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Agency

OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Code Citation

Adopted Amendments: N.J.A.C. 19:31-20.1 through 20.7, 20.9, 20.10, 20.12, 20.13, 20.14, and 20.15

Adopted Repeal: N.J.A.C. 19:31-20.8

Text

Authority Assistance Programs

Offshore Wind Economic Development Tax Credit Program

Proposed: August 16, 2021, at 53 N.J.R. 1347(a).

Adopted: October 19, 2021, by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: October 19, 2021, as R.2021 d.131, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: November 15, 2021.

Expiration Date: May 8, 2025.

Summary of Public Comment and Agency Response:

No public comments were received.

Federal Standards Statement

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

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

SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM

19:31-20.1 Applicability and scope

This subchapter is promulgated by the New Jersey Economic Development Authority (the Authority) to implement section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended (the Act), which authorizes the Authority to approve up to $ 350 million, based on the amount of uncommitted tax credits under the New Jersey Aspire Program and the Emerge Program pursuant to N.J.S.A. 34:1B-362(b)(1)(f) and (h), in tax credits for the development of qualified wind energy facilities in the State.

19:31-20.2 Definitions

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

. . .

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

. . .

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

. . .

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

. . .

"Full-time employee" means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.), for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. A full-time employee is also a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include an employee who is a resident of another state and whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the State of New Jersey.

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

. . .

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-20.14(e) that must accompany the use of the tax credit certificate.

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

1. For the first year, at least a cumulative 100 new full-time employees compared to the number of full-time employees at the time of application;

2. For a privilege period or taxable year following the first year, at least a cumulative 150 new full-time employees compared to the number of full-time employees at the time of application;

3. For a privilege period or taxable year following the second year, at least a cumulative 200 new full-time employees compared to the number of full-time employees at the time of application; and

4. For the fourth and fifth privilege period or taxable year following the third and fourth year, respectively, at least a cumulative 300 new full-time employees compared to the number of full-time employees at the time of application.

. . .

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

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

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

1. For the first year, at least a cumulative 100 new full-time employees compared to the number of full-time employees at the time of application;

2. For a privilege period or taxable year following the first year, at least a cumulative 150 new full-time employees compared to the number of full-time employees at the time of application;

3. For a privilege period or taxable year following the second year, the lesser of 200 and the applicable prorated minimum number of new full-time employees, compared to the number of full-time employees at the time of application; and

4. For the fourth and fifth privilege period or taxable year following the third year and fourth year, respectively, the applicable prorated minimum number of new full-time employees compared to the number of full-time employees at the time of application.

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

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

"Soft costs" means all costs associated with financing, design, engineering, legal, 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.

. . .

19:31-20.3 Eligibility criteria

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

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

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

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

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

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

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

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

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

iv. The business shall lease the qualified wind energy facility for a term of not less than the eligibility period; and

v. Except for tenants of a qualified wind energy facility for which the owner has previously demonstrated a net positive economic benefit and received approval of the qualified wind energy facility or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required at (c) below. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment.

(b) (No change.)

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

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

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

(g) (No change.)

19:31-20.4 Restrictions

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

1.-2. (No change.)

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

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

19:31-20.5 Application submission requirements

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

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

i.-xii. (No change.)

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

xiv. (No change in text.)

2. Project information shall include the following:

i.-viii (No change.)

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

x.-xii. (No change.)

3.-4. (No change.)

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

19:31-20.6 Application and servicing fees

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

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

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

(b) A business shall pay to the Authority, the full amount of direct costs of an analysis by a third-party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee shall be paid at the time of execution of the non-binding letter of intent pursuant to N.J.A.C. 19:31-20.3(c), as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

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

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

(d) A non-refundable fee shall be paid prior to the receipt of the tax credit certificate, as follows:

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

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

(e) A business shall pay to the Authority an annual servicing fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the eligibility period and, if applicable, the duration of the commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the eligibility period. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, as follows:

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

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

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-20.10 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

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

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

(g) A business shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

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

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

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

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

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

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

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

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

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

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

(b) (No change.)

(c) In determining whether the company meets the net positive economic benefits test, as certified pursuant to N.J.A.C. 19:31-20.5(a)2iv, the Authority's consideration shall include, but not be limited to, the direct benefits to the State, including local taxes that may benefit the State. The Authority shall also consider indirect benefits caused by the business's relocation to New Jersey, except, that the Authority will not consider indirect benefits if a business is including new full-time employees resulting from an equipment supply coordination agreement in the calculation of its new full-time employees. The Authority may also consider taxes paid directly or generated indirectly by retained employees, at the Authority's discretion based on evidence satisfactory to the Authority that the employees are at risk of being lost to another state or country or eliminated, and induced benefits derived from construction, provided that such determination shall not include any capital investment or employees for which an incentive has been previously provided or any capital investment by a local or State governmental entity.

(d) Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Board shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions that must be met in order to maintain the approval and to receive the tax credits. An approval letter setting forth the conditions and indemnification and insurance requirements will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project does not violate any environmental law requirements and that the business agrees to extend the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax to the eligibility period. The approval letter shall contain the requirement that the project comply with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), for all capital investment and with the Authority's affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), commencing *[with (the effective date of this amendment)]* * **November 15, 2021***. The approval letter shall also set forth a condition requiring the business to maintain the project at the qualified wind energy facility after the eligibility period to the extent the net positive economic benefit is calculated based on a period of years after the eligibility period pursuant to N.J.A.C. 19:31-20.3(c).

1. (No change.)

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

(e) Within 12 months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for, and site control of, the qualified wind energy facility, except that projects consisting of new construction shall have 24 months. Commencing with the date six months following the date of application approval, and every six months thereafter until completion of the project, each approved business shall submit an update of the status of the project to the Authority. Unless the Authority determines in its sole discretion that extenuating circumstances exist for extensions, the Authority's approval of the tax credits shall expire if the Authority does not timely receive the progress information or status update.

(f) Upon completion of the capital investment and employment requirements of the Program, the business shall submit a certification of a qualified independent certified public accountant and any receipts or verifiable documentation requested by the Authority, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment, any employment requirements, and other eligibility requirements.

1. The certification with respect to the capital investment shall define the amount of the capital investment and shall not be increased regardless of additional capital investment in the qualified wind energy facility, provided; however, that in no event, will the amount of capital investment exceed the amount of capital investment previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the award accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The certification with respect to employment shall include the number of full-time employees employed at the qualified wind energy facility or through an equipment supply coordination agreement, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, and the salary of all new full-time employees. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time employees or salaries in the certification is reduced below the number of new full-time employees in the approval of the application or the salaries proposed in the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the award accordingly. If the certification indicates that the employment is less than the required number of new full-time employees for the first year of the award, the business shall no longer be eligible for tax credits.

3. (No change.)

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

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

6. (No change in text.)

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

19:31-20.8 (Reserved)

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

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

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

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

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

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

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

2. (No change.)

(c) The business may apply the credit against its corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the Program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as subsequently adjusted pursuant to N.J.A.C. 19:31-20.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the qualified wind energy facility or employees at the qualified wind energy facility during the tax period for which the tax credits are issued.

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

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

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

19:31-20.10 Application for tax credit transfer certificate

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

(b) (No change.)

(c) In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the corporate owners' distributive share of income or gain of the partnership, the selling agreement shall set forth the allocation among the corporate owners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31-20.5(a).

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

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

1. The name of the transferrer;

2. The name of the transferee;

3. The value of the tax credit transfer certificate;

4. The State tax against which the transferee may apply the tax credit; and

5. The consideration received by the transferrer.

19:31-20.12 Reduction and forfeiture of tax credits

(a) If, in any tax period during the eligibility period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under the Program, then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this section has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the required full-time employees at the qualified wind energy facility. A company with which the recipient has an equipment supply coordination agreement is not considered an affiliate for the purposes of this section. The number of full-time employees in a business's Statewide workforce shall not include a new full-time employee at the qualified wind energy facility.

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

(c) (No change.)

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

(e) For projects with a commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the eligibility period, the Authority may recoup all or a portion of the tax credits awarded if the business does not maintain the project at the qualified wind energy facility for the period of years after the eligibility period based on a recoupment schedule in the approval letter. The business shall have 12 months to restore the new full-time jobs to 300 or the applicable prorated minimum number of new full-time employees before the Authority may recoup any amount of tax credits.

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

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

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

1. (No change.)

2. If a tenant leases or subleases its tenancy in whole or in part during the eligibility period, the lessee or sublessee shall not acquire the credit of the lessor or sublessor, and the lessor or sublessor tenant shall forfeit all credits for the tax period of its lease or sublease and all subsequent tax periods, except that if the lessor or

sublessor tenant retains sufficient capital investment and employment to remain eligible for the Program, the forfeiture shall affect only the credits attributable to the leased or subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the lessee or sublessee shall be subtracted. Notwithstanding the foregoing, a business may lease or sublease a portion of its qualified business facility to any other new tenant without forfeiting any of the business's credits, but shall not include the new tenant's full-time employees and capital investment in the business's eligible full-time employees or capital investment if:

i. The leasee or subleasee is a party to any equipment supply coordination agreement;

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

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

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

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

1. A certification, which shall be made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-20.7(f)4. The certification shall state the number of full-time employees and new full-time employees employed at the qualified wind energy facility or through an equipment supply coordination agreement, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, the salary of all new full-time employees, the number in the business's Statewide employment, total lease payments, the list of affiliates that contributed to the full-time employees at the qualified wind energy facility, the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time employees at the qualified wind energy facility or resulting from an equipment supply coordination agreement or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time employees or salaries in the annual review report of the prior year or the certification pursuant to N.J.A.C. 19:31-20.7(f) if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the award accordingly. If, in a tax period subsequent to a reduction in the size of the grant the business increases the number of new full-time employees at the qualified wind energy facility or resulting from an equipment supply coordination agreement or salaries of these jobs in the annual review report above 10 percent or more of the number of new full-time employees or salaries in the annual review report of the prior year, the Authority may reevaluate the net positive economic benefit and increase the size of the award accordingly, but in no event shall the amount of tax credit that the business may take in a tax period be greater than one-fifth of the total tax credit amount approved by the Authority. This reduction shall not affect any forfeiture pursuant to N.J.A.C. 19:31-20.12.

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

(b) (No change.)

(c) The approval letter may provide for additional reporting requirements.

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

19:31-20.15 Appeals

(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., or 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) (No change.)