



NEW JERSEY REGISTER
Copyright © 2016 by the New Jersey Office of Administrative Law

VOLUME 48, ISSUE 10

ISSUE DATE: MAY 16, 2016

RULE ADOPTIONS

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

48 N.J.R. 858(a)

Adopted Amendments: *N.J.A.C. 19:31-18.2, 18.3, 18.5, 18.8, 18.11, 18.15, and 18.16*

Authority Assistance Programs; Grow New Jersey Assistance Program

Proposed: December 21, 2015, at *47 N.J.R. 3104(a)* (see also *48 N.J.R. 103(a)*).

Adopted: April 13, 2016, by the New Jersey Economic Development Authority, Melissa Orsen, Chief Executive Officer.

Filed: April 13, 2016, as R.2016 d.045, **with a non-substantial change** not requiring additional public notice and comment (see *N.J.A.C. 1:30-6.3*).

Authority: P.L. 2011, c. 149.

Effective Date: May 16, 2016.

Expiration Date: November 9, 2017.

Summary of Public Comments and Agency Response:

Hon. Dana L. Redd, Mayor, City of Camden and Kevin D. Sheehan, Esquire, Parker McCay, P.A.

COMMENTS: The proposed rule amendments at *N.J.A.C. 19:31-18.3* establish requirements for the aggregation of the required minimum capital investment, which shall apply to buildings that are proximate, as determined by the Authority, and have the same minimum investment per square feet of gross leasable area. In addition, the proposed rule amendments provide that proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The stated purpose of the Grow New Jersey Assistance (Grow NJ) Program is to encourage economic development and job creation and to preserve jobs currently in New Jersey. The incentives provided seek to encourage economic development in the State's most depressed municipalities and the five Garden State Growth Zones including the City of Camden. The ability to spur economic development in Garden State Growth Zones, and specifically, Camden is complicated by a lack of property available for development within those municipalities - currently, several manufacturing businesses looking for property of eight acres or more in Camden that cannot find suitable property available. The problem is particularly complicated for other manufacturing businesses that have had to assemble property from several different property owners in order to locate in Camden; and others have assembled property that is proximate but not adjacent or separated by only one public right-of-way. Therefore, only allowing a business to aggregate its capital expense if buildings are proximate, as defined in the proposed rule, will prohibit further manufacturing development in the Garden State Growth Zones, especially Camden. Accordingly, the

requirement that buildings be proximate in order to aggregate the capital investment of a business should not apply to projects located in a Garden State Growth Zone.

RESPONSE: The requirements at *N.J.A.C. 19:31-18.3(a)1v* pertain to how the required minimum capital investment for certain buildings, will be determined by the Authority, based on minimum factors set forth in the subparagraph. The provision has been developed with flexibility for the Authority to consider multi-building projects on an individual basis and in all areas of the State, therefore excepting the requirement that buildings shall be proximate for projects located in Garden State Growth Zones, is not necessary.

Summary of Agency-Initiated Change:

The definition of "business" includes the term "or," pertaining to the capital investment made by or full-time employees of certain affiliates for the purposes of the determination by the Authority of successors to a qualified business and affiliates of a qualified business, which was inadvertently deleted upon publication.

Federal Standards Statement

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

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

19:31-18.2 Definitions

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

...

"Business" means an applicant proposing to own or lease premises, or that has acquired the premises within 24 months prior to project application, in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (*N.J.S.A. 54:10A-5*), a corporation that is subject to the tax imposed pursuant to sections 2 and 3 of P.L. 1945, c. 132 (*N.J.S.A. 54:18A-2* and *54:18A-3*), section 1 of P.L. 1950, c. 231 (*N.J.S.A. 17:32-15*) or *N.J.S.A. 17B:23-5*, or is a partnership, an S corporation, or a limited liability company or a non-profit corporation. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. In connection with a regional distribution facility of foodstuffs, the business entity or entities that own or lease such facility shall qualify as a business regardless of the type of the business entity or entities that own or lease such facility; the ownership or leasing of such facility by more than one business entity; or the ownership of the business entity or entities that own or lease such facility. Such ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. Such members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. For the purposes of a regional distribution facility of foodstuffs, leasing shall include subleasing and tenants shall include subtenants. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate. After approval by the Board of the incentive, a business shall include a successor, as determined by the Authority in its sole discretion, to the business and a successor, as determined by the Authority in its sole discretion, to an affiliate of the business if the business applied for a credit based upon any capital investment made by ***or*** full-time employees of the affiliate, provided any successor must execute the incentive agreement, which shall include: the obligation to not reduce the number of full-time employees in the successor's Statewide employment in the last tax period prior to the approval of the award; an agreement that all parties to the incentive agreement are jointly and severally liable under the incentive agreement; and an acknowledgment that the tax credit will be allocated to each party to the incentive agreement in accordance with the number of full-time employees that each employs at the qualified business facility.

...

"Eligible position" or "full-time job" means a full-time position in a business in this State that the business has filled with a full-time employee. To be eligible as an eligible position or full-time job, the employee must have his or her primary office at the qualified business facility and must spend at least 80 percent of his or her time at the qualified business facility, or spend any other period of time generally accepted by custom or practice as full-time employment at the qualified business facility, as determined by the Authority in its sole discretion based on the characteristics of the employee's job and time at the facility, including, but not limited to, the amount of continuous time spent at the facility and the economic impact of the employee on the area in which the facility is located. For example, a reduced period of time is not applicable to a truck driver or salesperson who does not regularly contribute to the local economy due to the transient nature of his or her job responsibilities at the qualified business facility.

...

19:31-18.3 Eligibility criteria

(a) In order to be considered for a Grow New Jersey tax credit, the chief executive officer of a business shall demonstrate at the time of application that the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to or greater than, the applicable capital investment required in (a)1 below at which it will retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable number in (a)2 below.

1. For all projects approved after September 18, 2013, the effective date of P.L. 2013, c. 161, the minimum capital investment required shall be reduced by one-third (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties:

i.-ii. (No change.)

iii. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$40.00 per square feet of gross leasable area;

iv. For the new construction of a premises that does not qualify pursuant to (a)1i and ii above, a minimum investment of \$120.00 per square feet of gross leasable area. For purposes of this subparagraph, non-industrial premises shall include vacant industrial premises that are unleased and unoccupied; and

v. The minimum capital investment shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion, and have the same minimum investment per square feet of gross leasable area. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples:

(1) A complex of buildings consists of building A and building B, which are both on the same block but separated by other buildings. Both buildings are existing office buildings that will be rehabilitated. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

(2) A complex of buildings will consist of building A and building B, which will be adjacent to each other but have separate entrances. Building A is an existing office building that will be rehabilitated; building B will be a newly constructed office building. The business will have to make a minimum capital investment at building A and a separate minimum capital investment at building B.

(3) A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot. Both buildings are existing industrial buildings that will be rehabilitated for continued industrial use. The minimum capital investment for the project will be aggregated based on the total square feet of gross leasable area of the two buildings.

2. The minimum number of new or retained full-time jobs required shall be reduced by one-quarter (utilizing even numbers rounded down) for projects located in a Garden State Growth Zone or projects located within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties.

i.-ii. (No change.)

iii. For any other business, a minimum of 35 new or 50 retained fulltime jobs.

iv. The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings. Notwithstanding the preceding sentence, if a complex of buildings includes one or more buildings located in a Garden State Growth Zone or a county for which the minimum number of new or retained full-time jobs is reduced, the business shall meet the minimum job requirement by locating no less than the reduced minimum number of new or reduced full-time jobs at the buildings in the Garden State Growth Zone or one of the counties for which the minimum capital investment required is reduced. The following are examples:

(1) The complex of buildings for a manufacturing company consists of three buildings located in one municipality and one building located in a different municipality. The company will have three new jobs at each building. Neither municipality is a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the minimum full-time jobs, 10 new or 25 retained full-time jobs may be met in the aggregate across all four buildings. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 12 new full-time jobs.

(2) The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have four new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has met the minimum full-time jobs required because the reduced minimum full-time jobs, eight new or 19 retained full-time jobs, has been met in the aggregate at the buildings in municipality A. If the company meets all other program requirements, the company will be eligible to receive tax credits for all 10 new full-time jobs.

(3) The complex of buildings for a manufacturing company consists of two buildings located in municipality A and one building located in municipality B. The company will have three new jobs at each building in municipality A and two new jobs at the building in municipality B. Municipality A is a Garden State Growth Zone, but municipality B is not a Garden State Growth Zone or in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties. The company has not met the minimum full-time jobs because the number of jobs in the aggregate at the buildings in municipality A is six, which is less than the reduced minimum full-time jobs, eight new or 19 retained full-time jobs.

3. The business shall also demonstrate to the Authority that:

i.-ii. (No change.)

iii. The award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs for eligibility under the program.

(1) Except as determined by the Authority in its sole discretion based on extraordinary circumstances, including, but not limited to, geographic or regulatory constraints of a project, the business shall provide a full economic analysis of the in-State and out-of-State alternatives under consideration by the business to support that it demonstrates a material factor.

(2) If, in a Garden State Growth Zone, the site was acquired or leased prior to project application, the business shall provide additional extrinsic evidence to demonstrate that the award of tax credits is a material factor in the business's decision to create or retain the minimum number of fulltime jobs for eligibility under the program, including, but not limited to, viable alternatives to the site and the business's ability to dispose of or carry the costs of the site, if the business moves to the alternate site.

(3) In satisfaction of this requirement, with respect to a project in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1* et seq.) or a project located in a Garden State Growth Zone that 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, the award of tax credits will be a material factor in the business decision to make a capital investment and locate in a Garden State Growth Zone that qualifies under the Municipal Rehabilitation and Economic Recovery Act pursuant to P.L. 2002, c. 43 (*N.J.S.A. 52:27BBB-1* et seq.) or a Garden State Growth Zone that 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; and

iv. (No change.)

(b)-(d) (No change.)

19:31-18.5 Application submission requirements

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

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

i.-vii. (No change.)

viii. The total number of full-time employees in New Jersey at the time of application and in the last tax period prior to the credit amount approval;

ix.-xv. (No change.)

2. Project information shall include the following:

i.-v. (No change.)

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

vii.-xi. (No change.)

3. Employee information shall include the following:

i.-ii. (No change.)

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

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

4. A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the last tax period prior to the credit amount approval.

(b)-(g) (No change.)

19:31-18.8 Determination of grant amount; bonus award

(a) The total amount of tax credit for an eligible business shall be for each new or retained full-time job as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period; however, except as set forth in *N.J.A.C. 19:31-18.11(e)*, the total tax credit amount credited annually to the business shall not exceed the maximum amount determined by the Board under *N.J.A.C. 19:31-18.7(d)* and the amount calculated pursuant to *N.J.A.C. 19:31-18.7(g)*, divided by the number of years in the eligibility period. The total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. The total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings.

(b)-(h) (No change.)

19:31-18.11 Reporting requirements and annual reports

(a) After notification pursuant to *N.J.A.C. 19:31-18.7(g)*, the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

1. The number of full-time employees and new or retained full-time positions employed at the qualified business facility, the list of affiliates that contributed to the full-time employees at the qualified business facility, the number of full-time employees in its Statewide workforce as defined in *N.J.A.C. 19:31-18.15(a)*, the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, total lease payments, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs; and

2. (No change.)

(b)-(f) (No change.)

19:31-18.15 Reduction and forfeiture of tax credits

(a) If, in any tax period during the eligibility period, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this paragraph has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. The Statewide workforce shall not include full-time employees at any point-of-final purchase retail facilities, unless the award includes full-time employees engaged in final point of sale retail.

1. For purposes of this subsection, "business" shall include any affiliate that contributed to the full-time employees at the qualified business facility for the relevant tax period or contributed capital investment to the project.

(b)-(d) (No change.)

19:31-18.16 Effect of sale or lease of qualified facilities

(a) (No change.)

(b) Unless otherwise permitted in this subchapter, if a business leases or subleases the qualified business facility in whole or in part during the eligibility period, the new tenant shall not acquire the credit of the business, and the business shall forfeit all credits for the tax period of its lease or sublease and all subsequent tax periods. Notwithstanding the foregoing, a business may lease or sublease an amount up to five percent of the qualified business facility to a new tenant without forfeiting any of the business's credits; however, no full-time employees or capital investment by the new tenant shall contribute to the business's eligible full-time employees or capital investment.