



## 50 N.J.R. 2254(a)

VOLUME 50, ISSUE 21, NOVEMBER 5, 2018

### SPECIAL ADOPTIONS

#### Reporter

50 N.J.R. 2254(a)

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## Agency

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**OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

## Administrative Code Citation

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**Special Adopted New Rules: N.J.A.C. 19:31-20**

## Text

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### Authority Assistance Programs

#### Offshore Wind Economic Development Tax Credit Program

Special New Rules Adopted: October 17, 2018, by New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: October 17, 2018 as R.2018 d.194.

Authority: P.L. 2010, c. 57 and P.L. 2018, c. 17.

Effective Date: October 17, 2018.

Expiration Date: October 17, 2019.

**Take notice** that the New Jersey Economic Development Authority (Authority) has adopted new rules at N.J.A.C. 19:31-20 to implement the Offshore Wind Economic Development Tax Credit Program (Program) established pursuant to section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 51, as amended by P.L. 2018, c. 17, which authorizes the Authority to approve up to \$ 100 million, except as may be increased by the Authority, in tax credits for the development of certain qualified wind energy facilities in wind energy zones.

Under the Program, businesses making at least \$ 50 million in new capital investments in a qualified wind energy facility and employing at least 300 new, full-time employees at that facility may be eligible for tax credits. Businesses must apply for the tax credits by July 1, 2024, and satisfy the capital investment and employment conditions for award of the credits by July 1, 2027, subject to the rules in this subchapter. The tax credits are equal to 100 percent of the claimants' qualified capital investments made, except as may be limited by the net positive

economic benefits test, and taxpayers may apply 10 percent of the total credit amount per year over a 10-year period against their corporation business or insurance premiums tax. Tenants in qualified wind energy facilities may also receive tax credits, if they occupy space in a qualified business facility that proportionally represents at least \$ 17.5 million of the capital investment in the facility, at which the business, including tenants, employs at least 300 new, full-time employees in that facility. Finally, the Program is limited to wind energy zones, that is, property located in the South Jersey Port District established pursuant to The South Jersey Port District Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

In accordance with P.L. 2010, c. 57, as amended by P.L. 2018, c. 17, these new rules are adopted and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4) as adopted by the New Jersey Economic Development Authority and will remain in effect until October 17, 2019, or until the rules are proposed for public comment and readopted through standard rulemaking procedures.

## **Regulations**

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**Full text** of the specially adopted new rules follows:

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

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

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

#### **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.

"Act" means the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by the business, and may include not-for-profit entities. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to Section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under this Program.

"Approval letter" means the letter sent by the Authority that sets forth the conditions to maintain the approval and to receive the tax credit, the forecasted schedule for completion and occupancy of the project, the date the 10-year eligibility period is scheduled to commence, the estimated amount of tax credits, and other such information that furthers the purposes of the Program. 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.

"Authority" means the New Jersey Economic Development Authority.

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

"Business" means a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15) or N.J.S.A. 17B:23-5, or is a partnership, an S corporation, or a limited liability corporation. A business shall

include an affiliate of the business if that business applies for a credit based upon any capital investment made by the affiliate or full-time employees of an affiliate.

"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. 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.

"Complex of buildings" means buildings that are part of the same financing plan and operational plan.

"Developer" means, with respect to a qualified wind energy facility, a business that intends to construct and lease a wind energy facility. A developer may seek to receive approval that the facility will constitute a qualified wind energy facility conditioned upon identification of tenants that will have qualifying employment and pro formas indicating that the capital investment requirements will be met.

"Eligibility period" means the 10-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.

"Equipment supply coordination agreement" means an agreement between a business and an equipment manufacturer, supplier, installer, or operator that supports a qualified offshore wind project, or other wind energy project as determined by the Authority, and that indicates the number of new, full-time jobs to be created by the agreement participants towards the employment requirement as set forth in N.J.A.C. 19:31-20.3. "Equipment supply coordination agreement" shall not include subcontracts or agreements between the equipment manufacturer, supplier, installer, and operator and parties other than the business that has applied for a credit under this Program.

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

an employee who is a resident of another state and whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the State of New Jersey, provided that any employee whose work is provided pursuant to a collective bargaining agreement with a business in the wind energy zone may be included.

"Full-time employee at the qualified wind energy facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time in New Jersey, 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.

"Leasable area" means rentable area of the building 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 that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building and is not affected by changes in corridor sizes or configuration.

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-20.7(d) that must accompany the use of the tax credit certificate.

"Net leasable area" means the usable area or actual occupiable area of a building, a floor, or an office suite. The amount of usable area can vary over the life of a building as corridors expand and contract and as floors are remodeled, and, thus, is not fixed for the life of a building as would be the case with leasable area.

"New full-time employee" means a position that did not previously exist in this State and that is created by the business and filled by a full-time employee at the qualified wind energy facility. A new full-time employee may also include new full-time employee resulting from an equipment supply coordination agreement, provided that the employee spends at least 80 percent of his or her time in New Jersey, or any other period of time in New Jersey generally accepted by custom or practice as full-time employment, as determined by the Authority. New full-time employee resulting from an equipment supply coordination agreement may include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent. With regard to new full-time employees resulting from an equipment supply coordination agreement, one "new full-time employee" means 35 hours of employment per week dedicated to the work required under the agreement, or who renders any other standard of service generally accepted by custom or practice as determined by the Authority as full-time employment, regardless of whether or not the hours of work were performed by one or more persons. New full-time position shall also include new full-time positions that a business creates after receipt of approval, pursuant to N.J.A.C. 19:31-20.7, that are transferred to the qualified wind energy facility upon completion thereof and meet the requirements of this Program.

"Offshore wind economic development tax credit" means the tax credit permitted under section 6 of the Act, which may be applied against the tax liability otherwise due for corporation business tax or insurance premiums tax 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.

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

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

"Program" means the Offshore Wind Economic Development Tax Credit Program created pursuant to section 6 of the Act and provided in this subchapter.

"Progress information" means the information that must be submitted pursuant to N.J.A.C. 19:31-20.7(e).

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

"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).

"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 support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the Authority, and that are located in a wind energy zone.

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

"Tenant" means a business that is a lessee in a qualified wind energy facility.

"Wind energy zone" means property located in the South Jersey Port District established pursuant to The South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

#### 19:31-20.3 Eligibility criteria

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

1. If the business is other than a tenant, the business shall:
  - i. Make or acquire capital investments in a qualified wind energy facility totaling not less than \$ 50,000,000. A business that acquires a qualified wind energy facility after August 19, 2010, the effective date of the Act, shall also be deemed to have acquired the capital investment made or acquired by the seller, subject to the disqualifications in N.J.A.C. 19:31-20.13. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of \$ 50,000,000 provided that the owner so indicate in the owner's application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;
  - ii. Employ, in the aggregate, with tenants at the qualified wind energy facility, not fewer than 300 new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement; and
  - iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required in (c) below; and
2. If the business is a tenant in a qualified wind energy facility:
  - i. The owner of the qualified wind energy facility shall make or acquire capital investments in the facility totaling not less than \$ 50,000,000, as calculated in accordance with (a)1i above;
  - ii. The tenant shall occupy a leased area of the qualified wind energy facility that represents at least \$ 17,500,000 of the capital investment in the facility, as calculated pursuant to (b) below;
  - iii. Employ, in the aggregate, with other tenants at the qualified wind energy facility, at least 300 new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement;
  - iv. The business shall lease the qualified wind energy facility for a term of not less than 10 years; and
  - v. Except for tenants of a qualified wind energy facility for which the owner has previously demonstrated a net positive benefit and received approval of the qualified energy facility or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required in (c) below. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment.

- (b)** In order to determine whether the tenant's leasable area of the qualified wind energy facility satisfies the capital investment eligibility threshold, the Authority shall multiply the owner's capital investment by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$ 50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified wind energy facility.
- (c)** The net positive benefit required in (a)1iii and (a)2v above shall equal at least 110 percent of the approved tax credit allocation amount, to the State for the period equal to 75 percent of the useful life of the investment, not to exceed 10 years, 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. To support the determination of a net positive 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).
- (d)** Full-time employment for an accounting or privilege period, or the portion thereof after the certification of the business that it has met the capital investment and employment qualifications, shall be determined as the average of the monthly full-time employment for the period or portion thereof.
- (e)** Because a business may include an affiliate or affiliates, the capital investment and employment requirements may be met by the business or by one or more of its affiliates, and the entity satisfying the capital investment requirement does not need to be the same as the entity satisfying the employment requirement.
- (f)** A business shall be treated as owner of a qualified wind energy facility if it holds title to the facility if it ground leases the land underlying the facility for at least 50 years.
- (g)** A business that is investing in a qualified wind energy facility may apply for tax credits valued at less than the total amount of the capital investments in its project.

19:31-20.4 Restrictions

- (a)** A business shall not be allowed offshore wind economic development tax credits if:
1. The business participates in a Business Employment Incentive Program grant pursuant to P.L. 1996, c. 26 (N.J.S.A. 34:1B-124 et seq.) relating to the same capital and employees that qualify the business for the Program; or
  2. The business receives assistance pursuant to the "Business Retention and Relocation Assistance Act," P.L. 1996, c. 25 (N.J.S.A. 34:1B-112 et seq.).
- (b)** A business that is allowed 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)** Capital investments in a qualified wind energy facility must be incurred after the effective date of P.L. 2010, c. 57, which is August 19, 2010, but prior to its submission of documentation pursuant to N.J.A.C. 19:31-20.7(f).
- (d)** If a business participating in a Business Employment Incentive Program grant for the same capital investment, employees, and site or receiving assistance from the Business Retention and Relocation Assistance Grant Program, or incentives authorized by the Municipal Rehabilitation and Economic Recovery Act, seeks to qualify for offshore wind economic development tax credits, it shall first repay and terminate assistance pursuant to the rules governing the Business Employment Incentive Program, Business Retention and Relocation Assistance Grant Program, or Municipal Rehabilitation and Economic Recovery Act, as applicable.

## 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. The name of the business;
  - ii. The contact information of the business;
  - iii. Prospective future address of the business (if different);
  - iv. The type of the business;
  - v. Principal products and services and three-digit North American Industry Classification System number;
  - vi. The New Jersey tax identification number;
  - vii. The Federal tax identification number;
  - viii. The total number of employees in New Jersey at the time of application and in the last tax period prior to the application;
  - ix. The total list of New Jersey operations;
  - x. A written certification by the chief executive officer, or equivalent officer for North American operations, stating that the business applying for the Program is not in default with any other program administered by the State of New Jersey and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;
  - xi. Disclosure of legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
  - xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
  - xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65, P.L. 1996, c. 26, and P.L. 2002, c. 43;
  - xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of the Treasury by such time and with such information as the Director may require; and
  - xv. Any other necessary and relevant information as determined by the Authority for a specific application.
2. Project information shall include the following:
  - i. An overall description of the proposed project;
  - ii. A description of the capital investments planned by the business, if other than a tenant at the proposed qualified wind energy facility, or, if the business is a tenant, represented by the leased area of the business, at the proposed qualified wind energy facility;
  - iii. The estimated value of the capital investment;

- iv. A certification by the chief executive officer, or equivalent officer for North American operations, of the business, with supporting evidence, that the State's financial support of the proposed capital investment in a qualified wind energy facility will yield a net positive economic benefit in the amount required by N.J.A.C. 19:31-20.3(c), taking into account the criteria listed at N.J.A.C. 19:31-20.7(c). The applicant may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;
- v. Identification of the site of the proposed qualified wind energy facility, including the block and lot of the site as indicated upon the local tax map or other documentation acceptable to the Authority;
- vi. A project schedule that identifies projected move dates for the proposed qualified wind energy facility;
- vii. A schedule of short-term and long-term employment projections of the business in the State, taking into account the proposed project;
- viii. 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;
- ix. The total number of anticipated new full-time positions that would be created in New Jersey and 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. The total number of anticipated new full-time positions that would be created in New Jersey through any equipment supply coordination agreement and the projected length of time the agreement(s) will be in effect;
- xi. Any plans to hire and train local residents, including, specifically, residents of the municipality, and to contribute to the local economy and community; and
- xii. Any other necessary and relevant information as determined by the Authority for a specific application.

3. Employee information shall include the following:

- i. A written certification that the employees that are the subject of this application will be new full-time employees as defined in the Program;
- ii. The average annual wage and benefit rates of full-time employees and new full-time positions at the qualified wind energy facility;
- iii. To the extent a tenant other than the business is meeting the employment requirement in the qualified wind energy facility, a submission from the tenant relating to (a)3i above;
- iv. 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
- v. Any other necessary and relevant information as determined by the Authority for a specific application.

4. 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 last tax period prior to the credit amount approval.

**(b)** A developer may apply to have a building approved as a qualified wind energy facility by submitting the information required pursuant to (a)2i, ii, iii, and v above. Any tenant seeking an approval of tax credits

for a qualified wind energy facility so approved will be required to submit the information required pursuant to (a)1, 2iv, 2vi through xii, 3, and 4 above.

- (c) The business applying to the Program shall submit an application fee as set forth at N.J.A.C. 19:31-20.6.

19:31-20.6 Application and servicing fees

- (a) A business applying for benefits under the Program shall submit a one-time non-refundable application fee of \$ 5,000, with payment in the form of a check, payable to the "New Jersey Economic Development Authority."
- (b) In addition to the application fee in (a) above, a business shall pay to the Authority, the full amount of direct costs of an analysis by a third-party retained by the Authority, if the Authority deems such retention to be necessary.
- (c) A non-refundable fee of 0.5 percent of the tax credit, not to exceed \$ 500,000, shall be paid at the time of execution of the non-binding letter of intent pursuant to N.J.A.C. 19:31-20.3(c).
- (d) A non-refundable fee of 0.5 percent of the tax credit, not to exceed \$ 500,000, shall be paid prior to the receipt of the tax credit certificate.
- (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. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report. For each project with tax credits of \$ 1,000,000 or less annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$ 20,000 per year; and for each project with tax credits in excess of \$ 1,000,000 annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$ 75,000 per year.
- (f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-18.13 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee of \$ 5,000 and \$ 2,500 for each additional request made annually.
- (g) For each project with total tax credits of \$ 5,000,000 or less, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of \$ 5,000,000, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.
- (h) A non-refundable fee of \$ 5,000 shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a nonrefundable fee of \$ 10,000 shall be paid for any subsequent six-month extension.

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

- (a) A business seeking an approval of tax credits for a qualified wind energy facility must apply for tax credits by July 1, 2024, and a business shall submit its documentation for approval of its credit amount by July 1, 2027.
- (b) The Authority shall conduct a review of the applications commencing with the application bearing the earliest date a completed application is submitted or if interest in the Program so warrants, at its discretion and upon notice, institute a competitive application process whereby all applications submitted by a date certain will be evaluated as if submitted on that date. The Authority may require

the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The review will determine whether the applicant:

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

(c) In determining whether the company meets the net 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 local and State taxes paid directly by the business, property taxes, or payment in lieu of taxes paid directly by the business, and taxes paid directly by new employees. The Authority may also consider, at its discretion, local and State taxes generated indirectly by the business, property taxes or payment in lieu of taxes generated indirectly by the business, taxes generated indirectly by new employees, or peripheral economic growth caused by the business's relocation to the wind energy zone. The Authority may increase the net economic benefit, at its discretion, if the business demonstrates to the Authority's satisfaction commitment(s) to contribute to non-financial community objectives. The Authority may also consider taxes paid directly or generated indirectly by retained employees, at the Authority's discretion based on evidence satisfactory to the Authority that the employees are at risk of being lost to another state or country or eliminated. The determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority and shall not include any capital investment or employees for which an incentive has been previously provided or any capital investment by a local or State governmental entity.

(d) Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Board shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions that must be met in order to maintain the approval and to receive the tax credits. An approval letter setting forth the conditions and indemnification and insurance requirements will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and that the business agrees to extend the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax to the eligibility period. The approval letter shall 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. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the Program are subject to the completion of the project and satisfaction of the capital investment and employment qualifications required for the offshore wind economic development tax credits.

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

(e) Within six months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for, and site control of, the qualified wind energy facility. 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 certified public accountant and any receipts or verifiable documentation requested by the Authority, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment and any employment requirements.

1. The certification with respect to the capital investment shall define the amount of the tax credits and shall not be increased regardless of additional capital investment in the qualified wind energy facility, provided; however, that in no event, will the amount of tax credits exceed the amount of tax credits previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the incentive grant, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.
2. The certification with respect to employment shall include the number of full-time employees and new full-time positions employed at the qualified wind energy facility, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, and the salary of all new full-time employees. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time jobs or salaries in the certification is reduced below the number of new full-time jobs in the approval of the incentive grant or the salaries proposed in 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, the business shall no longer be eligible for tax credits.
3. The certification shall include the list of affiliates that contributed to the capital investment or full-time employees at the qualified wind energy facility and the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any such affiliate that was not listed in the application.
4. The certification shall be submitted to the Authority no later than three years after the Authority's application approval, unless the Authority determines in its sole discretion that there are extenuating circumstances for extensions, but in no event later than July 1, 2027.
5. The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

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

#### 19:31-20.8 Tax credit certificate

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

1. The starting date of the eligibility period;
2. The amount of the tax credits;
3. A requirement that any use of the tax certificate be accompanied by a letter of compliance;

4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the employment and/or capital investment requirements of the Program, a schedule setting forth the eligible affiliates and a requirement by the business to notify the Authority at least seven days prior to date of filing relating to each tax accounting or privilege period, the proposed allocation of tax credits by the business among the business and the affiliates;
5. Events that would trigger reduction and forfeiture of tax credit amounts; and
6. Reporting requirements and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 101.

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

- (a) The amount of the credit allowed pursuant to the Program shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business' leased area, or area owned by the business as a condominium, except as may be limited by the net positive economic benefits test and shall be taken over the eligibility period, at the rate of one-tenth of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the Authority as having met the investment capital and employment qualifications, subject to any reduction or disqualification provided in P.L. 2018, c. 17 and this subchapter as determined by annual review by the Authority.
- (b) In no event shall the amount of tax credits exceed the amount of tax credits previously approved by Board as follows:
  1. If the owner uses space in a qualified wind energy facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified business facility not leased to tenants and the denominator of which is the total net leaseable area.
  2. In order to determine the amount of the tenant's capital investment that will be attributed toward the amount of its tax credits, the Authority shall add the amount of capital investment that results from the calculation in N.J.A.C. 19:31-20.3(b) to any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant, provided that the owner has not included such tenant allowance or tenant improvements in its calculation of capital investment and further provided that such tenant allowance or tenant improvements meet the definition of capital investment.
- (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 wind energy facility or employees at the business facility during the tax period for which the tax credits are issued.
- (d) The amount of credit allowed for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business's total lease payments for occupancy for the tax period.
- (e) A business that is a partnership shall not be allowed a credit under the Program directly, but the amount of credit of an owner of a business shall be determined by allocating to each owner of the partnership that proportion of the credit of the business that is equal to the 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 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.

- (f) The tax credits are not refundable and shall not result in a refund in the event that they do not equal or exceed a business's tax liability.
- (g) The credit amount that may be taken for a tax period of the business that exceeds the final liabilities of the business for the tax period may be carried forward for use by the business in the next 20 successive tax periods, and shall expire thereafter.

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

- (a) A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for a tax credit transfer certificate covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be sold. Once approved by the Authority and the Director of the Division of Taxation, a certificate shall be issued. The certificate, upon receipt thereof by the business from the Director and the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was allowed the credit.
- (b) The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the business of less than 75 percent of the transferred credit amount before considering any further discounting to present value that shall be permitted. In order to evidence this requirement, the business shall submit to the Authority an executed form of standard selling agreement which states that the consideration received by the business is not less than 75 percent of the transferred credit amount.
- (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 owners' distributive share of income or gain of the partnership, the selling agreement shall set forth the allocation among the 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) In no event shall the purchaser or assignee of a tax credit transfer certificate make any subsequent transfers, assignments, or sales of a tax credit transfer certificate.
- (e) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

**19:31-20.11 Cap on total credits**

The value of all credits approved by the Authority may be up to \$ 100,000,000, except as may be increased by the Authority as set forth in this section. The Authority shall monitor application and allocation activity under the Program. If the Chief Executive Officer of the Authority judges certain qualified offshore wind projects to be meritorious, the cap may, in the discretion of the Authority, be exceeded for allocation to qualified wind energy facilities in such amounts as the Authority deems reasonable, justified, and appropriate.

**19:31-20.12 Reduction and forfeiture of tax credits**

- (a) If, in any tax 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. 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, the aggregate number of new full-time employees at the qualified wind energy facility and resulting from an equipment supply coordination agreement drops below 300, 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 full-time employees employed at the qualified wind energy facility and resulting from an equipment supply coordination agreement to 300, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.
- (c)** The credit amount for any tax period ending after January 13, 2026, which is the date 18 years after the effective date of P.L. 2007, c. 346 (N.J.S.A. 34:1B-207 et seq.), during which the documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the years of the eligibility period shall remain available.
- (d)** In the event that any certification required from the business or the other party to any equipment supply coordination agreement, including, but not limited to, the certifications required pursuant to N.J.A.C. 19:31-20.14(a)2, is found to be willfully false or that the business submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority or the Division of Taxation, the Authority may, at its sole discretion and in addition to any other remedies available, revoke and/or terminate any award of tax credits in their entirety and may require repayment of all tax credits received by the business.
- (e)** 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 that was included in the calculation of the net positive economic benefit pursuant to N.J.A.C. 19:31-20.3(c).

#### **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 sublease of the business's tenancy as follows:
  - 1.** If the qualified wind energy facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, except that any credits of tenants shall remain unaffected. The new owner may not apply for tax credits based upon the seller's capital investment. If the business merges with or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner.
  - 2.** If a tenant subleases its tenancy in whole or in part during the eligibility period, the sublessee shall not acquire the credit of the sublessor, and the sublessor tenant shall forfeit all credits for the tax period of its sublease and all subsequent tax periods, except that if the sublessor tenant retains sufficient capital investment and employment to remain eligible for the Program, the forfeiture shall affect only the credits attributable to the subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the sublessee shall be subtracted.

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

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

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

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

**(b)** Failure to submit its annual report within 120 days after the end of the business's tax privilege period or submission of the annual report without the information required above, shall result in forfeiture of any annual tax credits to be received by the business unless the Authority determines in its sole discretion that there are extenuating circumstances excusing the business from the timely filing required.

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

**(d)** In conducting its annual review, the Authority shall require a business to submit any information determined by the Authority to be necessary and relevant to its review and may require an audit of payroll and employment records.

**(e)** Annually, upon satisfactory review of all information submitted, the Authority will issue a letter of compliance. No tax credit certificate shall be valid without the letter of compliance issued for the

relevant tax privilege period. The letter of compliance shall indicate whether the business may take all or a portion of the credits allocable to the tax privilege period.

**19:31-20.15 Appeals**

- (a)** The Board's action on applications shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.
- (b)** An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the 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)** Appeals that are timely submitted shall be handled by the Authority as follows:
  1. The Chief Executive Officer of the Authority 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. The Chief Executive Officer, or equivalent 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, or equivalent 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.

**19:31-20.16 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.

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