TITLE 19. OTHER AGENCIES
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS
SUBCHAPTER 4. ECONOMIC REDEVELOPMENT AND GROWTH PROGRAM

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N.J.A.C. 19:31-4.1 (2017)

§ 19:31-4.1 Applicability and scope

(a) The EDA and the State Treasurer may enter into a redevelopment incentive grant agreement with a developer, or non-profit organization on behalf of a qualified developer, for any qualifying redevelopment project located in an economic redevelopment and growth grant incentive area, except an area that qualifies solely by virtue of being a transit village. Up to an average of 75 percent of the incremental increase in approved State revenues or 85 percent of the project annual incremental revenues in a Garden State Growth Zone that are directly realized from businesses operating on the redevelopment project premises may be paid to the developer in the form of a grant derived from the realized revenues. For certain qualified residential projects, mixed use parking projects or projects involving university infrastructure, where the estimated amount of incremental revenues is inadequate to fully fund the amount of the State portion of the incentive grant, tax credits equal to the full amount of the incentive grant may be awarded. The term of each approved State redevelopment incentive grant agreement may extend for up to 20 years. Except for a redevelopment incentive grant agreement with a municipal redeveloper, the base amount of the combined reimbursements from State and local grants or tax credits cannot exceed 20 percent of the eligible cost of the project, except in a Garden State Growth Zone, which cannot exceed 30 percent and except for the parking component of a mixed use parking project, which can be up to 100 percent. A developer seeking an incentive grant is required to make an equity participation for at least 20 percent of the project's eligible cost.

(b) The Authority will conduct a fiscal analysis to determine redevelopment project costs, evaluate and validate the project financing gap estimated by the developer and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project will result in net positive economic benefit to the State where each proposed project is located. The State Treasurer will approve or disapprove such analysis.

(c) In order to ensure compliance with the "Appropriations clause" of the New Jersey State Constitution (N.J. Const. Art. VIII, Sect. II, para.2), this subchapter provides that payments under State incentive grant agreements are subject to annual appropriations and availability of funds.

(d) Upon notice to and consent by the EDA and the State Treasurer, a developer's right, title, and interest in, a redevelopment incentive grant agreement may be pledged, assigned, or sold by a developer.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (a) and (d).

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted ", mixed use parking projects or projects involving university infrastructure," and "or tax credits", and substituted ". Except" for "; however, except", and "and except for the parking component of a mixed use parking project, which can be up to 100 percent. A" for "; and a".

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N.J.A.C. 19:31-4.2 (2017)

§ 19:31-4.2 Definitions

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

"Ancillary infrastructure project" means structures or improvements that are located within the incentive area, but outside the project area of a redevelopment project, including, but not limited to, docks, bulkheads, parking garages, freight rail spurs, roadway overpasses, and train station platforms, provided a developer or municipal redeveloper has demonstrated that the redevelopment project would not be economically viable or promote the use of public transportation without such improvements, as approved by the State Treasurer.

"Applicant" means a developer proposing to enter into a redevelopment incentive grant agreement and may include a non-profit organization to which a developer has assigned its ability to apply for a redevelopment incentive grant.

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

"Aviation district" means the area within a one-mile radius of the outermost boundary of the "Atlantic City International Airport," established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24).

"Deep poverty pocket" means a population census tract having a poverty level of 20 percent or more, according to the 2010 U.S. Census, and which is located within the incentive area.

"Developer" means any person who enters or proposes to enter into a redevelopment incentive grant agreement or an approval letter pursuant to the provisions of the Economic Redevelopment and Growth (ERG) Program, or its successors or assigns, including, but not limited to, a lender that has been approved by the Authority and the State Treasurer and that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project, a municipal redeveloper, or Rutgers, the State University of New Jersey.

"Developer contributed capital" means equity contributed by the developer.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Disaster recovery project" means a redevelopment project located on property that has been wholly or substantially damaged or destroyed as a result of a Federally declared disaster, and which is located within the incentive area.

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

"Eligibility period" means 10 years for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits or, for all other redevelopment projects, the period of time specified in a redevelopment incentive grant agreement for the payment of reimbursements to a developer, which period shall not exceed 20 years, with the term to be determined solely at the discretion of the applicant, at the time of approval.

"Eligible revenue" means any of the incremental revenues set forth in section 6 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489f), except in the case of a Garden State Growth Zone, in which such property tax increment and any other incremental revenues are calculated as those incremental revenues that would have existed notwithstanding the provisions of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161.

"Equity" means cash, development fees, costs for project feasibility incurred within the 12 months prior to application, Federal or local grants, Federal tax credits, property value less any mortgages, and any other investment by the developer in the project deemed acceptable by the Authority in its sole discretion. Property value shall be valued at the lesser of either the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application, or the value as determined by a current appraisal acceptable to the Authority. For a qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity means the portion of the developer's fee that is delayed for a minimum of five years.

"Fiscal impact analysis" means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State. For the purposes of determining if the applicant fulfills the net positive economic benefit requirement, the analysis needs to demonstrate that the project's net positive economic benefit equals at least 110 percent of the amount of grant assistance, for the period equal to 75 percent of the useful life of the project not to exceed 20 years. The analysis will be an econometric model that uses project data provided by the developer, including, but not limited to: full-time employees at the qualified business facility in new and retained jobs, amount of capital investment, type of project, occupancy characteristics, and location; and by using this information, shall generate an estimate of direct and indirect economic benefits, including without limitation, non-financial community revitalization objectives including, but not limited to, objectives memorialized in a municipal master plan or plan for an area in need of redevelopment or rehabilitation, or the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project, as deemed reasonable by the Authority, and projected eligible revenues. This information may be supplemented by the use of industry accepted estimates, that is, U.S. Department of Commerce Regional Input-Output Modeling System data, when specific data is not available.

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

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the U.S. Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); or a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

"Highlands development credit receiving area or redevelopment area" means an area located within an incentive area and designated by the Highlands Council for the receipt of Highlands Development Credits under the Highlands Transfer Development Rights Program authorized under section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13).

"Incentive grant" means reimbursement of all or a portion of the project financing gap of a redevelopment project.

"Infrastructure improvements in the public right-of-way" mean public structures or improvements located in the public right-of-way that are located within a project area or that constitute an ancillary infrastructure project and may include, but not be limited to, signalization and new interchanges, public parking structures, and pedestrian, bi-cycle-oriented, and mass transit improvements; and public utilities such as water, sewer, electric, and gas, either of which are dedicated to or owned by a governmental body or agency upon completion, or any required payment in lieu of the structures, improvements, or projects or any costs of remediation associated with the structures, improvements, or projects, and that are determined by the Authority, in consultation with applicable State agencies, to be consistent with and in furtherance of State public infrastructure objectives and initiatives.

"Internal rate of return" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment.

"Local incentive grant" means a grant made pursuant to a redevelopment incentive grant agreement between a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, and which is subject to review by the Local Finance Board, in the Division of Local Government Services, in the Department of Community Affairs.

"Low-income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

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

"Minimum environmental and sustainability standards" means the standards set forth in the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

"Mixed use parking project" means a redevelopment project consisting of a building or structure, the parking component of which shall constitute 51 percent or more of any of the following: the total square footage of the entire mixed use parking project; the estimated revenues of the entire mixed use parking project; or the total construction cost of the entire mixed use parking project.

"Moderate-income housing" means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal redeveloper" means an applicant for a redevelopment incentive grant agreement, which applicant is a municipal government, a municipal parking authority, or a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3); or a developer of a mixed use parking project, provided that the parking component of the mixed use parking project is operated and maintained by a municipal parking authority for the term of any financial assistance grant pursuant to P.L. 2015, c. 69.

"Municipal Revitalization Index" means the 2007 index by the Office for Planning Advocacy, within the Department of State, measuring or ranking municipal distress.

"Non-parking component" means that portion of a mixed use parking project not used for parking, together with the portion of the costs of the mixed use parking project, including, but not limited to, the footings, foundations, site work, infrastructure, and soft costs that are allocable to the non-parking use.

"Parking component" means that portion of a mixed use parking project used for parking, together with the portion of the costs of the mixed use parking project, including, but not limited to, the footings, foundations, site work, infrastructure, and soft costs that are allocable to the parking use.

"Project area" or "redevelopment project area" means land or lands located within the incentive area under common ownership or control, which shall be located in a qualifying economic redevelopment and growth grant incentive area, including, but not limited to, control through a redevelopment agreement with a municipality pursuant to N.J.S.A. 40A:12A-1 et seq., or as otherwise established by a municipality or a redevelopment agreement executed by a State entity to implement a redevelopment project.

"Project cost" means the costs incurred in connection with the redevelopment project by the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, for a specific investment or improvement, including the costs relating to receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L. 2004, c. 120 (N.J.S.A. 13:20-13), lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air

rights acquired, owned, developed, or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus costs not directly related to construction, of an amount not to exceed 20 percent of the total costs, capitalized interest paid to third parties, and the cost of infrastructure improvements, including ancillary infrastructure projects, and, for projects located in a Garden State Growth Zone only, the cost of infrastructure improvements including any ancillary infrastructure project and the amount by which total project cost exceeds the cost of an alternative location for the redevelopment project, but excluding any particular costs for which the project has received Federal, State, or local funding. For purposes of this definition, as determined by the Authority, certain Federal tax credit programs that involve significant private investment, including, but not limited to, the Low Income Housing Tax Credit administered by the New Jersey Housing and Mortgage Financing Agency, will not be considered Federal funding.

"Project financing gap" means the part of the project costs that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital or equity or other contributed capital or equity, which shall not be less than 20 percent of the eligible project cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of-way, subject to review by the State Treasurer, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis, and except for final point of sale retail businesses, including, but not limited to, retail, educational, hospital, and hotel projects, the amount by which total project costs exceed the cost of a viable alternative location for the out-of-State redevelopment project in the event the business's chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of leaving the State and that the project would not occur, but for the provision of the incentive grant under the program. When calculating the project financing gap, the factors set forth at N.J.A.C. 19:31-4.6(a)4, including, but not limited to, internal rate of return on developer's contributed capital, and net profit margin, will be considered. The project financing gap may be increased by the cost of capital necessary to raise an amount of current capital sufficient to complete the project when combined with all other sources of capital in recognition that the incremental eligible revenues will be reimbursed over an estimated period of years. A qualified residential project utilizing State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency (NJHMFA) will be determined to have a project financing gap if the developer cannot achieve the fee authorized by NJHMFA within five years after the project is placed in operation, provided that in no event shall the sum of the tax credits awarded under this subchapter and the State low income housing tax credits awarded by the New Jersey Housing and Mortgage Financing Agency exceed ninety percent of the total development cost.

"Qualified incubator facility" means a commercial building located within an incentive area: which contains 100,000 or more square feet of office, laboratory, or industrial space; which is located near, and presents opportunities for collaboration as demonstrated by a written agreement with, a research institution, teaching hospital, college, or university; and within which, at least 75 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

"Qualified residential project" means a redevelopment project for which a developer must submit a temporary certificate of occupancy by July 28, 2018, that is predominantly residential and includes multi-family residential units for purchase or lease, or dormitory units for purchase or lease, having a total project cost of at least $ 17,500,000, if the project is located in any municipality with a population greater than 200,000 according to the latest Federal decennial census, or having a total project cost of at least $ 10,000,000 if the project is located in any municipality with a population less than 200,000 according to the latest Federal decennial census, or is a disaster recovery project, or having a total project cost of $ 5,000,000 if the project is in a Garden State Growth Zone. A qualified residential project shall not include transitional or homeless units.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" means an aviation district, a port district, a distressed municipality, or an area:

1. Designated as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or Planning Area 3 (Fringe Planning Area), pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.); or

2. Located within:

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

plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);

ii. Any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4), including the sports complex, that is, the 750-acre sports and exposition site located in the Borough of East Rutherford under the jurisdiction of the New Jersey Sports and Exposition Authority as of February 5, 2015, the effective date of P.L. 2015, c. 19 (N.J.S.A. 5:10A-1 et seq.), and such additional property that is owned and controlled by the New Jersey Sports and Exposition Authority as may be designated by the Meadowlands Regional Commission, as established by P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), and section 6 of P.L. 2015, c. 19 (N.J.S.A. 5:10A-6) from time to time as part of the sports complex;

iii. A regional growth area, a town, a village, or a military and Federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

iv. The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or in a highlands development credit receiving area or redevelopment area;

v. A Garden State Growth Zone;

vi. Land approved for closure under any Federal Base Closure and Realignment Commission action; or

vii. Only the following portions of the areas designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive). This subparagraph shall only apply if Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within:

(1) A designated center under the State Development and Redevelopment Plan;

(2) A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts rules to revise this definition as it pertains to Statewide planning areas;

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

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

(5) The planning area of the Highlands Region as defined in section 3 of P.L. 2004, c. 120 (N.J.S.A. 13:20-3) or a highlands development credit receiving area or redevelopment area; or

(6) Any area on which an existing tourism destination project is located.

"Qualifying economic redevelopment and growth grant incentive area" or "incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in the Highlands Water Protection and Planning Act, P.L. 2004, c. 120 (N.J.S.A. 13:20-1 et seq.).

"Redevelopment incentive grant agreement" means an agreement between the State Treasurer, the Authority, and a developer, or a municipality and a developer, or a municipal ordinance authorizing a project to be undertaken by a municipal redeveloper, under which, in exchange for the proceeds of an incentive grant, the developer agrees to perform any work or undertaking necessary for a redevelopment project, including the clearance, development, or redevelopment, construction, or rehabilitation of any structure or improvement of commercial, industrial, residential, or public structures or improvements within a qualifying economic redevelopment and growth grant incentive area or a transit village.

"Redevelopment project" or "project" means a specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, leased, developed, or redeveloped, constructed, reconstructed, rehabilitat-

ed, or improved, undertaken by a developer, owner or tenant, or both within a project area and any ancillary infrastructure project including infrastructure improvements in the public right-of-way, as set forth in an application to be made to the Authority. The use of the term "redevelopment project" in sections 3 through 18 of P.L. 2009, c. 90 (N.J.S.A. 52:27D-489c et seq.) shall not be limited to only redevelopment projects located in areas determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 6) but shall also include, but not be limited to, any work or undertaking in accordance with the Redevelopment Area Bond Financing Law, sections 1 through 10 of P.L. 2001, c. 310 (N.J.S.A. 40A:12A-64 et seq.) or other applicable law, pursuant to a redevelopment plan adopted by a State entity, or as described in the resolution adopted by a public entity created by State law with the power to adopt a redevelopment plan or otherwise determine the location, type, and character of a redevelopment project or part of a redevelopment project on land owned or controlled by it or within its jurisdiction, including, but not limited to, the New Jersey Meadowlands Commission established pursuant to P.L. 1968, c. 404 (N.J.S.A. 13:17-1 et seq.), the New Jersey Sports and Exposition Authority established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), and the Fort Monmouth Economic Revitalization Authority created pursuant to P.L. 2010, c. 51 (N.J.S.A. 52:27I-18 et seq.).

"Retained job" means a position that currently exists in New Jersey and is filled by a current employee but which, as certified by the business's chief executive officer, is at risk of being lost to another state or country.

"Revenue increment base" means the amounts of all eligible revenues from sources within the redevelopment project area in the calendar year preceding the year in which the redevelopment incentive grant agreement is executed, as certified by the State Treasurer for State revenues.

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

"SDA municipality" means a municipality in which an SDA district is situated.

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

"Square feet of gross leasable area" or "gross 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.

"Technology startup company" means a for-profit business that has been in operation fewer than five years and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service that the business intends to move to commercialization.

"Tourism destination project" means a redevelopment project that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance.

"Transit project" means a redevelopment project located within a one-half-mile radius, or one-mile radius for projects located in a Garden State Growth Zone, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations. For the purposes of determining the transit project bonus pursuant to N.J.A.C. 19:31-4.7(e)4, a bus station platform is a terminal as listed on the EDA's website at www.njeda.com.

"Transit village" means a community with a bus, train, light rail, or ferry station that has developed a plan to achieve its economic development and revitalization goals and designated by the New Jersey Department of Transportation as a transit village.

"University infrastructure" means any of the following located on the campus of Rutgers, the State University of New Jersey: buildings and structures, such as academic buildings, recreation centers, indoor athletic facilities, public works garages, and water and sewer treatment and pumping facilities; open space with improvements, such as athletic fields and other outdoor athletic facilities, planned commons, and parks; and transportation facilities, such as bus shelters and parking facilities.

"Urban transit hub" means an urban transit hub, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 10 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), or all light rail stations and property located within a one-mile radius of the mid-point of the platform area of such a rail, bus, or ferry station if the property is in a qualified municipality under the Municipal Rehabilitation and Economic Recovery Act, P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

"Vacant commercial building" means any commercial building or complex of commercial buildings having over 400,000 square feet of office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied at the time of application to the Authority or is negatively impacted by the approval of a "qualified business facility," as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), or any unleased and unoccupied commercial building in a Garden State Growth Zone having over 35,000 square feet of office, laboratory, or industrial space, or over 200,000 square feet of office, laboratory, or industrial space in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties available for occupancy for a period of over one year.

"Vacant health facility project" means a redevelopment project where a health facility, as defined by section 2 of P.L. 1971, c. 136 (N.J.S.A. 26:2H-2), currently exists and is considered vacant. A health facility shall be considered vacant if at least 70 percent of that facility has not been open to the public or utilized to serve any patients at the time of application to the Authority.

HISTORY:

Amended by R.2012 d.044, effective February 21, 2012.

See: 43 N.J.R. 2991(a), 44 N.J.R. 512(a).

Rewrote definition "Qualifying economic redevelopment and growth grant incentive area".

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In definition "Fiscal impact analysis", inserted ", for the period equal to 75 percent of the useful life of the project not to exceed 20 years"; and added definition "Full-time employee at the qualified business facility".

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote definitions "Ancillary infrastructure project", "Developer", "Eligible revenue", "Fiscal impact analysis", "Infrastructure improvements in the public right-of-way", " 'Project area' or 'redevelopment project area' ", "Project financing gap", and " 'Redevelopment project' or 'project' "; added definitions "Aviation district", "Deep poverty pocket", "Developer contributed capital", "Disaster recovery project", "Distressed municipality", "Eligibility period", " 'Garden State Growth Zone' or 'growth zone' ", "Highlands development credit receiving area or redevelopment area", "Low-income housing", "Major rail station", "Minimum environmental and sustainability standards", "Moderate-income housing", "Municipal Revitalization Index", "Project cost", "Qualified incubator facility", "Qualified residential project", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", "SDA district", "SDA municipality", "Square feet", " 'Square feet of gross leasable area' or 'gross leasable area' ", "Technology startup company", "Tourism destination project", "Transit project", "Urban transit hub", "Vacant commercial building", and "Vacant health facility project"; in definition "Applicant", inserted "and may include a non-profit organization to which a developer has assigned its ability to apply for a redevelopment incentive grant"; in definition "Redevelopment incentive grant agreement", inserted a comma following "Authority" and "development", and inserted "or a transit village"; and deleted definitions "Eligible project costs", "Net profit margin", " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", and "Soft costs".

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Deleted definition "Cash on cash yield"; rewrote definitions "Equity", " 'Garden State Growth Zone' or 'growth zone' ", and "Project financing gap"; and in definition "Qualified residential project", substituted "2018" for "2015", and inserted the last sentence.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In definition "Developer", inserted ", a municipal redeveloper, or Rutgers, the State University of New Jersey"; in definition "Eligibility period", substituted ", mixed use parking projects, or projects involving university infrastructure, if the project receives" for "that receive"; in definition "Infrastructure improvements in the public right-of-way", substituted "the" for "such" preceding "structures," twice; added definitions "Mixed use parking project", "Non-parking component", "Parking component", and "University infrastructure"; rewrote definition "Municipal redeveloper"; in definition " 'Qualifying economic redevelopment and growth grant incentive area' or 'incentive area' ", rewrote paragraph 2ii; in definition " 'Redevelopment project' or 'project' ", deleted a comma following "owner", and inserted the first occurrence of ", but not be limited to,"; and in definition "SDA municipality", substituted "situated" for "situate".

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N.J.A.C. 19:31-4.3 (2017)

§ 19:31-4.3 Eligibility criteria

(a) In order to be eligible for a State or local incentive grant the following must apply:

1. The redevelopment project must be located in a qualifying economic redevelopment and growth grant incentive area, provided, however, that a State incentive grant shall not be given for a project in an incentive area that qualifies as such solely by virtue of being a transit village;

2. The developer must not have commenced any construction at the site of a proposed redevelopment project prior to submitting an application, except as set forth in (a)2i or ii below. For purposes of this paragraph, construction shall have commenced if the project has received site plan approval and started site preparation or utility installation.

i. In the event construction has commenced on a proposed redevelopment project, the project may be eligible if the Authority, at its sole discretion, determines that the project would not be completed otherwise; or

ii. In the event the project is to be undertaken in phases, a developer may apply for phases for which construction has not yet commenced, subject to N.J.A.C. 19:31-4.6(a)2;

3. For any State incentive grant project consisting of newly-constructed residential units, the developer shall be required, pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.9), to reserve at least 20 percent of the residential units constructed for occupancy by low or moderate income households, as those terms are defined in section 4 of P.L. 1985, c. 222 (N.J.S.A. 52:27D-304), with affordability controls as required under the rules of the Council on Affordable Housing, unless the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan, or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan;

4. A project financing gap exists; and

5. For a State incentive grant, except for a qualified residential project, a mixed use parking project, or a project involving university infrastructure, pursuant to a fiscal impact analysis, the overall public assistance provided to the project will result in net benefits to the State.

HISTORY:

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the introductory paragraph of (a); in (a)2ii, updated the N.J.A.C. reference; and rewrote (a)5.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)5, inserted "a mixed use parking project, or a project involving university infrastructure,".

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N.J.A.C. 19:31-4.4 (2017)

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

(a) A developer that submits an application to the Authority for a State incentive grant shall indicate on the application whether it is also applying for a local incentive grant. In each instance where an applicant indicates that it is also applying for a local incentive grant, the EDA shall forward a copy of the application to the municipality wherein the redevelopment project is to be located so that the local incentive grant may be reviewed and approved by municipal ordinance. A developer or municipal redeveloper that submits an application for a local incentive grant shall indicate on the application whether it is also applying for a State incentive grant.

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

1. The name of the business;

2. The contact information of the business;

3. Prospective future address of the business (if different);

4. The type of the business;

5. Principal products and services and three-digit North American Industry Classification System number;

6. The New Jersey tax identification number;

7. The Federal tax identification number;

8. An anticipated construction schedule;

9. Estimated project costs, including any State or local grant funding to the project, and proposed terms of financing, including projected internal rate of return on developer's contributed capital, net margin, return on investment, and cash on cash yield;

10. Estimates of the revenue increment base and projection of the eligible revenues for the project, and the assumptions upon which those estimates are made;

11. For qualified residential projects, a certification that it meets the requirements of N.J.A.C. 19:31-4.3(a)3;

12. Estimated costs to the municipality resulting from the project;

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

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

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

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

15. Submission of an application and fee for a tax clearance certificate pursuant to P.L. 2007, c. 101;

16. A list of all development subsidies, as defined by The Development Subsidy Job Goals Accountability Act, P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.), 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;

17. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated upon the local tax map;

18. A list and status of all required State and Federal government permits that have been issued for the redevelopment project, or will be required to be issued pending resolution of financing issues, as well as of all local planning and zoning board approvals, that are required for the redevelopment project;

19. A description of how the project addresses the factors contained in N.J.A.C. 19:31-4.7(b);

20. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction, as listed on the EDA website at www.njeda.com;

21. A copy of a letter of support from the governing body of the municipality in which the proposed redevelopment project or ancillary infrastructure project or infrastructure improvement in the right-of-way is located; and

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

(c) Any developer shall be allowed to assign their ability to apply for a State incentive grant to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone. The non-profit organization may make an application on behalf of a developer that meets the requirements for the incentive grant, or a group of non-qualifying developers, such that these will be considered a unified project for the purposes of the incentives provided under this subchapter. In addition to the information required pursuant to (b) above, the non-profit organization shall be required to submit:

1. Evidence of the assignment to apply for the tax credit from the developer or the group of non-qualifying developers;

2. The name of the non-profit organization;

3. The contact information of the non-profit organization;

4. The New Jersey employer identification number;

5. The Federal employer identification number; and

6. The mission statement of the non-profit organization.

(d) A developer who has already applied for an incentive grant award prior to September 18, 2013, the effective date of P.L. 2013, c. 161, but who has not yet been approved for such grant, or has not executed an agreement with the Authority, may proceed under that application or seek to amend such application or reapply for an incentive grant award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions established pursuant to P.L. 2013, c. 161, except that projects with costs exceeding $ 200,000,000 shall not be eligible for revised percentage caps under subsection d. of section 19 of P.L. 2013, c. 161.

HISTORY:

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

Rewrote (b)13.

Amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote (b)9, (b)11, (b)20, and (b)21; in (b)19, updated the N.J.A.C. reference; and added (c) and (d).

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N.J.A.C. 19:31-4.5 (2017)

§ 19:31-4.5 Fees

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

(b) In addition to the application fee in (a) above, a developer 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) For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a non-refundable fee of .5 percent of the approved incentive grant or tax credit, not to exceed $ 300,000, shall be charged by the Authority prior to the approval of the tax credit. For all other incentive grants, a non-refundable fee of .5 percent of the approved incentive grant, not to exceed $ 500,000, shall be charged by the Authority prior to the approval of the incentive grant. The fee shall be refunded if the Authority does not approve the incentive grant or tax credit.

(d) For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a non-refundable fee of .5 percent of the tax credit, not to exceed $ 300,000, shall be charged upon the receipt of the tax credit certificate. For all other incentive grants, a non-refundable fee of .5 percent of the incentive grant, not to exceed $ 500,000, shall be charged upon execution of the incentive grant agreement.

(e) For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, a developer shall pay to the Authority an annual review fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital qualifications, and for the duration of the eligibility period. The annual review fee shall be paid to the Authority by the business at the time the business submits its annual report. The annual review fee shall be $ 2,500 per year.

(f) For a qualified residential project, mixed use parking project, or project involving university infrastructure that receives tax credits, upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-4.10 or permission to pledge a tax credit transfer certificate purchase agreement as collateral, a developer shall pay to the Authority a fee of $ 5,000 and $ 2,500 for each additional request made annually.

(g) Upon application to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive agreement and in the incentive grants payable thereunder, a developer shall pay to the Authority a fee of $ 2,500.

(h) A non-refundable fee of $ 5,000 shall be paid for each request for any administrative changes, additions, or modifications; and a non-refundable fee of $ 25,000 shall be paid for any major changes, additions, or modifications, such as those requiring extensive staff time and Board approval.

(i) A non-refundable fee of $ 1,000 shall be paid for the first six-month extension to the date by which evidence must be submitted to demonstrate compliance with the conditions set forth in commitment letter pursuant to N.J.A.C. 19:31-4.8(a); and a non-refundable fee of $ 2,500 shall be paid for the second extension to that date.

(j) 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 of $ 5,000 for terminations that do not require extensive staff time and Board approval; and a non-refundable fee of $ 25,000 for terminations that require extensive staff time or Board approval.

HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.5, Financing gap and fiscal impact analysis, recodified to N.J.A.C. 19:31-4.6.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (c) through (f), inserted ", mixed use parking project, or project involving university infrastructure," throughout; and in (f), substituted "$ 5,000 and $ 2,500 for each additional request made annually" for "$ 2,500".

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N.J.A.C. 19:31-4.6 (2017)

§ 19:31-4.6 Financing gap and fiscal impact analysis

(a) The Authority, in consultation with the State Treasurer, shall review the proposed project costs and evaluate and validate the project financing gap estimated by each developer applying for a State incentive grant, as follows:

1. The Authority will evaluate proposed project costs against reasonable costs as noticed on the EDA website at www.njeda.com for the standard of review, which shall include, but not be limited to, construction, tenant fit out, consultants, rental rates, rates of return and vacancy allowances. For a project involving university infrastructure, in validating the project financing gap, the Authority may rely on a certification of the Chief Financial Officer of the university that, based on current university budget projections, a financing gap exists;

2. For a redevelopment project involving rehabilitation or improvement of an existing building(s), the costs of land acquisition and rehabilitation shall not exceed 100 percent of the replacement cost for new construction, exclusive of any environmental remediation costs. When evaluating a redevelopment project involving rehabilitation or improvement of existing building(s), if a developer spends more than 100 percent of the total cost of acquisition of the building(s) on such rehabilitation or improvement, then the cost of acquisition shall be included in the eligible project costs. With respect to the Authority's evaluation of a redevelopment project pursuant to the requirements of N.J.A.C. 19:31-4.3(a)2i, a developer's future expenditures will have to be at least 100 percent of the project costs previously expended as of its application date in order for the Authority to include the costs expended prior to the application date to be included in the project costs;

3. For large, multi-phased projects that are built sequentially over time, the EDA shall only evaluate and validate the project financing gap on phases of the project with funding commitments;

4. The project financing gap analysis shall include, but not be limited to, an evaluation of the project costs, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, internal rate of return on developer's contributed capital, and return on investment, or, in the Authority's sole discretion, in comparison to alternative financing structures for a comparable project available to the developer or its tenants; and

5. Except for final point of sale retail businesses, including, but not limited to, retail, educational, hospital, or hotel projects, the project financing gap will include the amount by which the total project cost exceeds the cost of a viable alternative location for the out-of-State redevelopment project in the event the business's chief executive officer, or equivalent officer for North American operations, submits a certification indicating that the project is at risk of leaving the State or not being located in the State and that the project would not occur but for the provision of the incentive grant under the program. In the event that this certification by the business's chief executive officer, or equivalent officer, is found to be willfully false, the Authority may revoke any award of an incentive grant in its entirety, which revocation shall be in addition to any other criminal or civil penalties that the business and the officer may be subject to.

(b) The Authority, in consultation with the State Treasurer, shall undertake the fiscal impact analysis by determining whether the overall public assistance provided to the proposed project, except with regard to a qualified residential project, mixed use parking project, or project involving university infrastructure, will result in net positive economic benefits equaling no less than 110 percent of the amount of grant assistance, to the State for a period not to exceed 20 years.

(c) In determining whether the project meets the net positive economic benefits analysis, the Authority's consideration shall include, but not be limited to, the State taxes paid directly by and generated indirectly by the developer, taxes paid directly or generated indirectly by new or retained jobs, and peripheral economic growth caused by the project including, without limitation, both direct and indirect economic benefits and non-financial community revitalization objectives, to be determined by the Authority in its sole discretion, including, but not limited to, objectives memorialized in a municipal master plan or plan for an area in need of redevelopment or rehabilitation, or the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project, provided that such determination shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(d) For the calculation of new revenues in predominantly retail projects in the net positive economic benefits analysis, the following weighting criteria shall be used:

1. When a project is proximate to a neighboring state jurisdiction (that is, Pennsylvania, Delaware, New York) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

2. When a project is a destination entertainment and retail facility (that is, a project which contains unique retail establishments, entertainment and/or sports venues) and the project can demonstrate substantial increased incremental tax revenue to the State of New Jersey from other jurisdictions through a marketing analysis provided by the developer, 100 percent of the projected incremental ongoing sales tax revenue will be factored in the analysis;

3. For projects which are significantly retail in nature, but do not meet either (d)1 or 2 above:

i. Ongoing State sales tax revenue will be calculated at 0 percent value;

ii. One-time construction related taxes will be calculated at 100 percent value; and

iii. Ongoing other tax revenues, for example, corporation business taxes and gross income taxes, will be calculated at 66 percent value.

(e) The State Treasurer will approve or disapprove the redevelopment project costs, the financing gap, and the net positive economic benefits.

HISTORY:

Amended by R.2012 d.118, effective June 18, 2012.

See: 44 N.J.R. 434(a), 44 N.J.R. 1784(c).

In (b), inserted "equaling 110 percent of the amount of grant assistance,".

Recodified from N.J.A.C. 19:31-4.5 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

In the introductory paragraph of (a) and in (b), deleted "redevelopment" following "proposed"; in (a)2, deleted "eligible" preceding the fourth occurrence of "project"; in (a)3, deleted "and" at the end; rewrote (a)4 and (c); added (a)5; and in (b), inserted ", except with regard to a qualified residential project,". Former N.J.A.C. 19:31-4.6, Approval of application for State incentive grant, recodified to N.J.A.C. 19:31-4.7.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (a)2, substituted the second and third occurrences of "100" for "50"; rewrote (a)4; and in (b), inserted "no less than", and deleted "equal to 75 percent of the useful life of the project" following "period".

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a)1, inserted the second sentence; and in (b), inserted ", mixed use parking project, or project involving university infrastructure,".

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N.J.A.C. 19:31-4.7 (2017)

§ 19:31-4.7 Approval of application for State incentive grant

(a) The Authority and the State Treasurer may, except in the case of a qualified residential project, mixed use parking project, or project involving university infrastructure, approve an application only if they make a finding that the State revenues to be realized from the redevelopment project will be in excess of the amount necessary to reimburse the developer for the portion of the project financing gap allocable to the State incentive grant. This finding may be made by an estimation based upon the professional judgment of the Chief Executive Officer of the Authority and the State Treasurer.

(b) In deciding whether or not to recommend entering into a redevelopment incentive agreement, the Chief Executive Officer shall consider the following factors prior to approval:

1. The economic feasibility of the redevelopment project;

2. The extent of economic and related social distress in the municipality and the area to be affected by the redevelopment project or the level of site specific distress to include dilapidated conditions, brownfields designation, environmental contamination, pattern of vacancy, abandonment, or under utilization of the property, rate of foreclosures, or other site conditions as determined by the Authority;

3. The degree to which the redevelopment project will advance State, regional and local development and planning strategies;

4. The likelihood that the redevelopment project shall, upon completion, be capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for project costs incurred as provided in the redevelopment incentive grant agreement, provided, however, that any tax revenue generated by a redevelopment project that is a disaster recovery project shall be considered new tax revenue, even if the same or more tax revenue was generated at or on the site prior to the disaster;

5. The relationship of the redevelopment project to a comprehensive local development strategy, including other major projects undertaken within the municipality;

6. The need of the redevelopment incentive grant agreement to the viability of the redevelopment project or the promotion of the use of public transportation; and

7. The degree to which the redevelopment project enhances and promotes job creation and economic development or the promotion of the use of public transportation.

(c) The decision whether or not to approve an application and enter into a redevelopment incentive grant is solely within the discretion of the Authority and the State Treasurer, provided they both agree to enter into an agreement.

(d) Except for a local redevelopment incentive grant agreement with a municipal redeveloper or with the developer of a redevelopment project solely with respect to the cost of infrastructure improvements in the public right-of-way, including any ancillary infrastructure project in the public right-of-way, in no event shall the base amount of the combined reimbursements under the redevelopment incentive grant agreements with the State and municipality exceed 20 percent of the total project cost, except in a Garden State Growth Zone, which shall not exceed 30 percent. The maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 30 percent of the total project cost, except for projects located in a Garden State Growth Zone, in which case the maximum amount of any redevelopment incentive grant, including any increase in the amount of reimbursement under (e) below, shall be equal to up to 40 percent of the total project cost or mixed use parking projects, in which case the maximum amount of any redevelopment incentive with respect to a mixed use parking project shall be up to 100 percent of the total project costs allocable to the parking component of the project and shall be up to 40 percent, including any increase in the amount of reimbursement under (e) below, of the total project cost allocable to the non-parking component of the project.

(e) The Authority, pursuant to section 19 of P.L. 2013, c. 161 may increase the amount of the reimbursement under the redevelopment incentive grant agreement with the State by up to 10 percent of the total project cost if the project is:

1. Located in a distressed municipality that lacks adequate access to nutritious food in the judgment of the Chief Executive Officer of the Authority and will include either a supermarket or grocery store with a minimum of 15,000 square feet of selling space devoted to the sale of consumable products or a prepared food establishment selling only nutritious ready-to-serve meals;

2. Located in a distressed municipality that lacks adequate access to health care and health services in the judgment of the Chief Executive Officer of the Authority and will include a health care and health services center with a minimum of 10,000 square feet of space devoted to the provision of health care and health services;

3. Located in a distressed municipality that has a business located therein that is required to respond to a request for proposal to fulfill a contract with the Federal government as set forth in subsection d. of section 3 of P.L. 2011, c. 149 (N.J.S.A. 34:1B-244);

4. A transit project;

5. A qualified residential project in which at least 10 percent of the residential units are constructed as, and reserved for, moderate income housing;

6. Located in a highlands development credit receiving area or redevelopment area;

7. Located in a Garden State Growth Zone;

8. A disaster recovery project;

9. An aviation project;

10. A tourism destination project; or

11. A project involving the substantial rehabilitation or renovation of more than 51 percent of an existing structure or structures.

HISTORY:

Recodified from N.J.A.C. 19:31-4.6 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.7, State incentive grant agreement, recodified to N.J.A.C. 19:31-4.8.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a), inserted "mixed use parking project, or project involving university infrastructure,"; and in (d), rewrote the second sentence.

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N.J.A.C. 19:31-4.8 (2017)

§ 19:31-4.8 State incentive grant agreement

(a) Except for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits, upon approval of the application by the Authority and the State Treasurer, the Authority and the developer will execute a commitment letter providing information specific to the grant amount and containing conditions that must be met prior to receiving the grant. Within one year following the date of approval, the developer shall submit progress information indicating that the developer has financing, copies of all required State and Federal government approvals and all local planning and zoning board approvals, and site control of and site plan approval for the redevelopment project. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval. Upon a receipt of evidence from the developer that it has control of the redevelopment project site and offers of financing, which may be conditioned upon execution of the grant agreement, and that it has met any other conditions set forth in the commitment letter, the Authority and the State Treasurer may enter into a State redevelopment incentive grant agreement with a developer for the reimbursement of incremental State revenues directly realized from businesses operating on the redevelopment project premises.

(b) Except for qualified residential projects, mixed use parking projects, or projects involving university infrastructure, if the project receives tax credits, the Chief Executive Officer of the Authority, in consultation with the State Treasurer, shall negotiate the terms and conditions of any State redevelopment incentive grant agreement. The State redevelopment incentive grant agreement shall include, but not be limited to, the following terms and conditions as determined by the Authority:

1. The eligibility period, the maximum amount of project cost, the maximum percentage reimbursement amount, the maximum aggregate dollar amount of the incentive grant to be awarded the developer, the maximum annual percentage of reimbursement, the particular tax or taxes to be utilized from those listed in N.J.A.C. 19:31-4.10(a), the order in which multiple taxes will be applied to determine the incentive grant amount, and, for a project receiving an incentive grant in excess of $ 50 million, the amount of the negotiated repayment to the State, which may include, but not be limited, to cash, equity, and warrants and shall be up to the amount of the maximum aggregate dollar amount of the reimbursement. If the actual project costs are less than the project costs set forth in the application, the percentage reimbursement amount will be based on the actual project costs. For the purposes of determining the amount and timing of any repayment due for projects receiving an incentive grant in excess of $ 50 million, the Authority shall consider such factors as the financial structure of the project, risk of the project, developer returns, magnitude of State support, as well as the returns of various types of revenue generating projects, that is, retail, commercial, and/or hotel. If the project does not produce the anticipated amount of incremental taxes in a given year, the developer shall only receive the approved percentage of actual tax revenue created. No portion of revenues pledged pursuant to P.L. 2013, c. 161 shall be subject

to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof in the grant agreement;

2. All payments shall be made annually and subject to annual appropriation and availability of funds;

3. In the absence of extenuating circumstances, the reimbursement schedule, which will indicate the annual percentage amount of reimbursement provided that it not exceed:

i. Seventy-five percent of the annual incremental State revenues; or

ii. Eighty-five percent of the projected annual incremental revenues in a Garden State Growth Zone.

4. Representations that the developer is in good standing, that the project complies with all applicable law, and specifically, that the project will comply 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), and the project does not and will not violate any environmental law;

5. The frequency of payments and eligibility period, which shall not exceed 20 years, during which that tax credit shall be granted;

6. Description of the occupancy permit or other event evidencing project completion that begins the eligibility period and whether the project will be undertaken in phases;

7. The requirement that the developer submit, prior to the first disbursement of funds under the agreement, satisfactory evidence of actual project costs, as certified by a certified public accountant, evidence of a temporary certificate of occupancy, or other event evidencing project completion that begins the eligibility period indicated in the incentive agreement, and, if applicable, evidence that the municipality is in substantial compliance with the requirements under N.J.A.C. 19:31-4.3(a)3. In the event the project cost or square footage of the project are reduced below the amount of project cost or square footage of the project in the approval of the incentive grant, the Authority may reevaluate the fiscal impact analysis and financing gap analysis and reduce the size of the grant accordingly;

8. Annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance against established milestones for calculating any necessary repayments pursuant to (b)1 above;

9. Representations that the developer will comply with the green building standards pursuant to N.J.A.C. 19:31-4.4(b)20;

10. To the extent the taxes of such businesses are to be reimbursed, covenant that the developer will notify all businesses operating on the redevelopment project premises that certain incremental taxes are to be reimbursed under the agreement. The developer shall also covenant that the developer shall obtain information about such businesses as is necessary for the State to ascertain the incremental tax revenue. Such information may include, but not be limited to, name, address, taxpayer identification number, change in business ownership and any other information that may be required by the State. The developer shall also acknowledge that the State will not provide to the developer information about individual taxes paid by businesses located at the redevelopment project;

11. Acknowledgement that if the developer has entered into a Brownfield Reimbursement Agreement for the redevelopment project premises, to the extent that the same eligible revenues are identified in both the Brownfields Reimbursement Agreement and the incentive grant, then the incentive grant will not commence until the reimbursement has terminated or otherwise as subject to review of the Division of Taxation;

12. Indemnification and insurance requirements;

13. Events, if any, that would trigger forfeiture of the grant;

14. Default and remedies;

15. Reporting requirements, as required pursuant to N.J.S.A. 52:27D-489f, and other reporting requirements that may be required by law or agreement, such as an annual report and an annual tax clearance certificate issued by the Division of Taxation pursuant to P.L. 2007, c. 200 (N.J.S.A. 52:39-1 et seq.);

16. Requirement to demonstrate that the project continues to be eligible for any increase of reimbursement pursuant to N.J.A.C. 19:31-4.7(e); and

17. To the extent the project consists of newly-constructed residential units, the approval letter will require that the project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.

(c) Agreement that a fee of $ 5,000 annually will be paid to the Division of Taxation and all other administrative costs associated with the incentive grant shall be assessed to the developer and retained by the State Treasurer from the annual incentive grant payments.

HISTORY:

Recodified from N.J.A.C. 19:31-4.7 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.8, Incremental revenue sources, recodified to N.J.A.C. 19:31-4.10.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote (a); in the introductory paragraph of (b), inserted the first occurrence of "grant"; in (b)15, deleted "and" from the end; in (b)16, substituted "; and" for a period; and added (b)17.

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

In (a) and the introductory paragraph of (b), substituted ", mixed use parking projects, or projects involving university infrastructure, if the project receives", for "that receive".

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N.J.A.C. 19:31-4.9 (2017)

§ 19:31-4.9 Tax credits for qualified residential projects, mixed use parking projects, or projects involving university infrastructure

(a) In the case of a qualified residential project, mixed use parking project, or project involving university infrastructure, if the Authority determines that the estimated amount of incremental revenues pledged towards the State portion of an incentive grant is inadequate to fully fund the amount of the State portion of the incentive grant, then in lieu of an incentive grant based on such incremental revenue, the developer shall be awarded tax credits equal to the full amount of the incentive grant, which shall be taken over a 10-year period, at the rate of one-10th of the total amount for each tax accounting or privilege period of the developer. For (a)1 through 4 below, not more than $ 40,000,000 of credits shall be awarded to any qualified residential project in a deep poverty pocket or distressed municipality and not more than $ 20,000,000 of credits shall be awarded to any other qualified residential project. The value of all credits approved by the Authority pursuant to this subsection shall not exceed $ 628,000,000, of which:

1. $ 250,000,000 shall be restricted to qualified residential projects within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties, of which, $ 175,000,000 of the credits shall be restricted to qualified residential projects located in a Garden State Growth Zone located within the aforementioned counties and mixed use parking projects located in a Garden State Growth Zone or urban transit hub located within the aforementioned counties; and $ 75,000,000 of credits shall be restricted to qualified residential projects in municipalities with a 2007 Municipal Revitalization Index of 400 or higher as of the date of enactment of the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161;

2. $ 250,000,000 shall be restricted to the following categories of projects:

i. Qualified residential projects located in urban transit hubs that are commuter rail in nature that otherwise do not qualify under (a)1 above;

ii. Qualified residential projects located in Garden State Growth Zones that do not qualify under (a)1 above;

iii. Mixed use parking projects located in urban transit hubs or Garden State Growth Zones that do not qualify under (a)1 above, provided however, an urban transit hub shall be allocated no more than $ 25,000,000 for mixed use parking projects and $ 25,000,000 of credits shall be restricted to mixed use parking projects in Garden State Growth Zones that have a population in excess of 125,000 and do not qualify under (a)1 above;

iv. Qualified residential projects that are disaster recovery projects that otherwise do not qualify under (a)1 above; or

v. Qualified residential projects in SDA municipalities located in Hudson County that were awarded State Aid in State Fiscal Year 2013 through the Transitional Aid to Localities program and otherwise do not qualify under (a)1 above;

3. $ 87,000,000 shall be restricted to the following categories of projects: qualified residential projects located in distressed municipalities, deep poverty pockets, highlands development credit receiving areas or redevelopment areas, otherwise not qualifying pursuant to (a)1 or 2 above; and mixed use parking projects that do not qualify under (a)1 and 2 above and which are used by an independent institution of higher education, a school of medicine, a nonprofit hospital system, or any combination thereof; provided, however, that $ 20,000,000 of the $ 87,000,000 shall be allocated to mixed use parking projects that do not qualify under (a)1 or 2 above;

4. $ 16,000,000 shall be restricted to qualified residential projects that are located within a qualifying economic redevelopment and growth grant incentive area otherwise not qualifying under (a)1, 2, or 3 above; and

5. $ 25,000,000 shall be restricted to projects involving university infrastructure.

(b) In developing a recommendation for allocating tax credits to qualified residential projects, mixed use parking projects, or projects involving university infrastructure, the Chief Executive Officer of the Authority shall take into account, together with the factors set forth at N.J.A.C. 19:31-4.7(b):

1. An evaluation of the developer's pro forma analysis;

2. Input from the municipality in which the project is located;

3. Whether the project furthers specific State or municipal planning and development objectives, or both;

4. Whether the project furthers a public purpose, such as catalyzing urban development or maximizing the value of vacant, dilapidated, outmoded, government-owned, or underutilized property or both; and

5. Whether the project contributes to the recovery of areas affected by Superstorm Sandy.

(c) Upon receipt of a recommendation from the Authority staff on the qualified residential facility, mixed use parking project, or project involving university infrastructure application, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its capital investment in a qualified residential project, mixed use parking project, or project involving university infrastructure, and promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits, including the same financial and related analysis, the same term of the grant, and same mechanism for administering the credits as if such credits had been awarded to the developer pursuant to section 35 of P.L. 2009, c. 90 (N.J.S.A. 34:1B-209.3). An approval letter setting forth the conditions subsequent will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, and the requirement that the minimum environmental and sustainability standards, are incorporated into the proposed project including the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

1. If the application is approved, the project approval is subject to the terms and conditions of the approval letter, and any benefits under the program are subject to the completion of the project and satisfaction of the capital investment required for the tax credits. The approval letter will require that the qualified residential project will be monitored for purposes of N.J.A.C. 19:31-4.3 in order to maintain the affordable units for the term of the grant by an administrative agent as defined in N.J.A.C. 5:80-26.2.

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

(d) Within one year following the date of Board approval by the Authority, each approved developer of a qualified residential facility, mixed use parking project, or project involving university infrastructure, if the project has been approved for tax credits shall submit progress information indicating that the developer has site plan approval, financing for, and site control of the qualified business facility, qualified residential project, mixed use parking project, or project involving university infrastructure. Unless otherwise determined by the Authority in its sole discretion, the Authority's approval of the tax credits shall expire if the progress information is not received by the Authority within one year of the date of application approval.

(e) No later than July 28, 2019, each approved developer of a qualified residential facility that has been approved for tax credits after September 18, 2013, the effective date of P.L. 2013, c. 161 shall submit evidence of a temporary

certificate of occupancy. The developer of a mixed use parking project or project involving university infrastructure seeking an award of credits towards the funding of its incentive grant agreement pursuant to (a)3 above and if approved after January 11, 2016, the effective date of P.L. 2015, c. 217, shall submit a temporary certificate of occupancy no later than July 28, 2021.

(f) Upon completion of the capital investment and receipt of the occupancy permit or other event evidencing project completion indicated in the approval letter, the developer shall submit a certification of an independent certified public accountant, which may be made pursuant to an "agreed upon procedures" letter acceptable to the Authority evidencing that the developer has satisfied the conditions relating to the capital investment requirements.

1. Once accepted by the Authority, 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 residential facility, mixed use parking project, or project involving university infrastructure, and in no event will the amount of tax credits exceed the maximum percentage amount of allowed tax credits approved by the Board for the developer's capital investment in a qualified residential project, a mixed use parking project, or a project involving university infrastructure.

2. The certification under this subsection shall be submitted to the Authority no later than 12 months after the submission to the Authority of a temporary certificate of occupancy.

(g) Once the Authority accepts the certification of the developer that it has satisfied the capital investment requirements of the program, and the Authority determines that other necessary conditions have been met, the Authority shall notify the developer 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.

(h) After notification, either the developer, the owner of the project, or a tax credit transferee shall furnish to the Authority an annual report in a format as may be determined by the Authority, which shall contain the following information:

1. A certification indicating whether or not the party submitting the report is aware of any condition, event, or act that would cause the business not to be in compliance with the approval, the Act, or this subchapter;

2. Documentary evidence that a deed restriction has been recorded against each residential component of the qualified residential project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;

3. Evidence that the residential units of the qualified residential project are not being used for non-residential purposes. Such evidence may include, but is not restricted to, rental receipts, municipal records, and/or a certification by an MAI appraiser or governmental official;

4. Evidence that the parking component of the mixed use parking project is not being used as non-parking component; and

5. Additional reporting requirements as may be contained in the tax credit certificate.

(i) Failure to submit a copy of the annual report, or submission of the annual report without the information required in (g) above, will result in forfeiture of any annual tax credits to be received by the developer or tax credit holder unless the Authority determines that there are extenuating circumstances excusing the developer or tax credit transferee from the timely filing required. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

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

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

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

2. The amount of the tax credits;

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

4. In the event that the Board has approved an application for a business using one or more affiliates in order to satisfy the 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 the date of filing relating to each tax accounting or privilege period of the proposed allocation of tax credits by the business;

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

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

HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Former N.J.A.C. 19:31-4.9, Pledge and assignment of grant amount, recodified to N.J.A.C. 19:31-4.11.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

Rewrote the introductory paragraph of (c), (c)1, and (e).

Amended by R.2017 d.010, effective January 3, 2017.

See: 48 N.J.R. 2031(a), 49 N.J.R. 134(a).

Section was "Tax credits for qualified residential projects". Rewrote the section.

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N.J.A.C. 19:31-4.10 (2017)

§ 19:31-4.10 Incremental revenue sources

(a) Except for projects receiving an increase in the amount of reimbursement under N.J.A.C. 19:31-4.7(b)4, in accordance with a State redevelopment incentive grant agreement beginning upon the receipt of occupancy permits for any portion of the redevelopment project or upon such other event evidencing project completion as set forth in the incentive grant agreement, the State Treasurer will pay to the developer up to an average of 75 percent of the projected annual incremental revenues, or an average of 85 percent of the projected annual incremental revenues in a Garden State Growth Zone, directly realized from businesses operating on or at the site of the redevelopment project from the following taxes:

1. The Corporation Business Tax Act (1945), P.L. 1945, c. 162 (N.J.S.A. 54:10A-1 et seq.);

2. The tax imposed on marine insurance companies pursuant to N.J.S.A. 54:16-1 et seq.;

3. The tax imposed on insurers generally, pursuant to P.L. 1945, c. 132 (N.J.S.A. 54:18A-1 et seq.);

4. The public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed on sewerage and water corporations pursuant to P.L. 1940, c. 5 (N.J.S.A. 54:30A-49 et seq.);

5. The tariffs and charges imposed by electric, natural gas, telecommunications, water and sewage utilities, and cable television companies under the jurisdiction of the New Jersey Board of Public Utilities, or comparable entity, except for those tariffs, fees, or taxes related to societal benefits charges assessed pursuant to section 12 of P.L. 1999, c. 23 (N.J.S.A. 48:3-60), any charges paid for compliance with the Global Warming Response Act, P.L. 2007, c. 112 (N.J.S.A. 26:2C-37 et seq.), transitional energy facility assessment unit taxes paid pursuant to section 67 of P.L. 1997, c. 162 (N.J.S.A. 48:2-21.34), and the sales and use taxes on public utility and cable television services and commodities;

6. The tax derived from net profits from business, a distributive share of partnership income, or a pro rata share of S corporation income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.;

7. The tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.);

8. The tax imposed pursuant to P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) from the purchase of furniture, fixtures, and equipment, or materials for the remediation of, or the construction of new structures at the site of a redevelopment project. For the purpose of computing the sales and use tax on the purchase of materials used for remediation, construction of new structures, or the construction of new residences at the site of the project, it shall be presumed by the Director of the Division of Taxation, in lieu of an exact accounting from the developer, suppliers, contractors, subcontractors, and other parties connected with the project, that the tax equals one percent of the developer's contract price for such remediation or construction or such other percentage, not to exceed three percent, that may be agreed to by the director

upon the presentation of clear and convincing evidence that the tax on materials is greater than one percent of the contract price for the remediation or construction;

9. The hotel and motel occupancy fee imposed pursuant to section 1 of P.L. 2003, c. 114 (N.J.S.A. 54:32D-1); or

10. The portion of the fee imposed pursuant to section 3 of P.L. 1968, c. 49 (N.J.S.A. 46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" ("New Jersey Affordable Housing Trust Fund") pursuant to section 4 of P.L. 1968, c. 49 (N.J.S.A. 46:15-8).

(b) The Director of the Division of Taxation may retain up to 20 percent of certain State incremental tax revenues, such as the corporate business tax and sales and use tax, for adjustment as necessary, which shall be returned to the developer after such time as the statute of limitations has expired for the specific tax withheld. No portion of revenues pledged pursuant to P.L. 2013, c. 161 shall be subject to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof in the grant agreement.

(c) Incremental revenue shall be calculated as the difference between the amount collected in any fiscal year from any eligible revenue source included in the State incentive grant agreement, less the revenue increment base for that eligible revenue.

HISTORY:

Recodified from N.J.A.C. 19:31-4.8 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section. Former N.J.A.C. 19:31-4.10, Affirmative action and prevailing wage, recodified to N.J.A.C. 19:31-4.12.

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N.J.A.C. 19:31-4.11 (2017)

§ 19:31-4.11 Pledge, assignment, transfer, or sale of grant amount

(a) A developer may, upon notice to and consent of the Authority and the State Treasurer, which consent shall not be unreasonably withheld, pledge, assign, transfer, or sell any or all of its right, title, and interest in and to such agreements and in the incentive grants payable thereunder, and the right to receive same, along with the rights and remedies provided to the developer under such agreement. Any such assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Any pledge of incentive grants made by the developer shall be valid and binding from the time when the pledge is made and filed in the records of the Authority. The incentive grants so pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. Neither the redevelopment incentive grant agreement nor any other instrument by which a pledge under this section is created need be filed or recorded except with the Authority.

(b) A developer may apply to the Director of the Division of Taxation and the Chief Executive Officer of the Authority for a tax credit transfer certificate, if the developer is awarded a tax credit pursuant to N.J.A.C. 19:31-4.8 or 4.9, covering one or more years, in lieu of the developer being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer from the Director and the Chief Executive Officer of 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 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 developer shall include a statement waiving the developer's right to claim that amount of the credit against the taxes that the developer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this subsection shall not be exchanged for consideration received by the developer of less than 75 percent of the transferred credit amount before considering any further discounting to present value which may be permitted. 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 developer who originally applied for and was allowed the credit.

HISTORY:

Recodified from N.J.A.C. 19:31-4.9 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Section was "Pledge and assignment of grant amount". Inserted designation (a); in (a), substituted ", assign, transfer, or sell any or all of its right, title," for "and assign as security for any loan or bond any or all of its right, title"; and added (b). Former N.J.A.C. 19:31-4.11, Severability, recodified to N.J.A.C. 19:31-4.14.

Amended by R.2015 d.132, effective August 17, 2015.

See: 47 N.J.R. 258(a), 47 N.J.R. 2178(b).

In (b), substituted "or 4.9" for "(d)", "$ 25,000" for "100,000", and "before considering any further discounting to present value which may be permitted" for ", as determined at present value", and deleted ", provided that one transfer consisting of any remainder that is less than $ 100,000 may be made in each tax period in an amount less than $ 100,000," following "credits".

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N.J.A.C. 19:31-4.12 (2017)

§ 19:31-4.12 Affirmative action and prevailing wage

The Authority's affirmative action requirements P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) will apply to State incentive grant projects undertaken in connection with financial assistance received under the Economic Redevelopment and Growth Program; and, for a State incentive grant solely for infrastructure improvements in the public right-of-way or any ancillary infrastructure project, regardless of whether the work or improvements are part of a larger redevelopment project, only to the work relating to the infrastructure improvements in the public right-of-way or the ancillary infrastructure project for which the incentive grant is issued.

HISTORY:

Recodified from N.J.A.C. 19:31-4.10 and amended by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

Rewrote the section.

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N.J.A.C. 19:31-4.13 (2017)

§ 19:31-4.13 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. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

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

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. 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.

HISTORY:

New Rule, R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).

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N.J.A.C. 19:31-4.14 (2017)

§ 19:31-4.14 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.

HISTORY:

Recodified from N.J.A.C. 19:31-4.11 by R.2015 d.014, effective January 20, 2015.

See: 46 N.J.R. 1593(a), 47 N.J.R. 277(b).