total of 150 to 299 new full-time employees approved by the Board, the annual servicing fee shall be \$50,000 per year; and**

**2. For projects with a total of 300 or more new full-time employees approved by the Board, the annual servicing fee shall be \$75,000 per year.**

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. [19:31-18.13] **19:31-20.10** or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee [of \$5,000 and \$2,500 for each additional request made annually.], **as follows:**

**1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$10,000 and \$5,000 for each additional request made annually; and**

**2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$15,000 and \$7,500 for each additional request made annually.**

(g) [For each project with total tax credits of \$5,000,000 or less, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of \$5,000,000, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.] **A business shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and, a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:**

**1. For each project with a total of 150 to 299 new full-time employees approved by the Board, a non-refundable fee of \$5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$15,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval; and**

**2. For each project with a total of 300 or more new full-time employees approved by the Board, a non-refundable fee of \$7,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.**

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

**1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$10,000 for the first six-month extension and \$15,000 for each subsequent six-month extension; and**

**2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$15,000 for the first six-month extension and \$25,000 for each subsequent six-month extension.**

**(i) A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee for terminations that do not require extensive staff time and Board approval; and a non-refundable fee for terminations that require extensive staff time or Board approval, as follows:**

**1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$5,000 and \$15,000 for terminations that require extensive staff time and Board approval; and**

**2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$7,500 and \$25,000 for terminations that require extensive staff time and Board approval.**

19:31-20.7 Review of allocation and certification of project completion

(a) A business seeking an approval of tax credits for a qualified wind energy facility must apply for tax credits by July 1, [2024] **2025**, and a business shall submit its documentation for approval of its credit amount by July 1, [2027] **2028**.

(b) (No change.)

(c) In determining whether the company meets the net **positive** economic benefits test, as certified pursuant to N.J.A.C. 19:31-20.5(a)2iv, the Authority's consideration shall include, but not be limited to, the **direct benefits to the State, including** local [and State] taxes **that may benefit the State** [paid directly by the business, property taxes, or payment in lieu of taxes paid directly by the business, and taxes paid directly by new employees]. The Authority [may] **shall** also consider **indirect benefits** [, at its discretion, local and State taxes generated indirectly by the business, property taxes or payment in lieu of taxes generated indirectly by the business, taxes generated indirectly by new employees, or peripheral economic growth] caused by the business's relocation to [the wind energy zone] **New Jersey, except, that the Authority will not consider indirect benefits if a business is including new full-time employees resulting from an equipment supply coordination agreement in the calculation of its new full-time employees.** [The Authority may increase the net economic benefit, at its discretion, if the business demonstrates to the Authority's satisfaction commitment(s) to contribute to non-financial community objectives.] The Authority may also consider taxes paid directly or

generated indirectly by retained employees, at the Authority's discretion based on evidence satisfactory to the Authority that the employees are at risk of being lost to another state or country or eliminated, **and induced benefits derived from construction, provided that such** [The] determination [shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority and] shall not include any capital investment or employees for which an incentive has been previously provided or any capital investment by a local or State governmental entity.

(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 and the maximum amount of tax credits to be granted. The Board shall 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 that must be met in order to maintain the approval and to receive the tax credits. An approval letter setting forth the conditions and indemnification and insurance requirements 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 that the business agrees to extend the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax to the eligibility period. **The approval letter shall contain the requirement that the project comply with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), for all capital investment and with the Authority's affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), commencing with \_\_\_\_\_ {effective date of these rule amendments}.** The approval letter shall also set forth a condition requiring the business to maintain the project at the qualified wind energy facility after the eligibility period to the extent the net positive economic benefit is calculated based on a period of years after the eligibility period pursuant to N.J.A.C. 19:31-20.3(c).

1. (No change.)

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

(e) Within [six] **twelve** 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, financing for, and site control of, the qualified wind energy facility, **except that projects consisting of new construction shall have twenty-four months.** Commencing with the date six months following the date of application approval, and every six months thereafter until completion of the project, each approved business shall submit an update of the status of the project to the Authority. Unless the Authority determines in its sole discretion that extenuating circumstances exist for extensions, the Authority's approval of the tax credits shall expire if the Authority does not timely receive the progress information or status update.

(f) Upon completion of the capital investment and employment requirements of the Program, the business shall submit a certification of a **qualified independent** certified public accountant and any receipts or verifiable documentation requested by the Authority, 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, **and other eligibility requirements**.

1. The certification with respect to the capital investment shall define the amount of the [tax credits] **capital investment** and shall not be increased regardless of additional capital investment in the qualified wind energy facility, provided; however, that in no event, will the amount of [tax credits] **capital investment** exceed the amount of [tax credits] **capital investment** previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the [incentive grant] **application**, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. 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 employment shall include the number of full-time employees [and new full-time positions] employed at the qualified wind energy facility **or through an equipment supply coordination agreement**, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, and the salary of all new full-time employees. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time [jobs] **employees** or salaries in the certification is reduced below the number of new full-time [jobs] **employees** in the approval of the [incentive grant] **application** or the salaries proposed in the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. If the certification indicates that the employment is less than the [minimum eligibility requirement] **required number of new full-time employees for the first year of the award**, the business shall no longer be eligible for tax credits.

3. (No change.)

**4. The Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants; provided, the business may select a certified public accountant that is independent to the business and not on the Authority’s list of qualified certified public accountants for purposes of the capital investment certification, or the business’s chief financial officer may certify for purposes of the employment certification, upon the Authority’s prior approval if the business demonstrates an extenuating circumstance prohibiting the business from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business.**

[4]5. The certification shall be submitted to the Authority no later than three years after the Authority's application approval, unless the Authority determines in its sole discretion that there are extenuating circumstances for extensions, but in no event later than July 1, [2027] **2028**.

[5]6. 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 timely certification of the business that it has satisfied the capital investment, [and] employment, **and any other eligibility** requirements of the Program, and the Authority determines that [other] **all** 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.

19:31-20.9 Tax credit amount; application and allocation of the tax credit

(a) The amount of the credit [allowed] **awarded** pursuant to the Program **for projects creating 300 or more new full-time employees during the eligibility period** shall, except as otherwise provided, be equal to the capital investment **previously approved by the Board and** made by the business, or the capital investment represented by the business' leased area, or area owned by the business as a condominium, except as may be limited by the net positive economic benefits test and shall be taken over the eligibility period, at the rate of [one-tenth] **one-fifth** of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the Authority as having met the investment capital, [and] employment [qualifications], **and any other eligibility requirements**, subject to any reduction or disqualification provided in P.L. 2018, c. 17 and this subchapter as determined by annual review by the Authority. **The amount of the credit allowed pursuant to the Program for projects creating less than 300 new full-time employees but at least 150 new full-time employees during the eligibility period shall be set as follows:**

**1. 50 percent of the capital investment for projects creating 150 new full-time employees and less than 200 new, full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 150 new full-time employees.**

**2. 65 percent of the capital investment for projects creating 200 new full-time employees and less than 250 new full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 200 new full-time employees.**

**3. 85 percent of the capital investment for projects creating 250 new full-time employees and less than 300 new full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 250 new full-time employees.**

(b) In no event shall the amount of tax credits exceed the amount of tax credits previously approved by Board as follows:

1. If the owner uses space in a qualified wind energy facility, in order to determine the amount of the owner's capital investment that will 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] **wind energy** facility not leased to tenants and the denominator of which is the total net leaseable area.

2. (No change.)

(c) The business may apply the credit against its corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The credit 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, or as subsequently adjusted pursuant to N.J.A.C. 19:31-20.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the **qualified** wind energy facility or employees at the [business] **qualified wind energy** facility during the tax period for which the tax credits are issued.

(d) The amount of credit [allowed] **awarded** 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 for the tax period.

(e) A business that is a partnership shall not be [allowed] **awarded** a credit under the Program directly, but the amount of credit of [an] **a corporate** owner of a business shall be determined by allocating to each **corporate** owner of the partnership that proportion of the credit of the business that is equal to the **corporate** owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or at the end of the owner's tax period, or that proportion that is allocated by an agreement, if any, among **all** the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by the time and accompanied by the additional information as the Director may require **consistent with any rule, guidance, or other publication issued by the Division of Taxation**.

(f)-(g) (No change.)

#### 19:31-20.10 Application for tax credit transfer certificate

(a) 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 a tax credit transfer certificate covering one or more years, 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 sold. Once approved by the Authority and the Director of the Division of Taxation, a certificate shall be issued. The certificate, upon receipt thereof by the business from the Director

and 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 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided 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 credit by the business that originally applied for and was [allowed] **awarded the credit, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.**

(b) (No change.)

(c) 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 **corporate** owners' distributive share of income or gain of the partnership, the selling agreement shall set forth the allocation among the **corporate** owners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31-20.5(a).

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

**(f) The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:**

- 1. The name of the transferrer;**
- 2. The name of the transferee;**
- 3. The value of the tax credit transfer certificate;**
- 4. The State tax against which the transferee may apply the tax credit; and**
- 5. The consideration received by the transferrer.**

19:31-20.12 Reduction and forfeiture of tax credits

(a) If, in any tax period **during the commitment period**, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under the Program, 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 section 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. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the required full-time employees at

the qualified wind energy facility **but shall not include any employees resulting from an equipment supply coordination agreement.** The number of full-time employees in a business's Statewide workforce shall not include a new full-time employee at the qualified wind energy facility.

(b) If, in any tax period **during the commitment period**, the aggregate number of new full-time employees at the qualified wind energy facility and resulting from an equipment supply coordination agreement drops below [300] **the minimum number of new, full-time employees or prorated annual minimum number of new full time employees, as applicable**, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of **new** full-time employees employed at the qualified wind energy facility and resulting from an equipment supply coordination agreement to [300] **the minimum number of new, full-time employees or prorated annual minimum number of new full-time employees, as applicable, has been reviewed and approved by the Authority**, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(c) (No change.)

(d) In the event that any certification required from the business or the other party to any equipment supply coordination agreement, including, but not limited to, the certifications required pursuant to N.J.A.C. 19:31-20.14(a)2, is found to be willfully false or that the business submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority or the Division of Taxation, the Authority may, at its sole discretion and in addition to any other remedies available, revoke and/or terminate any award of tax credits in their entirety and may [require repayment of] **recapture all or a portion of the tax credits received by the business.**

(e) **For projects with a commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the commitment period, the [The Authority may recoup all or a portion of the tax credits awarded if the business does not maintain the project at the qualified wind energy facility for the period of years after the [eligibility] commitment period [that was included in the calculation of the net positive economic benefit pursuant to N.J.A.C. 19:31-20.3(c)] based on a recoupment schedule in the approval letter. The business shall have twelve months to restore the new full-time jobs to 300 or the applicable prorated minimum number of new full-time employees before the Authority may recoup any amount of tax credits.**

(f) **Any recapture or recoupment pursuant to (d) or (e) above may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture or recoupment amount.**

19:31-20.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified wind energy facility or **lease or** sublease of the business's tenancy as follows:

1. (No change.)

2. If a tenant **leases or** subleases its tenancy in whole or in part during the eligibility period, the **lessee or** sublessee shall not acquire the credit of the **lessor or** sublessor, and the **lessor or** sublessor tenant shall forfeit all credits for the tax period of its **lease or** sublease and all subsequent tax periods, except that if the **lessor or** sublessor tenant retains sufficient capital investment and employment to remain eligible for the Program, the forfeiture shall affect only the credits attributable to the **leased or** subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the **lessee or** sublessee shall be subtracted. **Notwithstanding the foregoing, a business may lease or sublease a portion of its qualified business facility to any other new tenant without forfeiting any of the business's credits but shall not include the new tenant's full-time employees and capital investment in the business's eligible full-time employees or capital investment if:**

**i. The lease or sublease is to a party to any equipment supply coordination agreement;**

**ii. The aggregate amount leased or subleased to any other tenant comprises five percent or less of the qualified wind energy facility; or**

**iii. The business leases or subleases to a tenant that primarily uses the leased or subleased premises to support the development and operation of a qualified offshore wind project.**

19:31-20.14 Annual review reporting requirements; letter of compliance

(a) After notification pursuant to N.J.A.C. 19:31-20.7(g), the business shall furnish to the Authority an annual review report [certified by a certified public accountant] in a format as may be determined by the Authority, which shall contain the following information:

1. **A certification, which shall be made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-20.7(f)4. The certification shall state the number of full-time employees and new full-time [positions] employees employed at the qualified wind energy facility or through an equipment supply coordination agreement, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, the salary of all new full-time employees, the number in the business's Statewide employment, total lease payments, the list of affiliates that contributed to the full-time employees at the qualified wind energy facility, the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, 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. To include a new full-time**

employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time [jobs] **employees** at the qualified wind energy facility or resulting from an equipment supply coordination **agreement** or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time [jobs] **employees** or salaries in the annual review report of the prior year or the [independent] certification **pursuant to N.J.A.C. 19:31-20.7(f)** if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. If, in a tax period subsequent to a reduction in the size of the grant the business increases the number of new full-time [jobs] **employees** at the qualified wind energy facility or resulting from an equipment supply coordination **agreement** or salaries of these jobs in the annual review report above 10 percent or more of the number of new full-time [jobs] **employees** or salaries in the annual review report of the prior year, the Authority may reevaluate the net positive economic benefit and increase the size of the [grant] **award** accordingly, but in no event shall the amount of tax credit that the business may [apply] **take** in a tax period be greater than [one-tenth] **one-fifth** of the total tax credit amount approved by the Authority. [In the event the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year or the independent certification if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly.] This reduction shall not affect any forfeiture under N.J.A.C. 19:31-20.12.

2. A certification indicating whether or not the business is aware of any condition, event, or act that would cause the business not to be in compliance with the approval **letter**, P.L. 2007, c. 346 or this subchapter.

(b) (No change.)

(c) The [tax credit certificate] **approval letter** may provide for additional reporting requirements.

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

#### 19:31-20.15 Appeals

(a) The Board's action [on applications] shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the **effective** date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the

requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) (No change.)