



Draft Emerge Rule Amendments for Informal Public Comment

PURPOSE OF DOCUMENT

This draft proposal includes amendments to rules revising the Emerge Program, authorized by the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, and later amended by P.L. 2021, c. 160. In accordance with Executive Order 63, these draft rule amendments are being provided to enable the public to provide input as the New Jersey Economic Development Authority (Authority or NJEDA) develops, launches, and administers the programs contained in the new law.

BACKGROUND

The New Jersey Economic Development Authority serves as the State's principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 into law on January 7, 2021. A courtesy copy of this act can be found by clicking [here](#). The law creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

Programs created in the law include:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

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On July 7, 2021, Governor Murphy signed P.L. 2021 c.160 further improving the programs established under the New Jersey Economic Recovery Act of 2020. A courtesy copy of this act can be found [here](#).

The New Jersey Economic Development Authority is soliciting input from the public on the following draft rule amendments pertaining to implementation of Emerge Program pursuant to recently enacted statutory revisions in P.L. 2021, c. 160.

PROGRAM OVERVIEW

Emerge encourages economic development in the State's priority sectors by providing per-job tax credits for up to seven years (the "eligibility period"). The overview provided here highlights certain key aspects of the program. The full details of the program are contained in the draft rules (below) and the statute.

To be eligible for Emerge support, a project must meet various eligibility criteria at application and at project certification after approval. In addition, that project must comply with certain standards during the term of an Emerge project agreement. Some of the key criteria and standards include:

- Create a minimum of 35 new full-time jobs. The job requirement is lowered to 25 new full-time jobs for businesses in targeted industries.
 - Business with less than 100 employees at the time of application, engaged primarily in a targeted industry (Small Business) do not have a minimum, but must demonstrate job growth of at least 25 percent by the end of the eligibility period.
- To receive tax credits for retained jobs, the minimum number of retained jobs is 500 in certain areas and 1000 in all other eligible incentive areas.
- Be located in a qualified incentive location.
- Meet minimum capital investment requirements, except for Small Businesses.
- Yield a net positive benefit to the State of at least 400 percent of the requested tax credit. Projects in certain target areas are subject to a lower net positive benefit threshold.
- Demonstrate that the award of the tax credit is a "material factor" in the decision to create or retain at least the minimum number of full-time jobs in the New Jersey.
- Ensure that at least 80 percent of incented employees' work time is spent in New Jersey.
- Ensure the Qualified Business Facility can accommodate at least 50 percent of incented new jobs.
 - To receive tax credits for retained jobs, the Qualified Business Facility must accommodate all the retained full-time jobs at the time of application.
- Commit to stay at the Qualified Business Facility for 1.5 times the eligibility period.

Projects under the Emerge and Aspire Programs are subject to a program cap of \$1.1 billion per year for the first six years of the programs, with the cap split between northern and southern counties. Any remaining unused tax credits are available in the seventh and last year.

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The Emerge Program awards are calculated on an annual per job basis, with base credits for new jobs ranging between \$500-\$4,000 per job depending on project location or certain project categories. Eligible retained jobs are calculated at 50 percent the value of new jobs. Bonuses may increase the per job calculation up to \$8,000 depending on project location, industry, and alignment with certain Emerge program policy objectives. Jobs that are covered by a labor harmony agreement are eligible for an additional \$1,000 bonus over the capped amounts.

- Tax credit awards will be reduced if a project pays less than the county median salary and all jobs must pay no less than 30 percent of the host county's median salary.
- Tax credits awarded through Emerge can be used to offset Corporate Business Tax or Insurance Premiums Tax, can be transferred for no less than 85 percent of their value, or, if allowed under the State's annual appropriation act and if funds are available, may be surrendered to NJ Division of Taxation for 90 percent of the value of the credits.
- In order to receive Emerge tax credits, the project must be in good standing with the NJ Department of Labor, NJ Department of Treasury, and the NJ Department of Environmental Protection (as determined by each Department). All projects that receive Emerge support must also meet minimum environmental standards, pay prevailing wages to construction workers and building service workers, and provide health care.
- Projects that have a total project cost exceeding or equaling \$10 million must also enter into a Community Benefit Agreement with NJEDA and the county or municipality in which the project is located, unless the municipality certifies the Redevelopment Agreement or the Emerge approval letter.

ANTICIPATED PROGRAM MILESTONES

The Authority currently anticipates bringing proposed rule amendments for the Emerge Program to its Board for consideration on December 8, 2021. If the Board approves the rule amendments, they will be published in the New Jersey Register for a 60-day public comment period.

The Authority may, at its discretion, accept applications based upon any draft rules approved for publication by its Board prior to the completion of the full Administrative Procedures Act process. However, all applicants will be subject to the requirements of the final adopted rules upon the conclusion of the formal comment process.

ECONOMIC RECOVERY ACT TRANSPARENCY WEBSITE

The NJEDA's Economic Recovery Act website (www.njeda.com/economicrecoveryact) allows members of the public to learn more about the programs included in the ERA and provide input on how the Authority will operationalize various aspects of its new incentive programs. The site also allows members of the public to share their thoughts on how NJEDA can make the programs more transparent.

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This general feedback process precedes and is separate from the NJEDA's formal procedure to publish and adopt the rule amendments.

PUBLIC FEEDBACK: WRITTEN COMMENTS

Members of the public will also be able to submit feedback on Emerge Program through the NJEDA's Economic Recovery Act website (<https://www.njeda.com/economicrecoveryact/>) between the following dates:

- **PUBLIC FEEDBACK OPEN: November 17, 2021**
- **PUBLIC FEEDBACK CLOSED: December 1, 2021**

We welcome constructive input on how to ensure new programs created through the Economic Recovery Act or programs amended by the Economic Recovery Act are structured and administered in a manner that drives opportunities for all residents and communities. Members of the public can do that by sending an email to emerge@njeda.com or through the online portal on the NJEDA's website.

All feedback received through this process will be assessed and considered when preparing the final version of the rule amendments that is proposed by the Authority for Board approval. Following potential Board approval, there will be a 60-day period for formal public comment.

Please observe the following guidelines when submitting your feedback:

PLEASE DO:

- Reference a specific part of the rules by section and subsection when providing comments
- Share your feedback, relevant observations, and additional information.
- Keep comments brief and to the point.
- Use attachments to share more detailed or formal feedback.

PLEASE DO NOT:

- Include information that you do not want to be made public.
- Submit any information or other material protected by copyright without the permission of the copyright owner.
- Submit comments about topics unrelated to the Main Street Recovery Finance Program.

We may, at NJEDA's sole discretion, publish any, all, or a representative sample of comments in full or in part.

Do not include any information in your comment that you do not want to become public. Do not include any personally identifying or contact information if you do not want to be identified. (Providing optional contact information, however, will allow us to follow up with you if clarification is needed.) We will not accept or agree to a request to keep information confidential.

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By submitting material, you grant to the NJEDA the non-exclusive, worldwide, transferable right and license to display, copy, publish, distribute, transmit, print, and use such information or other material in any way and in any medium, including but not limited to print or electronic form.

SUMMARY OF DRAFT RULES SECTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Proposed Amendments: N.J.A.C. 19:31-22.1 through 22.11, and 22.14 through 16

Authority Assistance Programs

Emerge Program Rules

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

Authority: P.L. 2021, c. 160.

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

Proposal Number: PRN 2022-____.

Submit written comments by _____, 2022, to:

Jacob Genovay, Sr, Legislative and Regulatory Officer
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the rules implementing the EmERGE Program pursuant to recently enacted statutory revisions in P.L. 2021, c. 160 (approved July 2, 2021).

In accordance with the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, the NJEDA specially adopted and concurrently proposed the EmERGE Program rules on May 20, 2021, and adopted the concurrently proposed rules on December __, 2021, as simultaneously noticed along with these proposed amendments.

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Under the New Jersey Economic Recovery Act of 2020, the Emerge Program Act, sections 68 through 81 of P.L. 2020, c. 156, was established to encourage economic development in the State's priority sectors by providing per-job tax credits for up to seven years. To be eligible for the program, a project must meet various eligibility criteria at application and at project certification, including:

- Be located in a qualified incentive area;
- Meet minimum capital investment requirements, except for small businesses;
- Yield a net positive benefit to the State of at least 400 percent of the requested tax credit (projects in certain more highly distressed areas of the State are subject to a lower net positive benefit threshold);
- Demonstrate that the award of the tax credit is a "material factor" in the decision to create or retain at least the minimum number of full-time jobs in New Jersey;
- Ensure that at least 80 percent of incented employees' work time is spent in New Jersey;
- Ensure that the qualified business facility can accommodate at least 50 percent of incented new jobs, and to receive tax credits for retained jobs, the qualified business facility must accommodate all the retained full-time jobs at the time of application; and
- Commit to stay at the qualified business facility for 1.5 times the eligibility period.

The following provides a summary of the proposed amendments:

N.J.A.C. 19:31-22.1 Applicability and scope

The proposed amendment revises the section to include a citation for P.L. 2021, c. 160, which amends the Emerge Program Act.

N.J.A.C. 19:31-22.2 Definitions

The proposed amendments add new definitions for "technology startup company" and "substantial environmental remediation;" delete the definition of "authorized agent of the owner;" and redefine certain terms used in this subchapter, as follows:

"Business" is revised to 1. delete the provision that a business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by full-time employees of an affiliate, 2. delete "at, or associated with, the qualified business facility" as pertains to certain full-time employees in a cooperative or part of a cooperative, and 3. delete and replace "incentive" with "commitment" agreement;

"Capital investment" is revised to add that capital investment also means expenses incurred on behalf of the business or affiliate by its landlord, which may be demonstrated through an executed letter of intent or lease;

"Employment and Investment Corridor" is revised to 1. delete the existing date of until June 30, 2013 pertaining to a designated growth center in an endorsed plan under the New Jersey State Development and Redevelopment Plan, and 2. correct a reference to the State Development

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and Redevelopment Plan, and provide that at the time of application, the Employment and Investment Corridor contain any combination of office, laboratory, or industrial space, with the existing availability for occupancy requirement;

“Enhanced area” is revised to clarify that the area means a municipality that contains an urban transit hub as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208);

“Full-time employee” is revised to 1. clarify that a person who is a resident of another state, and would be eligible pursuant to subparagraphs 1i, ii, or iii, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., shall be due to a reciprocity agreement with the other state, 2. delete the requirement that a full-time employee shall include, but shall not be limited to, an employee who has been hired by way of a labor union hiring hall, or its equivalent, provided that the 35 hours of employment per week “at, or associated with, the qualified business facility” which is replaced with “in the State,” 3. delete the provision excepting full-time employees of the Statewide workforce from requirement to be provided employee health benefits, and 4. delete the requirement that a full-time employee shall be paid no less than \$15.00 per hour or 120 percent of the minimum wage as set forth in statute;

“Incentive area” is revised to 1. delete reference to a transit hub municipality which is replaced with enhanced area, 2. eliminate the requirement that certain areas designated pursuant to the State Planning Act are eligible provided an area designated as Planning Area 2 (Suburban) or Planning Area 3 (Fringe Planning Area) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation, and 3. correct a reference to the State Development and Redevelopment Plan;

“New full-time job” is revised to delete the provision that an eligible position created by a business shall be at, or associated with, a qualified business facility;

“Project agreement” or “incentive agreement” is revised to delete “or incentive agreement;”

“Project phase agreement or “incentive phase agreement” is revised to delete “or incentive phase agreement;”

“Quality child care facility” is revised to 1. correct a reference to the Department of Children and Families, 2. provide that a qualified center may also be a registered family child care home with the Department of Human Services, and 3. delete “total” and “of at least 60” as pertains to licensed capacity, and 4. delete the age requirement of six which is replaced with 13 and add “who attend for less than 24 hours a day;”

“Retained full-time job” is revised to delete “or of being eliminated” as pertains to an eligible position that currently exists in New Jersey and is filled by a full-time employee, but

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which, because of a potential relocation by the business, is at risk of being lost to another state or country; and

“Statewide workforce” is revised to delete the provision that an eligible position shall be “at, or associated with, the qualified business facility.”

N.J.A.C. 19:31-22.3 Eligibility criteria

N.J.A.C. 19:31-22.3(b) deletes and replaces “a business’s authorized agent of the owner” with “the chief executive officer of the business or an equivalent officer;”

N.J.A.C. 19:31-22.3(b)2 deletes “at, or associated with, the qualified business facility” which is replaced with “in the State;”

N.J.A.C. 19:31-22.3(b)5i deletes “transit hub municipality” with is replaced with “an enhanced area” as pertains to the location a qualified business facility regarding the required net positive benefit to the State;

N.J.A.C. 19:31-22.3(b)5v deletes “incentive” which is replaced with “commitment” agreement;

N.J.A.C. 19:31-22.3(b)5iv deletes and replaces “after” with “beyond” regarding the election of extended commitment period by the business for which the economic benefits shall be creditable by the Authority, and deletes that provision that if the business makes this election, the net positive economic benefits calculated shall be additionally discounted by the Authority to reflect the uncertainty of the business’s location after the commitment period expires;

N.J.A.C. 19:31-22.3(b)8i(2), which pertains to instances in which the payment of prevailing wage shall not apply, applies wherein the landlord is a party to the construction contract, building services contract, or both;

N.J.A.C. 19:31-22.3(b)8i(3)ii corrects statutory references;

N.J.A.C. 19:31-22.3(c) deletes the provision that if a business qualifies on the basis of retained full-time jobs, the new construction or rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises by the business qualifying on the basis of retained full-time jobs shall be equal in size to no less than the space occupied by the business’s retained full-time jobs at the time of application;

N.J.A.C. 19:31-22.3(d)1 deletes “at, or associated with, the qualified business facility” which is replaced with “in the State;”

N.J.A.C. 19:31-22.3(d)4 adds that for a business eligible for new full-time jobs under (d)2 or 3, the business shall also be eligible for retained full-time jobs in addition to the new full-time jobs if the business will retain 150 retained full-time jobs when locating in a government-restricted municipality, 250 retained full-time jobs when locating in a qualified incentive tract or

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enhanced area municipality, or 500 retained full-time jobs when locating anywhere else in the State;

Recodified N.J.A.C. 19:31-22.3(d)5 clarifies that for a business not eligible under (d)2, 3, or 4 and locating in an “enhanced area,” in addition to the existing qualified incentive tract, or government-restricted municipality, shall be eligible for the greater of 500 “retained” rather than the existing “new” full-time jobs or the retained full-time jobs at the time of application;

Recodified N.J.A.C. 19:31-22.3(d)6 revises the citation for (d)4 to (d)5 and deletes and replaces “new” with “retained” as pertains to full-time jobs or the business’s retained full-time jobs at time of application;

N.J.A.C. 19:31-22.3(e) inserts “and adhere to” regarding the requirements listed in (e)1 and 2;

N.J.A.C. 19:31-22.3(e)1 deletes “or” which is replaced with “and” pertaining to the requirement for a plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business’s new and retained full-time employees, and removes the provision pertaining to certain space requirements for retained full-time jobs as the provision is proposed for deletion in subsection (c);

N.J.A.C. 19:31-22.3(e)2 deletes and replaces “authorized agent of the owner” which is replaced with “chief executive officer” of the business “or an equivalent officer;” and deletes and replaces the term “or” with “and” as pertains to a certification that certain withholdings of new and retained full-time jobs are, and will be, subject to the New Jersey Gross Income Tax Act; and

N.J.A.C. 19:31-22.3(f) deletes “owner” and “authorized agent of the owner” which is replaced with “chief executive officer” and “equivalent officer” of the business regarding the certification of certain factual representations.

N.J.A.C. 19:31-22.4 Restrictions

N.J.A.C. 19:31-22.4(a) deletes and replaces “an incentive” with “a commitment” agreement.

N.J.A.C. 19:31-22.5 Application submission requirements

N.J.A.C. 19:31-22.5(a)1x, which pertains to a written certification of substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury, 1. deletes and replaces “owner” and “authorized agent of the owner” with “chief executive officer” and “an equivalent officer;” and 2. adds that contractors or subcontractors that will perform work at the qualified business facility are registered as required by “The Public Works Contractor Registration Act,” P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State,

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and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

N.J.A.C. 19:31-22.5(a)2iv(1) deletes and replaces “owner” and “authorized agent of the owner” with “chief executive officer” and “an equivalent officer” as pertains to the net positive economic benefit certification required therein;

N.J.A.C. 19:31-22.5(a)2ix deletes and replaces “current” with “proposed” as pertains to in-State locations relating to certain documents to be provided;

N.J.A.C. 19:31-22.5(a)3i deletes the requirement for a written certification by the owner of the eligible business, or an authorized agent of the owner that the eligible positions that are the subject of the application will be at, or associated with, the qualified business facility;

N.J.A.C. 19:31-22.5(a)3ii deletes and replaces “at, or associated with, the qualified business facility” with “in the State;”

N.J.A.C. 19:31-22.5(a)4i deletes and replaces “at, or associated with, the qualified business facility” with “in the State;” and

N.J.A.C. 19:31-22.5(d) deletes “owner” and “authorized agent of the owner” which is replaced with “chief executive officer” and “equivalent officer” regarding the certification of certain information provided as part of an amended application or additional or supplemental factual representations prior to approval.

N.J.A.C. 19:31-22.6 Fees

Proposed new N.J.A.C. 19:31-22.6(a)4 and proposed new N.J.A.C. 19:31-22.6(c)4 through (i)4 establish new fees for mega projects that are defined as certain projects of special economic importance, at which 500 or more new full-time jobs are created, having capital investment of at least \$50,000,000 in a targeted industry and that provides opportunities to leverage leadership in a high-priority targeted industry; and

N.J.A.C. 19:31-22.6(i) deletes and replaces “incentive” with “commitment” agreement as referenced in the existing provision regarding the termination fee.

N.J.A.C. 19:31-22.7 Review of completed application

N.J.A.C. 19:31-22.7(c) deletes and replaces “will” with “shall” and deletes “compliance by being in” as pertains to the confirmation of substantial good standing with certain State agencies as listed;

N.J.A.C. 19:31-22.7(c)3ii deletes and replaces “owner” and “authorized agent of the owner” with “chief executive officer” and “equivalent officer” as pertains to the certification to be included in the non-binding letter of intent; and

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N.J.A.C. 19:31-22.7(e) deletes and replaces “owner” and “authorized agent of the owner” with “chief executive officer” and “an equivalent officer” as pertains to the certification as set forth at N.J.A.C. 19:31-22.5(a)2iv.

N.J.A.C. 19:31-22.8 Determination of grant amount; bonus award

N.J.A.C. 19:31-22.8(d)1 inserts “distress” as pertains to the Municipal Revitalization Index score as referenced in the paragraph;

N.J.A.C. 19:31-22.8(d)2 increases certain bonus amounts for an eligible business with a qualified business facility from \$1,000 to \$500.00 per year for each additional amount of investment that exceeds the minimum amount required for eligibility by 40 percent, with a maximum increase of \$1,500 rather than the existing \$3,000 per year;

N.J.A.C. 19:31-22.8(d)3 deletes and replaces “commitment” with “eligibility” period;

N.J.A.C. 19:31-22.8(d)3iii revises “\$1000” to “1,000;”

N.J.A.C. 19:31-22.8(d)6 deletes and replaces “that” with “with” and inserts “in” as pertains to a business with certain employees in full-time positions at the project and revises the bonus amount relating thereto from \$250.00 to \$200.00 per year for the new or retained full-time employees that are at the qualified business facility during the eligibility period for each 35 percent by which the project’s median salary levels exceeds the county or government-restricted municipality median salary, with a maximum increase of \$1,000 rather than the existing \$1,500 per year;

N.J.A.C. 19:31-22.8(d)7, which provides a \$500.00 per year bonus for an eligible business with a qualified business facility located in a qualified incentive tract, is deleted;

Recodified N.J.A.C. 19:31-22.8(d)11 deletes and replaces “agreement” with “active partnership as pertains to an eligible business that enters into a re-entry program for certain former and current inmates leaving the corrections system; provides that the bonus shall apply to an eligible business that enters “or has previously entered” into such program; and clarifies that the eligible business hire at least one active participant in the re-entry program “as a full-time employee;”

Recodified N.J.A.C. 19:31-22.8(d)14 provides that in addition to solar energy, the bonus for an eligible business that generates on site for use at the qualified business facility at least 50 percent of business facility’s electric supply needs, may include “geo-thermal, wind or any other renewable or distributed” energy;

Recodified N.J.A.C. 19:31-22.8(d)17 clarifies that the bonus for an eligible business with one-third or more of the members governing board or other governing body self-identifying as members of an underrepresented community as listed, shall apply “for each new or retained full-time job;”

N.J.A.C. 19:31-22.8(f) 1. deletes and replaces “at, or associated with, the qualified business facility” which is replaced with “subject to the project agreement” regarding the provision whereby the Authority shall reduce the gross amount of tax credits per full-time job if the median salary of new and retained full-time jobs is less than the existing median salary for full-time workers residing the county of the qualified business facility is located; 2. adds “or for a project located in a government-restricted municipality, if the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is less than the existing median salary for the municipality in which the qualified business facility is located;” 3. deletes and replaces “at, or associated with, the qualified business facility” which is replaced with “subject to the project agreement” regarding the provision that the Authority shall reduce the gross amount of the tax credits per full-time jobs, by an amount in percentage points, equal to the percentage the median salary of the new full-time jobs is below the existing median salary for full-time workers residing in the country “or government-restricted municipality” in which the qualified business is located; and 4. deletes and replaces “at, or associated with, the qualified business facility” which is replaced with “that would otherwise be subject to the project agreement” wherein the Authority shall not award a tax credit to an eligible business if the median salary of new and retained full-time jobs is 30 percent below the “relevant” existing median salary for full-time workers residing in the county “or government-restricted municipality” in which the qualified business facility is located; and

N.J.A.C. 19:31-22.8(f) deletes and replaces “current” with “proposed” as pertains to the reference to certain in-State locations.

N.J.A.C. 19:31-22.9 Approval letter and commitment agreement

N.J.A.C. 19:31-22.9(b)2 deletes and replaces “an incentive” with “a project” as pertains to phase agreement and “incentive” with “commitment” agreement respectively;

N.J.A.C. 19:31-22.9(b)8 clarifies that the existing provision that representations that the eligible business is in good standing refers to “the Department of Environmental Protection, Department of Labor and Workforce Development, and the Department of the Treasury,” and deletes the existing provision or “meets the agreement requirements at paragraph (1) of subsection b. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.7(c)1,” and revises that the required representations also include whether the eligible business “has entered into an agreement with the departments that includes a practical corrective action plan;”

N.J.A.C. 19:31-22.9(b)10 adds, for purposes of information which the Authority may confirm with the above-referenced agencies, “that each contractor or subcontractor performing work at the qualified business facility is registered as required by ‘The Public Works Contractor Registration Act,’ P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;”

N.J.A.C. 19:31-22.9(b)11, which pertains to certain instances in which the eligible business is not in good standing nor entered into an agreement with the agencies referenced

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above and has been given written notice thereof, deletes and replaces “Authority” and “suspend” with “eligible business” and “forfeit” regarding the issuance of tax credits pending the resolution of the “underlying” violations “or other issues” and deletes “or noncompliance, or if the violation(s) or noncompliance remain unresolved and the suspension continues for two years, then, at the Authority’s sole option, the eligible business may forfeit the tax credit for those years; relating thereto;”

N.J.A.C. 19:31-22.9(c)6i revises two citations from N.J.A.C. 19:31-22.10(a)5 to 3;

N.J.A.C. 19:31-22.9(c)8, which pertains to the instance that an eligible business shall not be required to enter into a community benefits agreement if the eligible business submits certain documentation to the Authority, deletes and replaces “redevelopment agreement” with “approval letter from the Authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement” and adds that the approval letter or redevelopment agreement “includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer pursuant to rules adopted by the Authority;”

N.J.A.C. 19:31-22.9(d) deletes and replaces “completion” with “certification” as relates to the date upon which certification shall occur following any extensions for certifications following approval of the application; and

N.J.A.C. 19:31-22.9(g) deletes and replaces “owner” with “chief executive officer” and “authorized agent of the owner” with “equivalent officer” pertaining to any submission required by the Authority pursuant to the approval letter or certifications at 22.9(f).

N.J.A.C. 19:31-22.10 Reporting requirements and annual reports

N.J.A.C. 19:31-22.10(a)1i and ii deletes and replaces “at, or associated with, the qualified business facility” with “in the State” regarding certain information to be provided in annual report submitted by the business;

Proposed new N.J.A.C. 19:31-22.10(a)3 provides that, as part of the annual report, the eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required by “The Public Works Contractor Registration Act,” has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury; and

N.J.A.C. 19:31-22.10(c) deletes and replaces “owner” with “chief executive officer” and “authorized agent of the owner” with “equivalent officer” regarding certain information to be certified to under subsection (a).

N.J.A.C. 19:31-22.11 Tax credit amount; application and allocation of the tax credit

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N.J.A.C. 19:31-22.11(f) clarifies that the provision that the credit certificate or credit transfer certificate may be surrendered to the Division of Taxation in the Department of the Treasury for a cash payment equal to 90 percent of the amount of tax credits evidenced by the certificate, in addition to other requirements, applies wherein “the credit certificate or credit transfer certificate has not been sold or assigned previously.”

N.J.A.C. 19:31-22.14 Reduction and forfeiture of tax credits

N.J.A.C. 19:31-22.14(b) deletes and replaces “at, or associated with, the qualified business facility,” with “subject to the project agreement” and “commitment” with “project” pertaining to the provision for certain new full-time employees employed by the eligible business that, if reduced as detailed in the subsection, may result in the reevaluation of the net positive economic benefit of the project and reduction of the size of the award accordingly;

N.J.A.C. 19:31-22.14(c) deletes and replaces “at, or associated with, the qualified business facility” with “subject to the project agreement”, deletes and replaces “incentive” with “project” regarding reference to a project phase agreement; and deletes and replaces “commitment” with “project” regarding reference to a project agreement; and

N.J.A.C. 19:31-22.14(h) clarifies that any funds recaptured pursuant to this section, including penalties and interest, shall be net of costs incurred by the Authority.

N.J.A.C. 19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility

N.J.A.C. 19:31-22.15(b) 1. revises the exemption that shall be applied for a small business to delete “or an eligible business engaged primarily in a targeted industry with less than 50 employees at application” as the term “small business” is already defined as being engaged primarily in a targeted industry, and the 50 employees cap was deleted by P.L. 2021, c. 160; and 2. eliminates the “new cost benefit analyses” which is replaced with “cost comparison of the originally approved location and the alternate qualified business facility” as required for certain instances wherein an eligible business may change the location of the qualified business facility before certification of the capital investment.

N.J.A.C. 19:31-22.16 Affirmative action and prevailing wage

Proposed new N.J.A.C. 19:31-22.16(a) through (c) revises the section to 1. more accurately delineate the requirements under which the Authority's affirmative action and prevailing wage, including the timeframe for applying the affirmative action requirements for two years after the first certificate, is issued, and prevailing wage requirements for certain construction work at the qualified business facility by the business or construction work incurred on behalf of the business by the landlord, as detailed therein; and, 2. clarify that during the commitment period, the application of the prevailing wage shall apply to building services at the qualified business facility pursuant to N.J.S.C. 19:31-22.3(b)8.

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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, which revise the Emerge program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State, are intended to have a positive social impact.

The Emerge program is a key component of the State's broader economic development plan, which balances economic impact, for example, stimulating high-quality job growth and private sector investment, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the Economic Recovery Act of 2020's overall approach, which establishes or amends 15 different programs with varying development objectives. While the Emerge program is primarily focused on job creation, other programs are primarily focused on areas, such as community development, small and micro business support, and other critical social issues, such as food security. Attracting high-quality jobs and private sector investments into the State helps bolster long-term revenues and deepens the State's base of responsible corporate partners, all of which will reinforce the State's social initiatives.

In addition, within the Emerge program there are a number of features that directly focus on social improvement. For example, the program includes policy-tied bonuses to incentivize companies to establish prisoner re-entry programs, provide subsidized childcare for employees, and support local workforce development. The program also requires community benefits agreements for all projects over \$ 10,000,000, fostering stronger relationships between companies and their communities and supporting programs, such as youth development, workforce training, and free services to underserved communities in and around the project location. Further the program creates a Recovery Infrastructure Fund where businesses can meet their capital investment requirement by contributing to a fund for local infrastructure projects in the municipality hosting the project.

The program also includes fiscal protections to ensure transparency, equity, and faithful stewardship of taxpayer dollars; including, an inducement provision that enables the Authority to size awards to the amount necessary to induce the project to be sited in New Jersey.

Economic Impact

The proposed amendments are intended to bolster the State's economy by stimulating new high-quality economic development. The Emerge program is the primary job creation and large-scale retention tool in the New Jersey Economic Recovery Act of 2020. It specifically encourages economic development in the State's priority sectors, which have a high economic spill-over effect into other parts of the economy. In other words, these sectors tend to sell goods and services outside of the State's borders, thereby bringing cash into the State and fueling broader economic growth and vibrancy.

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In addition, most projects participating in the Emerge program will have a minimum requirement for private capital investment. This private capital investment is, by definition, a durable and sustainable investment in the State's economic infrastructure. These investments will support long-term job creation opportunities after tax credits have been fully utilized and even if a given project does not meet its full potential.

Further, the proposed amendments require that the only projects that will provide the State a positive long-term economic benefit can participate in the Emerge 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 through 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 within the program.

Federal Standards Statement

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

Jobs Impact

The core focus of the Emerge program is to attract new private sector jobs into the New Jersey economy. In addition, the proposed amendments provide for the ability to also support projects that would retain a significant amount of private sector jobs that are at risk of being relocated to another state. The capital investment requirements of the program, which focus on new construction and refurbishment of industrial, office, and research and development properties, also ensure that participating projects will stimulate job growth in the building trades.

The Emerge program is a pay-for-performance program where tax credits are only provided to applicants once a project is fully executed, including completing required capital investments and creating jobs.

The Economic Recovery Act of 2020 creates a shared program cap between the Emerge program and the Aspire program of \$ 1.1 billion per year, however actual cap usage will primarily be driven by the volume of approved applicants and individual per-job caps within the program. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the Emerge program; however, the Act and the rules provide a series of transparency measures to ensure regular reporting of the number of jobs created, including bi-annual program evaluation reports.

Agriculture Industry Impact

The proposed amendments may have a positive impact on the agricultural industry, which includes aquaculture and fisheries, through the targeted industry inclusion of the non-retail food and beverages industry. Specifically, an eligible business of the Emerge program may be

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within the agricultural industry through involvement with research and development activities that advance agricultural food innovation technologies. As a result, new or advanced technologies may benefit the State's agricultural industry operations for the production, processing, preservation, and distribution of raw agricultural goods into consumer food products.

Regulatory Flexibility Statement

The proposed amendments may impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., however, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed fees for the program are intended to ensure a source of necessary administrative fee revenue for NJEDA to more fully cover the costs of the program.

Further, the proposed amendments create significant new flexibilities and supports for small businesses to participate in the program, as compared to the State's previous jobs-based tax credit programs. For example, businesses in targeted industries with less than 100 full-time equivalent employees at the time of application do not have minimum capital investment requirements, have lower minimum job requirements, and can more easily move their project's location to support accelerated growth.

In addition, the proposed amendments provide new features that allow approved applicants to use third-party, independent certified public accounting firms to support the tax credit certification process. This change is meant to improve regulatory compliance processes for all businesses and the Authority. The specific reporting, recordkeeping, and compliance requirements are discussed in the Summary above.

Housing Affordability Impact Analysis

The proposed amendments will not have an impact on the affordability of housing in the State and will not impact the amount or cost of housing units, including multi-family rental housing and for-sale housing in the State. The proposed amendments revise the Emerge program, which provides incentives to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State.

Smart Growth Development Impact Analysis

The proposed amendments will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments revise the Emerge program which provides incentives to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

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

FULL TEXT OF DRAFT RULES

SUBCHAPTER 22. EMERGE PROGRAM RULES

19:31-22.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the Emerge Program Act (Act), sections 68 through 81 of P.L. 2020, c. 156, **as amended by P.L. 2021, c. 160**. The Act authorizes the Authority to administer the program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State. The Authority Board may approve the award of tax credits to a business upon application of the business demonstrating its eligibility under the Act and this subchapter and following the execution of a letter of intent and the payment of fees, subject to the limitations set forth in this subchapter. The value of all tax credits approved by the Authority for businesses eligible pursuant to section 71 of P.L. 2020, c. 156 shall be subject to the limitations set forth in section 98 of P.L. 2020, c. 156.

19:31-22.2 Definitions

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

“Act” means the Emerge Program Act, sections 68 through 81 of P.L. 2020, c. 156.

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by, the business. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish, by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by sections 1563 and 414 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 1563 and 414). An affiliate of a business may contribute to meeting either the capital investment or full-time employee requirements of a business that applies for a credit under section 71 of P.L. 2020, c. 156.

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“Approval letter” means the letter sent by the Authority to the eligible business awarded tax credits under the program and countersigned by the eligible business pursuant to N.J.A.C. 19:31-22.9(a), which sets forth the conditions that must be met by the eligible business before the execution of a commitment agreement.

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

[“Authorized agent of the owner” means the chief executive officer or equivalent officer for North American operations of the business.]

“Aviation district” means all areas within the boundaries of the Atlantic City International Airport, established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24), and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center.

“Board” means the Board of members of the New Jersey Economic Development Authority, established pursuant to section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Building services” means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. “Building services” shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the “prevailing wage” as defined at section 2 of P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

“Business” means an applicant proposing to own or lease premises in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5, or is a partnership, S corporation, limited liability company, or non-profit corporation. [A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by full-time employees of an affiliate.] If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. After approval by the Board of the award, if the business transfers the project, in whole or in part, or the business merges into another company, a business shall include a successor, as determined by the Authority in its sole discretion, to the business and a successor, as determined by the Authority in its sole discretion, to an affiliate of the business if the business applied for a credit based upon any capital investment made by full-time employees of the affiliate, provided any successor must execute the [incentive] **commitment** agreement, which shall include: the obligation to not reduce the number of full-time employees in the successor’s Statewide

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employment in the last tax period prior to the approval of the award; an agreement that all parties to the [incentive] **commitment** agreement are jointly and severally liable under the [incentive] **commitment** agreement; and an acknowledgment that the tax credit will be allocated to each party to the [incentive] **commitment** agreement in accordance with the number of full-time employees that each employs [at, or associated with, the qualified business facility].

“Capital investment” means expenses that a business or an affiliate of the business incurs, **or is incurred on behalf of the business or affiliate by its landlord, which may be demonstrated through an executed letter of intent or lease**, following the submission of a complete application to the Authority pursuant to section 72 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.5, but prior to the project completion date, as shall be defined in the project agreement, for:

1. Site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, including, but not limited to, water, electric, sewer, and stormwater, and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems, or other environmental components required to attain the level of silver rating and gold rating standards or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source, including N.J.S.A. 52:27H-80 et seq., but does not include site acquisition;

2. Obtaining and installing furnishings and machinery, apparatus, or equipment, including but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property; or any combination of the foregoing. Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Capital investment shall include the value of a capital lease, as defined by generally accepted accounting practices (GAAP), of furnishings and machinery, apparatus, or equipment, based on the shorter of the useful life of the leased property or the commitment period; and

3. Associated soft costs, which shall not exceed 20 percent of all capital investment.

“College or university” means a county college, an independent institution of higher education, a public research university, or a State college.

“Commitment agreement” means the contract between an eligible business and the Authority pursuant to N.J.A.C. 19:31-22.9, that the parties execute after the conditions in the approval letter are met.

“Commitment period” means a period that is 1.5 times the eligibility period specified in the project agreement entered into pursuant to section 73 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.9, rounded up, for each applicable phase agreement.

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“Community benefits agreement” means the agreement between the eligible business, the municipality or county, and the Authority pursuant to N.J.A.C. 19:31-22.9(c).

“Complex of buildings” means buildings that are part of the same financing plan and operational plan. The buildings comprising a complex of buildings may be non-contiguous and in geographical locations with different factors that affect the tax credit calculation.

“County college” means an educational institution established by one or more counties, pursuant to Chapter 64A of Title 18A of the New Jersey Statutes.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Distressed municipality” means a municipality that is qualified to receive assistance pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs, to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

“Doctoral university” means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education’s Basic Classification methodology on August 7, 2017, the effective date of P.L. 2017, c. 221.

“Eligibility period” means the period in which an eligible business may claim a tax credit under the program for a given project phase, beginning with the tax period in which the Authority accepts certification of the eligible business that it has met the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(d), and extending thereafter for a term of not more than seven years. The term shall be determined at the discretion of the applicant at application, provided that the term of the eligibility period may consist of nonconsecutive tax years if the applicant elects, at any time after the end of the first tax period of the eligibility period, to defer the continuation of the eligibility period to a subsequent tax period. The applicant must be, at the time of the deferral election, in compliance with the requirements of the program. The Authority may extend the eligibility period one additional tax period to accommodate a prorated payment pursuant to paragraph (2) of subsection a. of section 77 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

“Eligible business” means any business that satisfies the criteria set forth at section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3 at the time of application for tax credits under the program.

“Eligible position” or “full-time job” means a full-time position in a business in this State that the business has filled with a full-time employee. An eligible position shall not include an independent contractor or consultant, unless the independent contractor or consultant meets the definition of a full-time employee in the Act and this section. An eligible position may not include a position that is engaged in final point-of-sale retail, unless the position is located at a

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qualified business facility used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District, as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219).

“Employment and Investment Corridor” means the portions of the qualified incentive area that are not located within a distressed municipality and which:

1. Are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan [until June 30, 2013], or until the State Planning Commission revises and readopts New Jersey's State [Strategic] **Development and Redevelopment** Plan and adopts rules to revise this definition;

2. Intersect with portions of: a port district, a qualified incentive tract, or Federally owned land approved for closure under a Federal Commission on Base Realignment and Closure action;

3. Are the proposed site of a qualified incubator facility, a tourism-destination project, or transit-oriented development; or

4. At the time of application, contain:

i. A vacant commercial building or campus having over 400,000 square feet of office, laboratory, or industrial space, **or any combination of office, laboratory, or industrial space**, available for occupancy for a period of over one year, provided that “employment and investment corridor” shall no longer include the building or campus when there is less than 400,000 square feet of vacant space; or

ii. A site that has been negatively impacted by the approval of a “qualified business facility,” as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

“Enhanced area” means **a municipality that contains** an urban transit hub as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208); the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and the three municipalities with the highest percentage of Supplemental Nutrition Assistance Program recipients according to the 2017 Municipal Revitalization Index.

“Full-time employee” means:

1. A person:

i. Who is employed by a business for consideration for at least 35 hours a week 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.;

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ii. Who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for at least 35 hours a week 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.;

iii. Who is a partner of a business who works for the partnership for at least 35 hours a week 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.;

iv. Who is a resident of another state, and would be eligible pursuant to subparagraphs 1i, ii, or iii above, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., **due to a reciprocity agreement with the other state;** or

v. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for subparagraphs 1i, ii, or iii above. A "full-time employee" shall include, but shall not be limited to, an employee who has been hired by way of a labor union hiring hall, or its equivalent, provided that the 35 hours of employment per week [at, or associated with, the qualified business facility] **in the State** shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons;

2. A "full time employee" further means a person eligible pursuant to paragraph 1 above who, [except for purposes of the Statewide workforce, and] as evidenced by documentation acceptable to the Authority,[:

i. Is] **is** provided, by the business, no later than 90 days of hire, employee health benefits under a health benefits plan authorized pursuant to State or Federal law; provided, however, that with respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal, the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; and

[ii. Is paid no less than \$15.00 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher;]

3. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business or a contract worker whose income is subject to withholding, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., except that any person working as an independent contractor or contract worker whose income is subject to withholding, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., for the business shall be deemed a full-time employee if the business demonstrates to the Authority that:

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i. The person working as an independent contractor or contract worker for the business works at least 35 hours per week or renders any other standard service generally accepted by custom or practice as full-time employment;

ii. The person is provided, at the date of initial engagement, as evidenced by documentation acceptable to the Authority, employee health benefits under a health benefits plan authorized pursuant to State or Federal law;

iii. The business provides documentation to the Authority to permit the Authority to verify the compensation paid to, the withholdings of, and the time worked by, the person working as an independent contractor or contract worker; and

iv. The business shall provide to the Authority an annual report that identifies the number of persons working as independent contractors or contract workers for the business and their contractual or partnering relationship with the business; and

4. "Full-time employee" shall not include any person who, at the time of project application, works in New Jersey for consideration for at least 35 hours per week for the business, or who renders any other standard of service generally accepted by custom or practice as full-time employment, but who, prior to project application, works under an employee leasing agreement between the business and an employee leasing company that is not a professional employer organization or who was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on January 7, 2021, the effective date of P.L. 2020, c. 156, is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality, or as a result of the Federal government owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Incentive area" means:

1. An aviation district;

2. A port district;

3. A distressed municipality or [transit hub municipality or] **enhanced area**;

4. An area designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning Area); or a Designated Center under the State Development and Redevelopment Plan[, provided an area designated as Planning Area 2 (Suburban) or Planning

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Area 3 (Fringe Planning Area) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation];

5. An area located within a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6), or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);

6. An area located within any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District, as delineated at section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4);

7. An area located within a regional growth area, rural development area zoned for industrial use as of December 5, 2016, the effective date of P.L. 2016, c. 75, or town, village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

8. An area located within a government-restricted municipality;

9. An area located within land approved for closure under any Federal Commission on Base Realignment and Closure action;

10. An area located within an area designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive), so long as that area designated as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within:

i. A designated center under the State Development and Redevelopment Plan;

ii. A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State [Strategic] **Development and Redevelopment** Plan and adopts rules to revise this definition as it pertains to Statewide Planning Areas;

iii. Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6), or in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-14);

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iv. Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided the expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals; or

v. Any area on which an existing tourism destination project is located; or

11. An area located in a qualified opportunity zone.

“Independent institution of higher education” means a college or university incorporated and located in New Jersey, which, by virtue of law, character, or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education that is equivalent to the education provided by the State’s public institutions of higher education, as attested by the receipt of, and continuation of regional accreditation by, the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

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

“Industrial use” means assembling, processing, manufacturing, or any combination thereof, of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity. “Industrial use” includes farming purposes as that term is defined at 26 U.S.C. § 6420(c)(3)(A), undertaken in an industrial space.

“Infrastructure Fund” means the Recovery Infrastructure Fund established pursuant to section 79 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.18 to fund local infrastructure improvements.

“Labor harmony agreement” means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by

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demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

“Major rail station” means a railroad station that is located within a qualified incentive area and that provides, to the public access, to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

“Mega project” means a project of special economic importance, at which 500 or more new full-time jobs are created, having capital investment of at least \$50,000,000 in a targeted industry and that provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to: being undertaken by a business that is making an industry leading investment in a new technology or high-growth sub-industry level or catalyzing a new sub-industry or industry-cluster within the State.

“Minimum environmental and sustainability standards” means the standards established by the Authority in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

“Municipal Revitalization Index” means the most updated municipal revitalization distress score, as published at the time of project Board approval by the Department of Community Affairs.

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

“Non-gaming business” means any business, or portion of any business, that is not engaged in the operation of casino gambling or other gaming as defined at N.J.S.A. 5:12-218. For projects that contain both gaming and non-gaming operations, the number of full-time jobs and amounts of eligible capital investment shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, for example, if gaming revenue is 40 percent of total revenue, then 60 percent of the full-time employees would be deemed non-gaming and in an eligible position for the program.

“Other eligible area” means the portions of the incentive area that are not located within a distressed municipality, or the employment and investment corridor.

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

“Phased project” means a project with an initial phase that is a mega project and each subsequent phase includes a minimum capital investment of \$25 million and minimum of 250 new full-time jobs.

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

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

“Program” means the Emerge program established by sections 68 through 81 of P.L. 2020, c. 156 and as implemented by this subchapter.

“Project” means the capital investment at a qualified business facility and the employment commitment pursuant to the project agreement.

“Project agreement” [or “incentive agreement”] means the approval letter and the commitment agreement executed between an eligible business and the Authority, which together set forth the terms and conditions under which the eligible business may receive the tax credit award authorized by the Board pursuant to the Emerge program.

“Project phase agreement” [or “incentive phase agreement”] means a sub-agreement of the project agreement that governs the timing, capital investment, employment levels, and other details of the respective phase.

“Public research university” means a public research university as defined at section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

“Qualified business facility” means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located therein, used in connection with the operation of a business that is not engaged in final point-of-sale retail business at that location, unless the building, complex of buildings, or structural components of buildings, and all machinery and equipment therein, are used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District, as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219). In determining whether a qualified business facility for professional services is engaged in final point-of-sale retail, the Authority shall consider several factors, including, but not limited to, whether the business is a small business and whether the preponderance of its customer base is located within this State.

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“Quality child care facility” means a child care center licensed by the Department of Children and **Families or a registered family child care home with the Department of Human Services**, operating continuously, which has not been subject to an enforcement action, and which has and maintains a [total] licensed capacity [of at least 60] **for children age [six] 13 years or younger who attend for less than 24 hours a day.**

“Qualified incentive tract” means a population census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Qualified incubator facility” means a commercial building located within an incentive area: that contains 5,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with, a research institution, teaching hospital, college, or university; and within which at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

“Qualified opportunity zone” means a Federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1.

“Research and development premises” or “research and development space” means premises or space in which at least 51 percent of the square footage will be, or has been, used for research and development.

“Retained full-time job” means an eligible position that currently exists in this State and is filled by a full-time employee, but which, because of a potential relocation by the business, is at risk of being lost to another state or country[, or of being eliminated]. For the purposes of determining the number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

“SDA district” means an SDA district as defined at section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

“SDA municipality” means a municipality in which an SDA district is situated.

“Small business” means a business engaged primarily in a targeted industry, with fewer than 100 employees, as determined six months before application and at the time of application. Employees of a small business shall include a person who is employed by a business for consideration for at least 35 hours a week; who is employed pursuant to an employee leasing agreement for at least 35 hours a week; or who is a partner of a business who works for the partnership for at least 35 hours a week. Employee of a small business shall also include any person who works as an independent contractor for the business or a contract worker who works at the business for at least 35 hours a week. For those persons who are employed by the business or who work for the business as independent contractors or contract workers for less than 35 hours a week, 35 hours of employment a week shall constitute one employee, regardless of whether or not the hours of work were performed by one or more persons. The Authority may

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determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment. For purposes of the number of employees, a small business shall include all of its affiliates, regardless of whether the affiliate may contribute full-time jobs or capital investment to the project.

“Soft costs” means 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.

“Square foot” or “square footage” means the sum of all areas on all floors of a building or structure included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

“Square foot of gross leasable area” or “square footage of gross leasable area” or “gross leasable area” means rentable area of the building or structure as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant’s pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building or structure that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building or structure and is not affected by changes in corridor sizes or configuration.

“State college” means a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes.

“Statewide workforce” means the total number of full-time employees in the Statewide workforce of the business and any affiliate of the business, if the affiliate contributes any capital investment or full-time employees. “Statewide workforce” shall not include a new eligible position [at, or associated with, the qualified business facility] unless the new eligible position is in addition to the number of full-time employees specified in the commitment agreement and the business is not receiving an additional tax credit award for the new eligible position. Further, “Statewide workforce” shall not include full-time employees at any final point-of-sale retail facilities unless the project, as approved by the Board, includes full-time employees engaged in final point-of-sale retail.

“Substantial environmental remediation” means the completion of the necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the capital investment in a qualified business facility.”

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“Targeted industry” means any industry identified from time to time by the Authority that shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses, including food innovation, and other innovative industries that disrupt current technologies or business models. A project shall be considered to be in a targeted industry if the primary activity undertaken by the full-time employees will be in a targeted industry, or if the business is engaged primarily in a targeted industry. An eligible business shall be considered to be in a targeted industry if the project is for full-time employees of a division that primarily undertakes activity within the definition of a targeted industry, or the eligible business is a subsidiary of an entity that is engaged primarily in a targeted industry, even if the project is for full-time employees who do not work directly in the targeted industry. The Authority may consider whether a business is engaged primarily in another innovative industry that disrupts current technologies or business models, by assessing factors including, but not limited to, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new firms to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based firms to collect a share of revenues that were traditionally only available to companies in other geographies.

“Technology startup company” means a for-profit business that has been in operation fewer than seven years at the time that it initially occupies or expands in a qualified business facility and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which proprietary technology or business method the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

“Total project cost” means the greater of the actual cost or the estimated cost to be incurred in connection with the project by the business or its landlord until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion, as set forth in the commitment agreement.

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

“Transit-oriented development” means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a government-restricted municipality, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations.

“Transit hub” means an urban transit hub, as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), and that is also located within an incentive area.

“Transit hub municipality” means a Transit Village or a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), or which has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

“Transit village” means a municipality that has been designated as a transit village by the Commissioner of the Department of Transportation and the Transit Village Task Force.

“Withholdings” means the amount withheld by a business from the wages of full-time employees, or estimated taxes paid by, or on behalf of, partners who are full-time employees, or any combination thereof, pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Withholdings shall not include amounts withheld by a business from stock options or from stock options, money, or other payments given to a full-time employee pursuant to the termination of employment of the full-time employee. Withholdings shall include amounts withheld by a business from money or other payments given to a full-time employee pursuant to a bonus for commencing employment or for services rendered by the full-time employee.

19:31-22.3 Eligibility criteria

(a) A business eligible pursuant to this section may submit an application to the Authority in accordance with the provisions of section 72 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.5 on or after May 20, 2021, the effective date of this subchapter, but prior to March 1, 2027.

(b) The Authority shall make the determination that an applicant has met the criteria for eligibility for a tax award and shall determine the amount of the award. In order for a business to be eligible for tax credits under the program, [a business's authorized agent of the owner,] **the chief executive officer of the business or an equivalent officer** shall demonstrate to the Authority at the time of application that:

1. The business will make, acquire, or lease a capital investment at the qualified business facility equal to or greater than the applicable amount set forth at (c) below;

2. The business will create or retain new and retained full-time jobs [at, or associated with, the qualified business facility] **in the State** in an amount equal to or greater than the applicable minimum number of new or retained full-time jobs required to be eligible as set forth at (d) below. To qualify as an eligible position or full-time job, the business must demonstrate to the Authority's satisfaction that the employee spends at least 80 percent of the individual's work time in this State and that the eligible position requires an employee to have the individual's primary place of work in this State;

3. The qualified business facility is located in a qualified incentive area;

4. The award of tax credits will be a material factor in the business's decision to create or retain the number of new and retained full-time jobs set forth in its application, except that:

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

ii. In determining whether a position provides professional services subject to (b)4i above, the Authority shall consider several factors, including, but not limited to, whether the business is a small business or whether the preponderance of its customer base is located within this State;

5. The award of tax credits, the capital investment resultant from the award of tax credits, and the resultant creation and retention of new and retained full-time jobs will yield a net positive economic benefit, as calculated by the Authority, to the State equaling at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below. For a phased project, the requested tax credit allocation amount for the initial phase shall equal at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below, and, for each phase thereafter, the cumulative net positive economic benefit shall equal at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below. The net positive economic benefit determination shall be calculated prior to considering the value of the requested tax credit under the program and shall be based on the benefits generated during the period of time from approval through the end of the commitment period. The net positive economic benefit may be based on the benefits generated through the end of the longer period of extended commitment that the business may elect for purposes of receiving credit for benefits projected to occur after the expiration of the commitment period, pursuant to (b)5iv below.

i. An award of tax credits to a business for a qualified business facility located in a distressed municipality or [transit hub municipality] **an enhanced area** shall yield a net economic positive benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 300 percent of the requested tax credit amount.

ii. An award of tax credits to a business for a qualified business facility located in a government-restricted municipality, or for a mega project, shall yield a net positive economic benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 200 percent of the requested tax credit amount.

iii. The net positive economic benefits calculated for all projects shall be evaluated by the Authority on a present value basis with the requested tax credit allocation amount discounted to

present value at the same discount rate as the benefits from capital investment resultant from the award of tax credits and the resultant retention and creation of full-time jobs as provided at (b)5iv below.

iv. A business may elect a period of extended commitment [after] **beyond** the commitment period for which time the economic benefits shall be creditable by the Authority to the determination of the net positive economic benefit of the project. In no event, shall the period for which the net positive economic benefit be determined, including any extended commitment period, exceed 20 years. [If the business makes this election, the net positive economic benefits calculated shall be additionally discounted by the Authority to reflect the uncertainty of the business's location after the commitment period expires.] A business electing a period of extended commitment and failing to maintain the project through the expiration of that extended commitment period shall be obligated to repay a proportion of the incremental benefits received on account of having extended the commitment period, taking into consideration the number of years of extended commitment during which the business maintained the project.

v. If, during the term of the program, the methodology used by the Authority in projecting the net positive economic benefits of a project in making the determination required pursuant to this paragraph is modified, the Authority may adjust, prospectively, the respective percentage thresholds by which the benefits must exceed the requested tax credit allocation amount set forth pursuant to this paragraph to ensure consistent application of the respective percentage thresholds. Any modification to the methodology shall be applied prospectively. Prospective application means using the modified methodology or respective percentages to pending applications and to projects that have been previously approved if the business requests a modification, or this subchapter or the [incentive] **commitment** agreement requires or authorizes the Authority to conduct a reevaluation of the net positive economic benefit;

6. The qualified business facility shall be in compliance with minimum environmental and sustainability standards upon completion of the project;

7. The project shall comply with the Authority's affirmative action requirements, adopted pursuant to section 4 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3; and

8. Each worker employed to perform construction work or building services work at the qualified business facility shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.).

i. The payment of prevailing wage pursuant to this paragraph shall not apply if:

(1) The work performed under the contract is performed at a qualified business facility owned by a landlord that is not a business receiving Authority assistance;

(2) The landlord is a party to the construction contract, [or] building services contract, **or both**; and

(3) The qualified business facility constitutes a lease of less than 35 percent of the entire facility at the time of contract and under any agreement to subsequently lease the qualified business facility.

ii. In accordance with section 1 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.1), nothing in this paragraph shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first certificate of compliance pursuant to paragraph [(8)] (2) of subsection a. of section [71] 77 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

iii. The payment of prevailing wages for building services work shall apply for the duration of the commitment period.

(c) The minimum capital investment required to be eligible pursuant to (b)1 above shall be the sum of (c)1 through 5 below, as applicable, provided that to the extent a business's qualified business is comprised of more than one of the uses at (c)1, 2, 3, or 4 below, the minimum investment for common areas will be in proportion to the other areas. [If a business qualifies on the basis of retained full-time jobs, the new construction or rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises by the business qualifying on the basis of retained full-time jobs shall be equal in size to no less than the space occupied by the business's retained full-time jobs at the time of application.]

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

2. For the new construction of an industrial, warehousing, logistics, or research and development portion of the premises for use by the business, a minimum investment of \$60.00 per square foot of gross leasable area;

3. For the rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises that does not qualify pursuant to (c)1 or 2 above, a minimum investment of \$40.00 per square foot of gross leasable area;

4. For the new construction of a portion of the premises that does not qualify pursuant to (c)1 or 2 above, a minimum investment of \$120.00 per square foot of gross leasable area;

5. For a small business, no new minimum capital investment shall be required, provided the applicant has demonstrated evidence satisfactory to the Authority of its intent to remain in the State for the commitment period. Such evidence may include, but is not limited to, a proposed lease, membership agreement, or similar commitment for space; and

6. In the event the business invests less than the amount set forth at (c)1 above in the qualified business facility, the business shall donate the uninvested balance to the infrastructure

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fund established pursuant to section 79 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.18, which donation shall not be included in the net positive economic benefit analysis pursuant to (b)4 above or the full economic analysis pursuant to N.J.A.C. 19:31-22.7(d).

(d) The minimum number of new or retained full-time jobs required to be eligible pursuant to (b)2 above shall be as set forth at (d)1 through 5 below. A business may be eligible for a tax credit award for both new and retained full-time jobs if the business separately satisfies the corresponding minimum number for new and retained full-time jobs.

1. For a small business, 25 percent growth of its workforce with new full-time jobs within the eligibility period. The small business shall submit a growth plan, which specifies the number of new full-time employees that the eligible business will hire each year of the eligibility period [at, or associated with, the qualified business facility;] **in the State** provided that by the end of the eligibility period, the eligible business shall have a minimum of 25 percent growth of its workforce with new full-time jobs;

2. For a business engaged primarily in a targeted industry that does not qualify as a small business, 25 new full-time jobs;

3. For any business not set forth at (d)1 or 2 above, a minimum of 35 new full-time jobs;

4. For a business eligible for new full-time jobs under (d) 2 or 3 above, the business shall also be eligible for retained full-time jobs in addition to the new full-time jobs if the business will retain 150 retained full-time jobs when locating in a government-restricted municipality, 250 retained full-time jobs when locating in a qualified incentive tract or enhanced area municipality, or 500 retained full-time jobs when locating anywhere else in the State;

[4.] **5.** For a business **not eligible under (d)2, 3 or 4 above and** locating in a qualified incentive tract, **enhanced area**, or government-restricted municipality, the greater of 500 [new] **retained** full-time jobs or the business's retained full-time jobs at the time of application; and

[5.] **6.** For any business not set forth at (d)[4]5 above, the greater of 1,000 [new] **retained** full-time jobs or the business's retained full-time jobs at the time of application.

(e) In addition to the requirements at (b), (c), or (d) above, a business shall provide **and adhere to** the following. The requirements set forth in this subsection may be modified by the Authority to respond to an emergency, disaster, or other factors that result in employees of an eligible business having to work from a location other than the qualified business facility:

1. A plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business's new [or] **and** retained full-time employees as approved, as determined by the Authority in its sole discretion by considering square footage allocable to eligible positions. The business shall adhere to such plan to complete its project. [If a business is approved for retained full-time jobs, the business shall also satisfy the space requirements at (c)4 and 5 above if a business is receiving tax credits for any retained full-time jobs.]

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2. A certification by the [authorized agent of the owner] **chief executive officer** of the business **or an equivalent officer**, under the penalty of perjury, that not less than 80 percent of the withholdings of new [or] **and** retained full-time jobs are, and will be, subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

(f) The [owner] **chief executive officer** of the business, or an [authorized agent of the owner] **equivalent officer**, shall certify that all factual representations made by the business to the Authority pursuant to (b), (c), and (d) above are true under the penalty of perjury.

(g) For a qualified business facility that is a complex of buildings:

1. The minimum capital investment required pursuant to (b) above and for purposes of qualifying as a mega project shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion. In all other instances, each building in a complex shall meet a minimum capital investment required pursuant to (b) above. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples of complexes of buildings that are proximate:

i. A complex of buildings consists of building A and building B, which are both on the same block, but separated by other buildings.

ii. A complex of buildings will consist of building A and building B, which will be adjacent to each other, but have separate entrances.

iii. A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot.

2. The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings.

(h) For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility shall have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

1. Having a capital investment in excess of \$50,000,000, at which more than 250 full-time employees of a business are created or retained; and

2. Demonstrating to the satisfaction of the Authority a combination of two or more of the following as a result of the project:

i. Positive financial benefit to the Tourism District;

ii. A net increase in visitors to the Tourism District;

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iii. An increase in marketing dollars spent on the Tourism District; or

iv. The addition of unique amenities or services to the Tourism District, which amenities or services may be located at the project.

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

(j) A business may apply for tax credits under the program for more than one project through one or more applications. However, the Authority may, in its sole discretion, consider two or more applications as one application for one project based on factors including, but not limited to, the location of the qualified business facilities, the types of jobs proposed, and the business's financing and operational plans.

19:31-22.4 Restrictions

(a) The Authority shall not enter into [an incentive] **a commitment** agreement with a business that has previously received incentives administered by the Authority unless the capital investment incurred and new or retained full-time jobs pledged by the business in the new [incentive] **commitment** agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

(b) A project that consists solely of final point-of-sale retail facilities shall not be eligible for a grant of tax credits. If a project consists of both final point-of-sale retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. If a warehouse facility is part of a final point-of-sale retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), shall not be considered final point-of-sale retail facility.

(c) For the purposes of the certifications and annual reports required pursuant to the commitment agreement and set forth at N.J.A.C. 19:31-22.9(f) and 22.10(a)5, if a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs.

1. To the extent an eligible retained full-time job that was the basis of the award no longer exists, the business shall include as a retained full-time job, a new eligible position that is filled by a full-time employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

2. If a qualified business facility comprises a complex of buildings with different factors affecting the tax credit calculation, the business shall meet the employment requirements related to the retained full-time jobs at, or associated with, each building before receiving benefits for

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new full-time jobs at, or associated with, any building. The business shall include as a retained full-time job, a new eligible position that is filled by a full-time employee, regardless of the location of such position, provided that the position is included in the order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new eligible position filled by a full-time employee or the tax credit for the retained full-time job that no longer exists.

(d) A business with full-time employees that are the subject of an existing incentive award shall have to maintain 100 percent of the full-time employees subject of the existing incentive award before any full-time employee may be counted as an eligible position.

(e) To remain a mega project, the business shall maintain at least 500 new full-time jobs and demonstrate the factors approved for leadership each year during the commitment period.

19:31-22.5 Application submission requirements

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

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

i. The name of the business;

ii. The contact information of the person identified as the primary contact for the business;

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

iv. The type of the business;

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

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of full-time employees in New Jersey on the date of the application and in the business's last tax period prior to the date of the application. If the application is approved in the business's subsequent tax period, the business must provide the total number of full-time employees in New Jersey in the tax period prior to credit amount approval;

ix. The total list of the business's locations in New Jersey and the function performed at each location;

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x. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the owner or business is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The business shall also submit a written certification by the [owner] **chief executive officer** of the eligible business or [authorized agent of the owner] **an equivalent officer** stating that the business applying for the program satisfies the criteria at N.J.A.C. 19:31-22.7(c)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury[.]; **that contractors or subcontractors that will perform work at the qualified business facility are registered as required by “The Public Works Contractor Registration Act,” P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury, and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;**

xi. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

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

xiii. A list of all the development subsidies, as defined at 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; and

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

2. Project information, which shall include the following:

i. An overall description of the proposed project;

ii. A description of the capital investments planned by the business at the proposed qualified business facility;

iii. The estimated value of the capital investment and financial information demonstrating ability to complete the capital investment; and

iv. Evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit pursuant to N.J.A.C. 19:31-22.3(b)5, taking into account the criteria listed at N.J.A.C. 19:31-22.3(b)5i through v, and a statement that the applicant understands and acknowledges it may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

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(1) In relation to whether a proposed capital investment will yield a net positive economic benefit, the business shall submit a certification by the business's [owner] **chief executive officer** or [authorized agent of the owner] **an equivalent officer** stating:

(A) That the existing full-time jobs are at risk of leaving the State or being eliminated, if the business has any such full-time jobs;

(B) The tax credits are a material factor in any projected creation or retention, as applicable, of new full-time jobs; and

(C) All documents and all factual representations made by the business to the Authority in support of and to demonstrate that the award of tax credits will yield a net positive benefit to the State are true and accurate at the time of submission, under the penalty of perjury;

v. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project;

vi. Identification of the site or sites of the proposed qualified business facility, including the block and lot of the site or sites as indicated upon the local tax map. For purposes of determining geographical location of a building or contiguous buildings that extend over more than one geographical location, the building or contiguous buildings shall be considered in the geographical location in which the building or contiguous buildings are located with the most beneficial total tax credit amount;

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

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

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

x. The identification of key factors that are influencing the business's decision to either move to, or stay in, the State, or locate out-of-State, weighted to reflect importance to the business;

xi. A narrative description of the business's rationale to move to, or stay in, the State, or locate out-of-State and any other issues driving the applicant's decisions;

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xii. Competitive proposals that the eligible business has received from other states;

xiii. The total number of anticipated new and retained full-time jobs in New Jersey and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity if any such jobs and employees will be provided by affiliates;

xiv. For a small business, the growth plan required pursuant to N.J.A.C. 19:31-22.3(d)1; and

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

3. Employee information, which shall include the following:

i. [A written certification by the owner of the eligible business, or an authorized agent of the owner that the eligible positions that are the subject of the application will be at, or associated with, the qualified business facility, and evidence] **Evidence** to the Authority's satisfaction that demonstrates that 80 percent of each eligible position's work time will be performed in this State;

ii. The average annual wage and benefit rates of full-time employees and new and retained full-time jobs [at, or associated with, the qualified business facility] **in the State**; and

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

4. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to:

i. A list of current employees and retained full-time employees [at, or associated with, the qualified business facility] **in the State**;

ii. The WR 30 of the business for the privilege period prior to application;

iii. A list of affiliates that will be contributing to the capital investment or full-time employees to the project;

iv. All locations in this State of the business and affiliates that will be contributing to the capital investment or full-time employees to the project;

v. The Statewide work force for the privilege period prior to application;

vi. A floor plan of the proposed qualified business facility that identifies the location of and square footage associated with the functions of the eligible positions at the proposed qualified business facility; and

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vii. A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the business's last tax period prior to the date of the application. If the application is approved in the business's subsequent tax period, the business must provide the total number of full-time employees in New Jersey of all affiliates in the tax period prior to credit amount approval.

(b) The business applying to the program shall submit an application fee as set forth at N.J.A.C. 19:31-22.6.

(c) The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project.

(d) If circumstances require an eligible business to amend its application to the Authority or to provide additional or supplemental factual representations prior to approval, then the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify to the Authority that the information provided in its amended application and any other factual representations made in support of and to demonstrate the eligibility requirements at N.J.A.C. 19:31-22.3(b), (c), (d), and (e) are true under the penalty of perjury.

19:31-22.6 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects with 99 or fewer new and retained full-time jobs, the fee to be charged at application shall be \$5,000;

2. For projects with 100 to 249 new and retained full-time jobs, the fee to be charged at application shall be \$10,000; [and]

3. For projects with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee to be charged at application shall be \$15,000[.]; **and**

4. For applicants that are seeking a mega project, the fee to be charged at application shall be \$25,000.

(b) A business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee shall be charged prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

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1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$10,000;
2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$75,000; [and]
3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$165,000[.]; **and**
- 4. For each project under a mega project, the fee shall be \$250,000.**

(d) A business shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$10,000;
2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$100,000; [and]
3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$200,000[.]; **and**
- 4. For each project under a mega project, the fee shall be \$300,000.**

(e) A business shall pay to the Authority an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(f), and for the duration of the commitment period and any period of extended commitment pursuant to N.J.A.C. 19:31-22.3(b)5iv. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the annual servicing fee shall be \$5,000;
2. For each project with 100 to 249 new and retained full-time jobs, the annual servicing fee shall be \$25,000; [and]
3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the annual servicing fee shall be \$60,000[.]; **and**
- 4. For each project under a mega project, the annual servicing fee shall be \$90,000.**

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-22.12 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

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1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$5,000, and \$2,500 for each additional request made annually;

2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$10,000, and \$5,000 for each additional request made annually; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$15,000, and \$7,500 for each additional request made annually[.]; **and**

4. For each project considered a mega project, the fee shall be \$20,000, and \$10,000 for each additional request made annually.

(g) 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 99 or fewer new and retained full-time jobs, a non-refundable fee of \$2,500 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$7,500 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;

2. For each project with 100 to 249 new and retained full-time jobs, 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

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, 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[.]; **and**

4. For each project considered a mega project, 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 \$35,000 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 shall be paid for the first six-month extension to the date by which the business shall submit the certification with respect to the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective

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project phase, pursuant to N.J.A.C. 19:31-22.9(f); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee for the first six-month extension shall be \$5,000, and \$7,500 for each subsequent extension;

2. For each project with 100 to 249 new and full-time retained jobs, the fee shall be \$10,000 for the first six-month extension and \$15,000 for each subsequent extension; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$15,000 for the first six-month extension and \$25,000 for each subsequent extension[.]; **and**

4. For each project considered a mega project, the fee shall be \$20,000 for the first six-month extension and \$30,000 for each subsequent extension.

(i) A business seeking to terminate an existing [incentive] **commitment** agreement in order to participate in an [incentive] **commitment** agreement authorized pursuant to the Emerge program shall pay, to the Authority, a non-refundable fee as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$2,500, and \$7,500 for each termination that requires extensive staff time and Board approval;

2. For each project with 100 to 249 new and retained full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$5,000, and \$15,000 for each termination that requires extensive staff time and Board approval; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee for a termination that does not require extensive staff time and Board approval shall be \$7,500, and \$25,000 for each termination that requires extensive staff time and Board approval[.]; **and**

4. For each project, considered a mega project, the fee for a termination that does not require extensive staff time and Board approval shall be \$10,000, and \$35,000 for each termination that requires extensive staff time and Board approval.

19:31-22.7 Review of completed application

(a) A business seeking an approval of tax credits for a project shall apply for tax credits prior to March 1, 2027.

(b) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application

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process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

(c) Before the Board may consider an eligible business's application for tax credits:

1. The Authority [will] **shall** confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the eligible business is in [compliance by being in] substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the eligible business:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the eligible business; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates, or issues, its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a business is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the eligible business.

3. The eligible business shall execute a non-binding letter of intent with the Chief Executive Officer of the Authority, specifying the amount and terms and conditions of tax credits that the Authority is prepared to propose for Board approval and that are intended to be a material factor

in the decision by the eligible business to create or retain the proposed number of new and retained full-time jobs, and in which the eligible business certifies such tax credits are a material factor in its decision.

i. If the eligible business has taken actions to commit to the project in this State, including, but not limited to, obtained site control of the qualified business facility; signed lease without penalty-free contingency language that the lease is conditioned upon receiving the tax credits; has expended physical construction costs for a building or other structure; has taken a formal decision that selects a site; made a public announcement that it intends to locate to the State; entered into any binding contract for relocation or equipment, including, but not limited to, moving furniture, fixtures, and equipment purchases; or made non-refundable deposits prior to the execution of the letter of intent, then the Authority may rescind approval of the award of tax credits, unless the eligible business disclosed these facts prior to executing the letter of intent and the Authority determines that the award of tax credits was still a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program.

ii. The letter of intent will also include a certification from the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer** that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury.

iii. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.

(d) In determining whether the award of tax credits is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program, the Authority shall undertake a full economic analysis of all locations under consideration by the eligible business. The Chief Executive Officer of the Authority may further consider the costs associated with opening and maintaining a business in New Jersey, competitive proposals that the eligible business has received from other states, the prevailing economic conditions, and any other factors that the Chief Executive Officer of the Authority deems relevant to assist the Authority in determining whether an award of tax credits is a material factor in the eligible business's decision. Based on this information, the Authority shall independently verify and confirm the eligible business's assertion that the award of tax credits under the program is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program and, in the case of retained full-time jobs, the jobs are actually at risk of leaving the State, before the Authority may award the eligible business any tax credits under this program.

(e) In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-22.3(b)5 and as certified by the business's [owner] **chief executive officer**, or [authorized agent of the owner] **an equivalent officer**, pursuant to N.J.A.C. 19:31-22.5(a)2iv, the Authority's consideration shall include, but not be limited to, the direct and indirect benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to

the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(f) In making the determination of the local property tax included in the net positive economic benefit required pursuant to (e) above, the Authority may consider local property tax from new construction and shall not consider the value of any taxes exempted, abated, rebated, or retained under the Five-Year Exemption and Abatement Law, P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the Long Term Tax Exemption Law, P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et seq.), the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the business's State or local tax liability.

(g) Upon completion of the review of an application pursuant to (b) through (f) 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 Authority 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 subsequent and pursuant to N.J.A.C. 19:31-22.9(a).

19:31-22.8 Determination of grant amount; bonus award

(a) The total amount of the tax credit for an eligible business for each new or retained full-time job shall be as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period. Unless the business demonstrates to the Authority's satisfaction that a new or retained full-time job is primarily working at the qualified business facility, the tax credit for the full-time job shall be calculated with the base amount for a qualified business facility in other eligible areas and shall not include the bonuses at (d)1, 2, 6, 7, 9, 13, 15, 16, and 17 below.

(b) For a project that has a complex of buildings, the total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. Subject to N.J.A.C. 19:31-22.4(c) and (d), the total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings, including location of the buildings. Notwithstanding that the total tax credit for jobs in different buildings may be calculated separately, forfeitures pursuant to N.J.A.C. 19:31-22.14 and defaults and recaptures included in the commitment agreement pursuant to N.J.A.C. 19:31-22.9(b)6 shall be based on the aggregate capital investment and eligible full-time jobs.

(c) The base amount of the tax credit for each new or retained full-time job for an eligible business shall be as follows:

1. For a qualified business facility located within a government-restricted municipality, or that is a mega project, \$4,000 per year;
2. For a qualified business facility located within an enhanced area, \$3,500 per year;

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3. For a qualified business facility located within a distressed municipality, \$3,000 per year;
4. For a project in a qualified opportunity zone or an employment and investment corridor, \$2,500 per year; and
5. For a project in other eligible areas, \$500.00 per year.

(d) In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased with the following bonuses, except that the Authority shall not award a bonus to an eligible business with full-time jobs at the qualified business facility, whether the full-time job is subject to the tax credit award or not, that pays less than \$15.00 per hour or 120 percent of the minimum wage fixed under subsection a of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher:

1. For an eligible business with a qualified business facility located in a municipality with a Municipal Revitalization Index **distress** score greater than 50, an increase of \$1,000 per year;

2. For an eligible business with a qualified business facility that is an industrial or research and development premises for industrial or research and development use and at which the capital investment in the industrial or research and development portion of the premises is in excess of the minimum capital investment required for eligibility for the entire qualified business facility pursuant to subsection b of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(c), an increase of [\$1,000] **\$500.00** per year for each additional amount of investment that exceeds the minimum amount required for eligibility by 40 percent, with a maximum increase of [\$3,000] **\$1,500** per year, unless the project qualifies as a mega project or the qualified business facility is located in a government-restricted municipality, in which case, the maximum increase is \$5,000 per year;

3. For an eligible business with large numbers of new full-time jobs during the [commitment] **eligibility** period, the increases shall be in accordance with the following schedule:

- i. If the number of new full-time jobs is between 251 and 400, \$500.00 per year;
- ii. If the number of new full-time jobs is between 401 and 600, \$750.00 per year;
- iii. If the number of new full-time jobs is between 601 and 800, [\$1000] **\$1,000** per year;
- iv. If the number of new full-time jobs is between 801 and 1,000, \$1,250 per year; and
- v. If the number of new full-time jobs is in excess of 1,000, \$1,500 per year;

4. For an eligible business that annually funds a training program specific to the business's industry, which has the capacity to enroll 10 percent or more of the eligible business's full-time workforce, or pays a State educational institution to provide to the public a training program specific to the business's industry, an increase of \$500.00 per year; provided, however, that if the

training program is provided by a State educational institution that is within 10 miles of the qualified business facility, then the increase shall be \$1,000 per year;

5. For an eligible business that qualifies as a small business, an increase of \$500.00 per year;

6. For an eligible business with new full-time jobs and retained full-time jobs at the qualified business facility with a median salary in excess of the existing median salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a government-restricted municipality, a business [that] **with** employees **in** full-time positions at the project with a median salary in excess of the median salary for full-time workers residing in the government-restricted municipality, an increase of [\$250.00] **\$200.00** per year for the new or retained full-time employees that are at the qualified business facility during the eligibility period for each 35 percent by which the project's median salary levels exceeds the county or government-restricted municipality median salary, with a maximum increase of [\$1,500] **\$1,000** per year;

[7. For an eligible business with a qualified business facility located in a qualified incentive tract, an increase of \$500.00 per year;]

[8.]7. For an eligible business engaged primarily in a targeted industry, an increase of \$500.00 per year;

[9.]8. For an eligible business with a qualified business facility located in a qualified incubator facility, an increase of \$500.00 per year;

[10.]9. For an eligible business that enters into a labor harmony agreement, an increase of \$2,000 per year that the portion of the project as represented by the new or retained full-time employees that are the subject of the labor harmony agreement is in effect; provided further that an eligible business receiving a bonus under this subparagraph may exceed the limitation applicable to the eligible business pursuant to (e) below by an amount not to exceed \$1,000;

[11.]10. For an eligible business that provides its employees access to child care either through an on-site quality child care facility free of charge to its employees or by offering employees a minimum of \$1,500 per employee per year in reimbursements, subsidies, or vouchers to be paid by the eligible business to its employees for the cost of child care in accordance with standards adopted by the Authority and made available on the Authority's website, an increase of \$1,000 per year;

[12.]11. For an eligible business that enters, **or has previously entered**, into an [agreement] **active partnership** with a [prisoner] re-entry program for the purpose of identifying and promoting employment opportunities at the eligible business for former inmates and current inmates leaving the corrections system, and that hires at least one active participant in the re-entry program **as a full-time employee**, an increase of \$500.00 per year;

[13.]12. For an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Silver" rating standards, but does not exceed "Gold"

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rating standards, or that completes substantial environmental remediation, an additional increase of \$250.00 per year, or for an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Gold" rating standards, an additional increase of \$500.00 per year;

[14.]**13.** For an eligible business in a targeted industry with a qualified business facility that is used by the eligible business to conduct a full-time collaborative research relationship with a college or university, including, but not limited to, a doctoral university, an increase of \$1,000 per year. The full-time collaborative research relationship must commence after approval of the application and must require at least 35 hours per week of collaborative activity, or any other standard of collaborative activity generally accepted by custom or practice as full-time, as determined by the Authority, and evidenced by an agreement at certification. To be eligible for this bonus, the agreement must remain in effect each year of the eligibility period;

[15.]**14.** For an eligible business with a project that generates solar, **geo-thermal, wind, or any other renewable or distributed** energy on site for use within the qualified business facility of an amount that equals at least 50 percent of the qualified business facility electric supply service needs, an increase of \$500.00 per year;

[16.]**15.** For an eligible business with a marine terminal project in a municipality located outside a government-restricted municipality, but within the geographical boundaries of the South Jersey Port District, an increase of \$1,500 per year;

[17.]**16.** For an eligible business with a qualified business facility located in a qualified opportunity zone, an increase of \$1,000 per year; and

[18.]**17.** For an eligible business if one-third or more of the members of the eligible business's governing board or other governing body self-identify as members of an underrepresented community, which shall be Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native, or lesbian, gay, bisexual, or transgender, an increase of \$2,000 per year **for each new or retained full-time job**. The Authority shall work with the State's Chief Diversity Officer or other State entities to ensure that the bonus provided under this paragraph is implemented faithfully and in compliance with the law.

(e) Except as provided at (d)10 above, the gross amount of the tax credit available to an eligible business for each new or retained full-time job shall be the sum of the base amount set forth at (c) above and the various additional bonus amounts for which the business is eligible pursuant to (d) above, subject to the following limitations:

1. For a mega project or a project in a government-restricted municipality, the gross amount for each new or retained full-time job shall not exceed \$8,000 per year;

2. For a qualified business facility located within an enhanced area, the gross amount for each new or retained full-time job shall not exceed \$6,000 per year;

3. For a qualified business facility within a distressed municipality, the gross amount for each new or retained full-time job shall not exceed \$5,000 per year;

4. For a qualified business facility in a qualified opportunity zone or an employment and investment corridor, the gross amount for each new or retained full-time job shall not exceed \$4,000 per year; and

5. For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$3,000 per year.

(f) The Authority shall reduce the gross amount of tax credits per full-time job if the median salary of new full-time jobs and retained full-time jobs [at, or associated with, the qualified business facility] **subject to the project agreement** is less than the existing median salary for full-time workers residing in the county in which the qualified business facility is located **or for a project located in a government-restricted municipality, if the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is less than the existing median salary for the municipality in which the qualified business facility is located.** The Authority shall reduce the gross amount of tax credits per full-time job by an amount, in percentage points, equal to the percentage the median salary of new full-time jobs and retained full-time jobs [at, or associated with, the qualified business facility] **subject to the project agreement** is below the existing median salary for full-time workers residing in the county **or government-restricted municipality** in which the qualified business facility is located. The Authority shall not award a tax credit to an eligible business if the median salary of new full-time jobs and retained full-time jobs [at, or associated with, the qualified business facility] **that would otherwise be subject to the project agreement** is 30 percent or more below the **relevant** existing median salary for full-time workers residing in the county **or government-restricted municipality** in which the qualified business facility is located.

(g) After the determination by the Authority of the gross amount of tax credits for which an eligible business is eligible pursuant to (e) and (f) above, the final total tax credit amount shall be calculated as follows: for each new full-time job, the eligible business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and for each retained full-time job, the eligible business shall be allowed tax credits equaling 50 percent of the gross amount of tax credits for each retained full-time job.

(h) Notwithstanding the provisions of (a) through (g) above to the contrary, for each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed an amount determined by the Authority to be necessary to induce the project to be sited in New Jersey, as determined by the Board. The Authority shall determine the amount necessary to complete the project through staff analysis of all locations under consideration by the eligible business and all lease agreements, ownership documents, or substantially similar documentation for the eligible business's [current] **proposed** in-State locations and potential out-of-State location alternatives, competitive proposals from other states, the prevailing economic conditions, and any other information that the Authority deems relevant, that may include, but is not limited to, public policy goals, the amount of space dedicated to

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eligible positions at the qualified business facility, net positive economic benefits, and leadership in targeted industries.

19:31-22.9 Approval letter and commitment agreement

(a) Following approval by the Board, but before the issuance of tax credits, the Authority shall require an eligible business to execute and return an approval letter to the Authority. The Board's award of the credits will be subject to conditions subsequently set forth in the approval letter. The conditions in the approval letter must be met in order to retain the approval of the tax credits prior to their issuance and receipt by the business pursuant to (i) below. Such conditions shall include, but not be limited to, the requirement to provide an estimated date of completion of the project; submission of periodic progress reports; submission of the information required by (a)2 below; the requirement that the project complies with the prevailing wage requirements at P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b)8 and the Authority's affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3; that the project does not violate any environmental law requirements, including, but not limited to, Flood Hazard Area Control Act Rules, N.J.A.C. 7:13; and that the business submit a plan to meet the minimum environmental and sustainability standards.

1. The approval letter shall state the period within which the business must provide to the Authority evidence that the conditions have been met.

2. Commencing with the date six months following the date the Authority and an eligible business execute the approval letter, the eligible business shall be required to demonstrate that it has obtained site plan approval for, as applicable, has committed financing for, as applicable, and has site control of, the qualified business facility in accordance with the time periods set forth in this paragraph, unless otherwise modified in the approval of the application by the Board.

i. Within the later of 12 months following the date of application approval by the Authority or six months following the date of execution of the approval letter, each approved business shall submit the information required at (a)2 above, except that a business shall have until the later of 24 months from the date of application approval or six months following the date of execution of the approval letter to submit such information.

ii. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's approval of the tax credits shall expire if the information required at (a)2 above is not received by the Authority within the required period of time.

(b) Upon satisfaction of the conditions in the approval letter, as determined by the Authority, the business shall execute a commitment agreement. The terms of the commitment agreement shall be consistent with the applicable eligibility requirements of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and shall include, but shall not be limited to, the following:

1. A detailed description of the proposed project that will result in job creation or retention, and the number of new and retained full-time jobs that are approved for tax credits;

2. For a phased project, [an incentive] **a project** phase agreement which for each phase identifies a description of the phase, the expected capital investment and number of new full-time jobs, and the time following acceptance of the [incentive] **commitment** agreement when each phase is to begin and be completed, with the awarding of tax credits under the [incentive] **commitment** agreement to be predicated on the number of full-time jobs created through the fulfillment of each [incentive] **project** phase agreement;

3. The eligibility period of the tax credits or, for a phased project, the eligibility period of the tax credits for each phase;

4. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the program;

5. A requirement that the eligible business maintain the project at, or associated with, a location in New Jersey for the commitment period, with at least the minimum number of full-time jobs, salaries, and withholdings as required by this program pursuant to N.J.A.C. 19:31-22.14(a), (b), and (c);

6. A provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the eligible business does not remain in compliance with (a)5 above for the required term or significantly reduces the number of full-time employees, or the salaries or withholdings thereof, based on the amounts that result in forfeitures or reductions pursuant to N.J.A.C. 19:31-22.14(a), (b), and (c), to an amount less than the minimum jobs, salaries, or withholdings to which the eligible business certified at the commencement of the eligibility period, for two or more successive tax periods;

7. A method for the eligible business to certify that it has met the capital investment, employment, and other eligibility requirements of the program set forth at subsections b. and c. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and to report annually to the Authority the number of new and retained full-time employees, and the withholdings and salaries thereof, for which the tax credits are to be allowed;

8. Representations that the eligible business is in substantial good standing **with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury** or [meets the agreement requirements described at paragraph (1) of subsection b. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.7(c)1] **has entered into an agreement with the departments that includes a practical corrective action plan**, and that the project complies with all applicable laws, and specifically, that the project does not violate any environmental law, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

9. A provision permitting an audit of the payroll records of the business and any other evidence and documentation supporting the certifications pursuant to (e) below, the annual reports pursuant to N.J.A.C. 19:31-22.10, and the addition of affiliates pursuant to N.J.A.C. 19:31-22.14(i) from time-to-time, as the Authority deems necessary;

10. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the eligible business and each contractor and subcontractor performing work at the qualified business facility is in substantial good standing, as defined at N.J.A.C. 19:31-22.7(c), or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable; **and that each contractor or subcontractor performing work at the qualified business facility is registered as required by "The Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;**

11. A provision providing that if the eligible business is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-22.7(c), and has been given written notice thereof, including opportunity to be heard or to contest the determination, by the respective department, then the [Authority] **eligible business** may [suspend] **forfeit** the issuance of tax credits pending the resolution of the **underlying** violation(s) **or other issues** [or noncompliance, or if the violation(s) or noncompliance remain unresolved and the suspension continues for two years, then, at the Authority's sole option, the eligible business may forfeit the tax credit for those years];

12. A requirement for the eligible business to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

13. A provision permitting the Authority to amend the agreement;

14. A provision establishing the conditions under which the Authority, the eligible business, or both, may terminate the agreement;

15. For a small business, an attached schedule with the reduced amount of the award, if the business does not meet the projections in the growth plan;

16. Milestones for the project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority may rescind the award of tax credits if a project fails to advance in accordance with milestones in the commitment agreement or fails to provide progress reports required under the approval letter;

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

18. Indemnification and insurance requirements;

19. Default and remedies, including, but not limited, to a default if an eligible business made a material misrepresentation on its application;

20. The schedule indicating the repayment of the incremental tax credits received by a business that elected a period of extended commitment pursuant to N.J.A.C. 19:31-22.3(b)5iv, if the business fails to maintain the project through the expiration of that extended commitment period; and

21. A provision requiring a community benefits agreement if the actual total project cost upon completion of the project equals or exceeds \$10 million.

(c) For a project whose total project cost equals or exceeds \$10 million, in addition to the commitment agreement, an eligible business shall execute a community benefits agreement or agreements pursuant to subsection b. of section 73 of P.L. 2020, c. 156, as prescribed below:

1. The business shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the qualified business facility is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the EDA that the municipality has made the request. The Authority shall not participate in negotiations between the eligible business and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to (d)4ii below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in, and around, the community in which the qualified business facility is located.

2. The community benefits agreement shall include a list of contributions by the business; the monetary equivalent for any non-monetary contribution; an event of default if the business forfeits tax credits pursuant to (c)7ii below in two successive years; and the date by when the community advisory committee must submit its annual report pursuant to (c)6 below.

3. The eligible business and the municipality or county shall have six months, with two three-month extensions, after Authority Board approval of the business's application, to enter into a community benefits agreement. The community benefits agreement is a condition to entering into a commitment agreement.

4. Prior to entering a community benefits agreement, the governing body of the municipality or, if the county is executing the agreement, the governing body of the county, in which the qualified business facility is located shall hold at least one public hearing subject to the Senator Byron M. Baer Open Public Meetings Act, at which, the chief executive or designee from the chief executive's department or office, shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address. The

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chief executive shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

5. The community benefits agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

i. The community advisory committee created pursuant to this paragraph shall be comprised of representatives from community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the qualified business facility is located.

ii. The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.

iii. For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the qualified business facility is located, at least one representative from a community group, and at least one resident from the zip code in which the qualified business facility is located. There shall be no more than one municipal or county employee on the community advisory committee.

iv. For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at (c)5iii above.

v. Community advisory committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the eligible business. The certifications shall be submitted to the Authority by the business or the municipality, or if the county is executing the agreement, the county.

vi. Any report or action shall be approved by a majority of the members of the community advisory committee.

6. The community advisory committee shall produce an annual report, including an evaluation of whether the eligible business is in compliance with the terms of the community benefits agreement:

i. If the report from the community advisory committee and the certification from the eligible business pursuant to N.J.A.C. 19:31-22.10(a)[5]3 both indicate that the eligible business is in compliance with the community benefits agreement, then the eligible business shall be in compliance with the community benefits agreement. Absent extenuating circumstances and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the eligible business shall be based on the certification from the eligible business pursuant to N.J.A.C. 19:31-22.10(a)[5]3.

ii. If the report from the community advisory committee indicates that the eligible business is not in compliance with the terms of the community benefits agreement, the Authority shall serve as, or identify, a mediator. The community advisory committee, municipality, or county, as applicable, and the eligible business shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority.

iii. If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in nature. The business, municipality, or county, and the community advisory committee shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report. The Chief Executive Officer shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this subsection is not a contested case subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7. If the business is not in compliance as determined pursuant to (c)6 above, the following apply:

i. The amount of tax credits that the business may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the business is not in compliance if the Authority determines that:

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

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

(3) The eligible business has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

ii. For any other noncompliance, 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 compliance 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.

8. An eligible business shall not be required to enter into a community benefits agreement pursuant to this subsection if the eligible business submits to the Authority a copy of the eligible business's [redevelopment agreement and] **approval letter from the Authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement [that] is certified by the chief executive of the municipality in which the project is located and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer pursuant to rules adopted by the Authority.**

(d) Upon completion of the capital investment and employment requirements of the program, an eligible business shall submit to the Authority certifications evidencing that the eligible business has satisfied the conditions of the program and the project agreement relating to the capital investment, employment, and other eligibility requirements, including, but not limited to, withholdings. If applicable, the certifications shall evidence that the eligible business has satisfied the requirements related to a mega project. The business must submit supporting evidence satisfactory to the Authority. Absent extenuating circumstances and the written approval of the Authority, the eligible business shall submit the certifications as described at (h) below within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline. However, the date of [completion] **certification** shall not occur later than four years following the date of approval of the application. The Authority may grant one additional extension of no more than one year, taking the date of completion to five years past the date of approval of the application, but only if:

1. The Authority finds that:

i. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;

ii. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and

iii. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay; and

2. The eligible business provides timely notice to the Authority of the delay within 30 days after the eligible business has actual or constructive knowledge of the delay, and shall provide periodic reports, not less than every 30 days, of the status of the delay and the steps the eligible business is taking to mitigate or overcome the delay.

(e) In addition to the extensions at (d) above, if the Governor declares an emergency, then the Chief Executive Officer of the Authority shall have the discretion to grant an extension for the duration of the emergency and the Board of the Authority, upon recommendation of the Chief Executive Officer, may grant two additional six-month extensions; provided, however, that:

1. The extensions are due to the economic disruption caused by the emergency;

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2. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;

3. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and

4. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

(f) The certifications required at (d) above shall be in the following form:

1. The business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to the capital investment. Capital investment in a complex of buildings that are not proximate shall be certified for each building. If the project seeks to qualify for the bonus pursuant to N.J.A.C. 19:31-22.8(d)2, in addition to submitting a certification of capital investment in the qualified business facility, the business shall submit a certification for the capital investment in the industrial or research and development portion of the premises for industrial or research and development use. In the event the capital investment is reduced below the capital investment amount set forth at N.J.A.C. 19:31-22.3(c), the business shall remain eligible if the business donates the difference between the amount set forth at N.J.A.C. 19:31-22.3(c) and the amount of capital investment invested into the Infrastructure Fund. If the amount paid into the Infrastructure Fund together with the amount of capital invested is less than the capital investment in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certified capital investment, together with any donation to the Infrastructure Fund, is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to employment. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits. The number of full-time jobs utilized by the Authority in the calculation of tax credits shall not be increased, regardless of additional jobs located at the qualified business facility. Except as set forth at N.J.A.C. 19:31-22.10(f), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth at N.J.A.C. 19:31-22.4(c) and (d). In the event the number and median salary of new or retained full-time jobs is reduced below the number or median salary of new or retained full-time jobs in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement set forth at N.J.A.C. 19:31-22.3(d), the business shall no longer be eligible for tax credits.

3. The Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants; provided, however, the business may select a certified

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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, or the business is a small business.

4. The business shall submit a certification with a floor plan showing the qualified building facility as of the date of the certifications identifying the uses pursuant to N.J.A.C. 19:31-22.3(c) and square foot of gross leasable area for each such use.

5. The business shall submit a certification from a licensed engineer that the project has adhered in all material respects to the plan submitted by the business describing how the business would satisfy the minimum environmental and sustainability standards;

6. At, or before, the date of certifications, any modification to the project as approved by the Board, including, but not limited to, a reduction in the amount of the capital investment, new and retained full-time jobs, or square foot of gross leasable area for each use pursuant to N.J.A.C. 19:31-22.3(c), shall require review and approval by the Authority to determine that the project as modified does not undermine the basis for the tax credit award approved.

7. The Authority may request additional information or certifications from the business to determine eligibility and may seek information from the Department of Labor and Workforce Development to support the certifications.

8. The Authority may recalculate the tax credit award, which may include a reevaluation of the amount necessary to induce the project to be sited in New Jersey pursuant to N.J.A.C. 19:31-22.8(h), if the certifications demonstrate different assumptions or facts upon which the Authority relied to calculate the tax credit award at approval.

(g) In any submission required by the Authority pursuant to the approval letter or the certifications at (f) above, the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify that the information provided is true under the penalty of perjury.

(h) Once the Authority accepts the certifications at (f) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications pursuant to (e) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-22.7(g) and 22.8. The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

19:31-22.10 Reporting requirements and annual reports

(a) An eligible business that is awarded tax credits under the program shall submit, annually, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment period, a report that indicates that the eligible business continues to maintain the number of new and retained full-time jobs and provides the salaries specified in the commitment agreement, including, but not limited to:

1. A certification, 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. 19:31-22.9(f)3, containing the following:

i. The number of full-time employees and new or retained full-time jobs employed [at, or associated with, the qualified business facility] **in the State**;

ii. The list of affiliates that contributed to the full-time employees [at, or associated with, the qualified business facility] **in the State**;

iii. The number of full-time employees in the business's Statewide workforce;

iv. 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

v. A copy of the business's applicable New Jersey tax return showing business income and withholdings as a condition of its continuation in the program, and the quarterly wage report required pursuant to N.J.S.A. 43:21-14 submitted to the Department of Labor and Workforce Development together with an annual payroll report showing:

(1) The new full-time jobs that were created in accordance with the project agreement;

(2) The new full-time jobs created during each subsequent year of the commitment period;
and

(3) The withholdings and salaries, as measured by the median salary, of the new and retained full-time jobs created and the amount of withholdings paid to New Jersey;

2. Information on any change or anticipated change in the identity of the affiliates comprising the business elected to claim all or a portion of the credit; and

3. The eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required by "The Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

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3. 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, the Act, the commitment agreement, community benefits agreement pursuant to subsection b. of section 73 of P.L. 2020, c. 156, and this subchapter.

(b) The certified report required pursuant to (a) above is due 120 days after the end of the business's tax privilege period; and failure to timely submit the certified report, absent extenuating circumstances and the written approval of the Authority, shall result in the forfeiture of the tax credits for that privilege period.

(c) An eligible business shall explain, in the certified report required pursuant to (a) above, the reason for any discrepancies between the annual payroll report submitted by the eligible business to the Authority and the quarterly wage report submitted to the Department of Labor and Workforce Development. The [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify that the information provided pursuant to (a) above and this subsection is true under the penalty of perjury. Claims, records, or statements submitted by an eligible business to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

(d) Upon receipt and review to the Authority's satisfaction of each certified report required pursuant to (a) above submitted during the eligibility period, the Authority shall provide to the eligible business and the Director a certificate of compliance indicating the amount of tax credits that the eligible business may apply against its tax liability. The Authority shall prorate the tax credit for the first and last years of the eligibility period based on the number of full months the project was certified in the year the eligible business first certifies. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period. The certificate of compliance will indicate the amount of the tax credit certificate that will be recommended to the Division of Taxation for issuance for an identified tax privilege period.

(e) In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

(f) If the certified report required pursuant to (a) above submitted by a small business demonstrates that the business has met the number of new full-time employees specified in the growth plan pursuant to N.J.A.C. 19:31-22.3(d)1 in each year of the eligibility period, then the business shall be entitled to an increased credit amount for that tax period, and each subsequent tax period, for each additional full-time employee added above the number of full-time employees certified, until the full-time employees number meets the maximum number projected for the final year of the eligibility period. Failure to meet the projections in any year shall not constitute a default but shall cause the Authority to reduce the award in accordance with a schedule attached to the project agreement.

(g) An eligible business shall forfeit the credit amount for any tax period for which the eligible business's documentation remains uncertified as of the date for certification indicated in the commitment agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the eligible business.

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

(i) A business may include an affiliate for any period, provided that the business provides a valid tax clearance certificate for the affiliate and a verification of the nature of the affiliate relationship during the relevant period, and provided further that the affiliate provides acceptable responses to the Authority's legal disclosures inquiries, as determined by the Authority, and the affiliate executes a joinder to the commitment agreement, in the form approved by the Authority. A business may remove an affiliate by notifying the Authority and the Director, in a form approved by the Authority, of the affiliate that is to be removed. A formal modification of the Authority's approval of the approval letter shall not be necessary to add or remove an affiliate after approval or execution of the approval letter.

(j) A business may change its name filed with the Authority by providing a copy of the filed amendment to the certificate of incorporation or formation, as the case may be, of the business and a valid tax clearance certificate with the business's new name. A formal modification of the Authority's approval shall not be necessary to change a business's name after approval or execution of the approval letter.

19:31-22.11 Tax credit amount; application and allocation of the tax credit

(a) Except for a small business that will have incremental or additional tax credits pursuant to a growth plan pursuant to N.J.A.C. 19:31-22.10(f), for each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter. Except as set forth at N.J.A.C. 19:31-22.10(f), the total tax credit amount that a business may apply for each year shall not exceed the maximum annual amount determined by the Board at approval pursuant to N.J.A.C. 19:31-18.7(g) and 22.8.

(b) Upon notification to the Director by the Authority, the Director shall allow the eligible business a tax credit. The eligible business may apply the credit allowed by the Director against the eligible business's tax liability for the tax period in which the Director allowed the tax credit or may carry forward the credit for use by the eligible business in any of the next seven successive tax periods, which credit shall thereafter expire.

(c) The amount of credit allowed may be applied against the tax liability 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.

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

prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

1. With respect to credits passed through to a person subject to tax liability due pursuant to sections 2 or 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), the person shall be allowed to apply credits against the person's tax liability without the provision of a tax credit certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying the person's tax return, subject to the person submitting any additional authenticating or supporting information with the tax return, and the person shall be considered the tax certificate holder and be subject to this subsection.

2. The Authority may recapture all or part of any tax credits claimed by a person pursuant to (d)1 above with penalties and interest from the person or the business in the event the Division of Taxation in the Department of the Treasury does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period. Such recapture amount 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 amount.

(e) The Director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of a credit applied pursuant to this section against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

(f) In lieu of applying any credit certificate or credit transfer certificate against tax liability 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 certificate or credit transfer certificate may be surrendered to the Division of Taxation in the Department of the Treasury for a cash payment equal to 90 percent of the amount of tax credits evidenced by the certificate, subject to appropriation and the availability of funds, provided that the issuance date of the credit certificate or credit transfer certificate to the taxpayer surrendering such certificate occurred at least two years prior to the date of surrender **and the credit certificate or credit transfer certificate has not been sold or assigned previously**, in a form and manner prescribed by the Director.

19:31-22.12 Application for tax credit transfer certificate

(a) An eligible business may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, within three years of the tax period in which the

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Director allows the eligible business a tax credit, in lieu of any amount of the tax credit against the eligible business's State tax liability. The tax credit transfer certificate, upon receipt thereof by the eligible business from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in an amount not less than \$25,000, within three years of the tax period in which the eligible business receives the tax credit transfer certificate from the Director, to another 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. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall apply the transferred credit against the same tax for which the eligible business was approved a tax credit under the program. The tax credit transfer certificate provided to the eligible business shall include a statement waiving the eligible business's right to claim the credit that the eligible business has elected to sell or assign.

(b) The eligible business shall not sell or assign a tax credit transfer certificate allowed pursuant to this section for consideration received by the eligible business of less than 85 percent of the transferred credit amount before considering any further discounting to present value that shall be permitted. The tax credit transfer certificate issued to the eligible business by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits under this program and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(c) With respect to credits to be sold or assigned, in full or in part, pursuant to an application to the Authority for a tax credit transfer certificate by a business to a person subject to tax liability due pursuant to sections 2 or 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 or 54:18A-3), the person shall be allowed to apply the credits against the person's tax liability without the provision of a tax credit transfer certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying its tax return, subject to the person submitting any additional authenticating or supporting information with the tax return, and the person be considered a tax credit transferee and be subject to (d) below.

(d) The Authority may recapture all or part of any tax credits claimed by a person pursuant to (c) above with penalties and interest from the person or the business in the event the Authority or the Director does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period. Such recapture amount 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 amount.

(e) The purchaser or assignee of a tax credit transfer certificate shall be subject to any limitations and conditions that apply to the use of the tax credits by the eligible business. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.

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(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.

19:31-22.13 Cap on total credits

The combined value of all credits approved by the Authority pursuant to this program shall be subject to limitations set forth at section 98 of P.L. 2020, c. 156. The amount of available tax credit shall be posted at the beginning of each calendar year on the website of the Authority.

19:31-22.14 Reduction and forfeiture of tax credits

(a) If, in any tax period, an eligible business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under the program, then the eligible 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 eligible business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(b) Except for a small business, if the annual report filed by an eligible business pursuant to section 77 of P.L. 2020, c. 156, and N.J.A.C. 19:31-22.10(a) provides that the number of new full-time employees employed by the eligible business [at, or associated with, the qualified business facility,] **subject to the project agreement** or the salaries of the new full-time employees, as measured by the median salary, was reduced by more than 10 percent of the number of new full-time employees, or salaries thereof, in the annual report of the prior year, or the [commitment] **project agreement** if the annual report is the first such report filed, then the Authority may reevaluate the net positive economic benefit of the project and reduce the size of the award accordingly. This reduction shall not affect any recapture pursuant to (f) below.

(c) If, in any tax period, the amount of withholdings paid to New Jersey or full-time employees employed by the eligible business [at, or associated with, the qualified business facility,] **subject to the project agreement** or the salaries thereof, drops below 80 percent of the withholdings and number of new and retained full-time jobs, and the salaries thereof, specified in the [commitment] **project agreement** or the [incentive] **project** phase agreement, then the

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eligible business shall forfeit its tax credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the amount of withholdings paid to New Jersey or number of full-time employees employed by the eligible business [at, or associated with, the qualified business facility] **subject to the project agreement** to 80 percent of the withholdings and number of jobs specified in the [commitment] **project agreement** or [incentive] **project** phase agreement or the restoration of 80 percent of the salaries specified in the [commitment] **project** agreement is reviewed and approved by the Authority.

(d) If the business is not in compliance with the community benefits agreement pursuant to N.J.A.C. 19:31-22.9(c), the Authority shall reduce the size of the award by the amount equal to 120 percent of the monetary value of the contribution or contributions for which the business is not in compliance. This reduction shall not affect any recapture pursuant to (f) below.

(e) If at any time during the eligibility period, the Authority determines that the eligible business made a material misrepresentation on the eligible business's application, the eligible business shall forfeit all tax credits awarded under the program, which shall be in addition to any other remedies in the commitment agreement and any criminal or civil penalties to which the business and the officer may be subject.

(f) The Authority may recapture all, or part of, a tax credit awarded if an eligible business does not remain in compliance with the requirements of a project agreement for the duration of the commitment period. A recapture pursuant to this subsection may include interest on the recapture amount, at a rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in 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. Failure of the eligible business to meet any program criteria shall constitute a default and shall result in the recapture of all or part of the tax credit awarded.

(g) With the exception of N.J.A.C. 19:31-22.12(d), if all or part of a tax credit sold or assigned pursuant to section 78 of P.L. 2020, c. 156, and N.J.A.C. 19:31-22.12 is subject to recapture, then the Authority shall pursue recapture from the eligible business and not from the purchaser or assignee of the tax credit transfer certificate.

(h) Any funds, **net of costs incurred by the Authority**, recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility

(a) A small business may move its qualified business facility, upon prior notice to the Authority, provided that the business remains in New Jersey during the commitment period and, for the purposes of this subsection, the tax credit calculation for each new or retained job will be recalculated for the new location, but the tax credit amount shall not be greater than the amount approved.

(b) Except for a small business[, or an eligible business engaged primarily in a targeted industry with less than 50 employees at application]:

1. If the qualified business facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller, provided, however, that any tax credits of tenants shall remain unaffected. If the business merges or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that an eligible business may change the location of the qualified business facility before certification of the capital investment if:

i. The new facility:

(1) Meets all applicable location qualifying criteria and has a gross leasable area not less than the gross leasable area of the qualified business facility initially approved by the Authority, and the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program; or

(2) Does not meet all applicable location qualifying criteria or has less gross leasable area than the gross leasable area of the qualified business facility initially approved by the Authority, if the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program. The Authority shall require a [new cost benefit analysis] **cost comparison of the originally approved location and the alternate qualified business facility** illustrating the economics of the occupancy at the alternate proposed qualified business facility location for the remaining duration of the commitment period compared to the economics of continuing occupancy at the qualified business facility proposed to be vacated. The alternate proposed qualified business facility must be 90 percent or more of the aggregate cost of the qualified business facility proposed to be vacated. If less than 90 percent, the Authority shall review the business's decision to relocate, including supporting documentation evidencing the reasons for relocation, to determine if the relocation to the alternate qualified business facility is consistent with the Board's approval of the application for the qualified business facility to be vacated. The Authority shall recalculate the net positive economic benefit of the project to reflect the economics of occupancy at the alternate proposed location for the remaining duration of the net positive economic benefit test period. The award of tax credits shall be reduced consistent with the variations in qualifying criteria for the alternate qualified business facility location, as well as in a manner consistent with the revised net positive economic benefit calculation.

(c) In the event that the modified project economics materially deviate from the economics of the initial approval in a manner that undermines the recommendation of approval made by the staff of the Authority at the time of the initial approval, then the business requesting to relocate a qualified business facility shall be required to obtain the approval of the Board.

(d) If a business leases, or subleases, or otherwise reduces its tenancy in whole or in part during the eligibility period, the new tenant shall not acquire the tax credits of the business, and the business shall forfeit all tax credits for any tax period of its lease or sublease in which the

business, in continued occupation of a portion of the qualified business facility, fails to maintain the number of jobs required for the business to earn tax credits for the tax period or fails to independently satisfy the minimum capital investment or sustainability requirements for the program as set forth at section 71 of P.L. 2020, c. 156. Provided, however, if the capital investment of the business in the occupied portion of the qualified business facility is below the project minimum capital investment as set forth at section 71 of P.L. 2020, c. 156, the business may include capital investment made by, or on behalf of, the new tenant in the leased or subleased portion of the qualified business facility, so long as that capital investment is not the subject of an independent application under an incentive program with the Authority. Notwithstanding the foregoing, a business may lease or sublease a portion of its qualified business facility to a new tenant that is a quality child care facility and up to five percent for any other new tenant without forfeiting any of the business's credits, provided that the new tenant's full-time employees and capital investment shall not be included in the business's eligible full-time employees or capital investment.

19:31-22.16 Affirmative action and prevailing wage

[The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 and prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-3, and 19:31-22.3(b)8 will apply to projects undertaken in connection with financial assistance received under the program.]

(a) The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to construction contracts at the qualified business facility undertaken in connection with financial assistance received under the program. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.

(b) The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-4, and 19:31-22.3(b)8 shall apply to construction work at the qualified business facility by the business or construction work incurred on behalf of the business by the landlord, as follows:

1. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and

2. Construction contracts for work undertaken in connection with financial assistance received under the program. In accordance with section 1 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.1), nothing in this paragraph shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first certificate of compliance.

(c) During the commitment period, prevailing wage shall apply to building services at the qualified business facility pursuant to N.J.A.C. 19:22.3(b)8.

19:31-22.17 Appeals

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(a) The Board's action 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., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-22.18 Recovery Infrastructure Fund

(a) The Authority shall establish a dedicated fund to be known as the Recovery Infrastructure Fund. Money in the fund shall be dedicated to the purpose of funding local infrastructure, which shall include:

1. Buildings and structures, such as schools, fire houses, police stations, recreation centers, public works garages, and water and sewer treatment and pumping facilities;

2. Sidewalks, streets, roads, ramps, and jug handles;

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3. Open space with improvements, such as athletic fields, playgrounds, and planned parks;
4. Open space without improvements;
5. Public transportation facilities, such as train stations and public parking facilities; and
6. The purchase of equipment considered vital to public safety.

(b) The fund shall be credited with money remitted by eligible businesses pursuant to paragraph (2) of subsection b. of section 71 of P.L. 2020, c. 156, or N.J.A.C. 19:31-22.3(c)6 or 22.9(f)1.

(c) Money remitted to the fund by an eligible business pursuant to N.J.A.C. 19:31-22.3(c)6 or 22.9(f)1 shall be earmarked for use on local infrastructure projects in the municipality in which the eligible business's project is located.

(d) A municipality shall apply to the Authority, in a form and manner prescribed by the Authority, for disbursements from the Recovery Infrastructure Fund. The Authority, in consultation with the Department of Community Affairs, shall review and approve applications for disbursements of money from the fund pursuant to the provisions of this section. Applications shall be reviewed in the order that completed applications are received. In order to be approved, an application will be required to meet a minimum score established by the Authority in consultation with the Department of Community Affairs, based on factors, including, but not limited to, whether the applicant demonstrates that it has a financing plan for the entire project and the proposed public benefit of the project. The Authority shall issue an approval with conditions to be met prior to disbursements.

(e) The Authority shall coordinate with the Department of Community Affairs to carry out the local infrastructure projects funded through the Recovery Infrastructure Fund. The Authority shall also coordinate with the Department of Community Affairs on the involvement by other boards, commissions, institutions, departments, agencies, and State officers and employees.

19:31-22.19 Reports on implementation of program

Beginning in 2022 and every two years thereafter, a State college or university shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the program, and submit the report to the Authority, the Governor, and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), the Legislature. Each biennial report required pursuant to this section shall include a description of each eligible business receiving a tax credit under the program, a detailed analysis of the consideration given to each applicant, an analysis of whether the incentives awarded influenced the eligible business's decisions to locate a qualified business facility in the State, the return on investment for incentives awarded, the eligible business's impact on the State's economy, and any other metrics the State college determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to

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the Governor and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

19:31-22.20 Severability

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