MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: May 12, 2021

SUBJECT: Special Adopted New Rules and Concurrent Proposed New Rules
Emerge Program (N.J.A.C. 19:31-22)

Request:

The Members are asked to approve:

1) The attached special adopted new rules and concurrent proposed new rules for the new Emerge Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and

2) The creation of the Emerge Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 (Sections 68 through 81 of P.L. 2020, c. 156), to encourage economic development, targeting the Governor's priority sectors through job creation and the retention of a significant number of jobs.

New Jersey Economic Recovery Act:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law. The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes 15+ economic development programs, including:

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

The program being presented for the Members' approval in this memorandum is the Emerge Program – one of the 15+ programs under the ERA. The Emerge Program is an incentive program designed to support job creation and large-scale job retention, with a focus on targeted industries.

This memorandum provides a summary about the Emerge Program including, program limits and general details about the program, eligibility criteria, specific program requirements, application process and the underwriting process. The specific details – and what will be promulgated and will govern the program – are included in the attached rules proposed for Board approval.

Program Purpose and General Description

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

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

- Create a minimum of 35 new full-time jobs. The job requirement is lowered to 25 new full-time jobs for businesses in targeted industries. Small Businesses do not have a minimum job requirement, but must demonstrate job growth of at least 25 percent by the end of the eligibility period.
- To receive tax credits for retained jobs, the minimum number of retained jobs is 500 in certain areas and 1000 in all other eligible incentive areas.
- Be located in a qualified incentive area.
- Meet minimum capital investment requirements, except for Small Businesses.
- Yield a net positive benefit to the State of at least 400 percent of the requested tax credit. Projects in certain target areas are subject to a lower net positive benefit threshold (200 and 300 percent).

- Demonstrate that the award of the tax credit is a “material factor” in the decision to create or retain at least the minimum number of full-time jobs in the New Jersey.
- Ensure that at least 80 percent of incented employees’ work time is spent in New Jersey.
- Ensure the Qualified Business Facility can accommodate at least 50 percent of incented new jobs.
    - To receive tax credits for retained jobs, the Qualified Business Facility must accommodate all the retained full-time jobs at the time of application.
- Commit to stay at the Qualified Business Facility for 1.5 times the eligibility period.

Collectively, projects under the Emerge Program and the Aspire Program - a separate program under the ERA designed to catalyze redevelopment projects in New Jersey - are subject to a program cap of $1.1 billion per year for the first six years of the programs, with the cap split between northern and southern counties. Unused amounts may be carried forward each year, and any remaining unused tax credits are available in the seventh year.

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

Tax credit awards are subject to certain caps based on the project location, and tax credit awards may reduced if the new or retained full-time jobs associated with a project pays less than the county median salary. Any incented job (new or retained full-time) must pay more than 70 percent of the host county’s median salary in order to be eligible. While a project may be eligible for a specific tax credit amount based on the project location and other applicable bonus criteria, the final award amount will be based on the Authority’s determination of the amount necessary to induce the project to be sited in the State. In no circumstance will the Authority recommend an award amount that exceeds the maximum tax credit award calculated based upon the project location and applicable bonuses.

Tax credits awarded through the Emerge Program can be used to offset Corporate Business Tax or Insurance Premiums Tax, can be transferred for no less than 85 percent of their value, or, if allowed under the State’s annual appropriation act and if funds are available, may be surrendered to NJ Division of Taxation for 90 percent of the value of the credits.

In addition to meeting the program eligibility, the project must be in substantial good standing with the NJ Department of Labor and Workforce Development, the NJ Department of Environmental Protection, and the Department of Treasury (as determined by each Department). If a compliance issue exists, the eligible business may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. The eligible business must have no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective Department. Furthermore, the project will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

The Emerge Program rules also require that the project demonstrate that it will comply with environmental laws (including flood hazard requirements). All projects that receive Emerge support must also meet minimum environmental standards (green building requirements), pay prevailing wages to construction workers and building service workers, and provide health care to incented employees.

Applicants with a project with a total project cost exceeding or equaling $10 million must also enter into a Community Benefits Agreement with NJEDA and the county or municipality in which the project is located, unless the municipality certifies the Redevelopment Agreement and Emerge Program approval letter.

Some of the areas described above are outlined in greater detail further in this memorandum.

Key Definitions

Certain locations, business, and projects receive different treatment and benefits under the ERA. These are highlighted here:

Government-Restricted Municipality: The criteria established in the ERA result in Atlantic City, Paterson, and Trenton.

Mega Project: The statute requires that a mega project be a "project of special economic importance," which must be "measured by the level of new jobs, new capital investment, and opportunities to leverage leadership in a high-priority targeted industry". Accordingly, the proposed definition in the rule requires:

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

Small Business: A business with less than 100 employees at the time of application, engaged primarily in a targeted industry. The different treatment of Small Businesses recognizes their significance to New Jersey's economy and involves a pathway for these small businesses to access the Emerge Program, as small businesses were not able to easily access New Jersey's predecessor incentive programs. The rules further clarify how the number of employees will be determined.

Targeted Industries: The ERA provides a statutory definition of "targeted industry" that is applicable in several programs, including the Emerge Program. The definition identifies several industries and includes "other innovative industries that disrupt current technologies or business models". An applicant is considered as being in a targeted industry if the project is primarily engaged in a targeted industry or, if the project itself is not in a targeted industry, the applicant is primarily engaged in a targeted industry due to activities elsewhere or the applicant is a subsidiary of an entity that is primarily engaged in a targeted industry. Consistent with Grow NJ, the definitions of each targeted industries are not included in the rules, as they are meant to be illustrative and guidance; however, unlike past practice, the policy definitions are and will continue to be made public. These definitions have been included as an appendix to this memorandum.

Eligibility Criteria

The following highlights certain key eligibility requirements for the Emerge Program. Full eligibility details are contained in the draft proposed rules in section 3 and the ERA in section 71. To be eligible, a project must meet various eligibility criteria at application, which the Board ascertains when the project is presented to the Board, and at project completion, when the business must submit certifications evidencing satisfaction of Program requirements and conditions.

Eligible Incentive Area

As part of eligibility for the Emerge Program, a project must be located in an eligible incentive location, which may include: a government-restricted municipality, an enhanced area, distressed municipality, employment/investment corridor, qualified opportunity zone, or other eligible area. Each of these geographic locations are statutorily defined, and the Authority maintains a list of applicable municipalities for each location on its website. For locations that are not municipalities, the Authority is developing a custom mapping tool to provide more clarity to potential applicants as to which of the aforementioned eligible incentive locations the proposed project falls within.

Job Creation / Retention

A project must create a minimum of 35 new full-time jobs to be eligible for the Emerge Program. However, as alluded to above, the job requirement is lowered to 25 new full-time jobs for businesses primarily engaged in targeted industries. For Small Businesses, no absolute minimum number is required, but the Small Business must grow its workforce over the course of the eligibility period with new full-time jobs by 25% of its workforce at time of application.

In order to receive tax credits for retained jobs, the minimum number of retained jobs is 500 in a qualified incentive tract or government-restricted municipality or 1,000 retained jobs in all other eligible incentive areas. The business must commit to retain the greater of the minimum eligibility retained jobs (500 or 1,000) or the business's retained jobs at the time of application.

To qualify as an eligible job, the business must demonstrate to the Authority's satisfaction that the employee spends at least 80% of the individual's work time in this State and that the eligible position requires an employee to have the individual's primary place of work in this State.

Further, the business must ensure that the Qualified Business Facility can accommodate at least 50 percent of incented new jobs. In order to receive tax credits for retained jobs, the Qualified Business Facility must accommodate all of the retained full-time jobs at the time of application.

Capital Investment

In addition to job creation and/or retention requirements, the business must meet the minimum capital investment requirements, except for Small Businesses, which are not required to make a minimum capital investment as long as they demonstrate their intent to stay in the State during the commitment period, as evidenced by such items like a proposed lease, membership agreement or a similar commitment for a space.

The amount of minimum capital investment required is based upon a dollar amount per square foot to be determined by the type of project (renovation or new construction) and the use of the space (industrial, warehousing, logistics, R&D, or office space). Buildings that are proximate can aggregate capital investment to meet the requirements but for projects that are complexes with non-proximate sites, each site must meet the minimum capital investment requirements specific to each site.

As an alternative to capital investment in the qualified business facility, the ERA requires the Authority to establish a dedicated fund known as the "Recovery Infrastructure Fund", which will be credited with money remitted by eligible businesses that invest less than the statutorily required capital investment in the qualified business facility. The ERA dedicates the Recovery Infrastructure Fund for certain local infrastructure projects in the municipality in which the eligible business's project is located. The Authority, in consultation with the Department of Community Affairs (DCA), will review and approve applications for disbursements of money from the Recovery Infrastructure Fund. The DCA will coordinate with the Authority and other entities, including boards, commissions, institutions, departments, agencies, to carry out the local infrastructure projects.

Material Factor

Pursuant to statute, any business applying for an Emerge Program award must demonstrate that the award of tax credits is a "material factor" in the business's decision to create or retain at least the minimum number of full-time jobs in New Jersey. To assist the authority in making this eligibility determination with respect to whether the award of tax credits is a material factor in the business's decision to create or retain the minimum number of new and retained full-time jobs in New Jersey, the Authority will collect, as part of the business's application, a full economic analysis of all locations under consideration; all lease agreements, ownership documents, or substantially similar documentation for the eligible business's current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for potential out-of-State location alternatives, to the extent they exist.

Based on this information, the Authority will undertake a full economic (cost-benefit) analysis across the proposed New Jersey site, and all competing alternative sites. Among the factors the Authority will consider, include: project location, size of the proposed facility, cost per square foot, one-time upfront costs (acquisition, construction, fit out, furniture, fixtures, and equipment), and ongoing annual costs (rental costs, real estate carrying costs, real estate taxes, utilities, expenses, building maintenance). The Authority may collect other relevant information as determined by the Chief Executive Officer, which may include but is not limited to: the proximity of the project to customers, infrastructure, supply chain or research.

Each applicant will be risk-rated using a material factor risk model developed by staff. The risk rating model considers various characteristics of the business and project and determines an overall risk rating that indicates the level of scrutiny and evidence necessary to review the material factor determination.

Finally, before the Board may consider an eligible business's application for tax credits, the eligible business shall execute a non-binding Letter of Intent with the Chief Executive Officer of the Authority. The Letter of Intent specifies the amount and terms and conditions of tax credits that the Authority is prepared to propose for Board approval and that are intended to be a material factor in the decision by the eligible business to create or retain the proposed number of new and retained full-time jobs. As part of the Letter of Intent, the eligible business certifies such tax credits are a material factor in its decision and that all factual representations made by the business to the Authority pursuant to material factor are true under the penalty of perjury.

Net Positive Economic Benefit Test

Pursuant to statute, any business applying for assistance under the Emerge Program must demonstrate that the project will yield a net positive economic benefit to the State, with the specific net benefit required tied to the geographic location of the project. The project must yield a net positive economic benefit to the State of 400%, however projects located in distressed Municipalities or Transit Hub Municipalities must yield a 300% net positive benefit and projects located in government-restricted municipalities, or mega projects, must yield a 200% net positive benefit to the State.

Staff is proposing to use the IMPLAN model to assist with determining the economic benefits of the project. IMPLAN is a third-party economic development model that is widely known, understood and utilized at the state, federal, and international levels. From among several widely-known, national level models, IMPLAN is a model that is more easily understood by a broader set of stakeholders. The analysis will include ongoing benefits for direct and indirect tax revenues at the State level and also direct, indirect and induced tax revenues at the State level for construction benefits. The local tax benefits will only be included when they benefit the State. An inflation rate and discount rate will also be used based on market conditions, economic conditions, and uncertainty in the company's commitment.

Under the statute, a business that is limited by the net positive economic benefit may choose to commit itself to a period longer than the commitment period, and the economic model will be extended accordingly for the extended commitment period. However, the maximum economic benefit period allowed is 20 years. If the business fails to satisfy its commitment after the initial commitment period but during the extended commitment period, the Authority will recoup the amount of tax credits approved based on the extended commitment period that the business will not satisfy.

Please refer to the Appendix B for the "Net Benefit Analysis – Overview" for a discussion of the test and model.

Green Building Standards

Similar to Grow NJ, the ERA requires the Emerge project to meet "minimum environmental and sustainability standards," which are statutorily defined as "standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction." The Green Building Manual is available online at http://greenmanual.rutgers.edu/.

The Authority had originally developed in 2013, and later updated in 2016, the "Green Building Standards" to evaluate Grow NJ and ERG projects. Staff has now updated the "Green Building Standards". The Green Building Standards lists options that apply the best practice principles of the Green Buildings Manual to the applicant's specific type of project. Please see Appendix E for a copy of the Authority's 2021 "Green Building Standards".

Tax Credit Award Calculation

The calculation of tax credit per job is the sum of a base credit and all applicable bonuses. Unless the business demonstrates to the Authority's satisfaction that a job is primarily working at the qualified business facility, the tax credit for the job will be calculated with the base amount for "other eligible areas" and will not include bonuses based on characteristics that are specific to a qualified business facility, such as geographical location.

Base Credit

As stated above, the Emerge Program tax credit awards are calculated on an annual per job basis, with base credits for jobs ranging between $500-$4,000 per job depending on project location or certain project categories.

Generally, the eligible incentive location determines the base credit amount per job, per year. Government restricted municipalities result in the highest potential base award at $4,000/ job, per year, with other locations providing incrementally smaller awards, and areas defined as "other eligible areas" providing the minimum base award of $500/ job, per year. An exception is a mega project, which also receives the highest possible base amount per job/per year of $4,000.

Bonus Credits

If applicable, bonuses can increase the per job, per year award up to a maximum award amount. Some bonuses are based on the project location. One bonus is based on the number of new full-time jobs, increasing on a tiered basis. Additional bonuses are based on certain features or details related to the proposed qualified business facility, such as energy and environmental rating or excess capital investment in certain uses. Finally, bonuses may be applied based on the projects alignment with certain policy objectives.

The following is a closer look at two specific policy bonuses that are anticipated to be frequently applied to proposed Emerge Program projects:

- To help incentivize job creation and business growth in New Jersey tied to specific targeted industries of high importance to New Jersey's economy, a $500 per job/per year bonus is available under the Emerge Program for eligible businesses engaged primarily in a targeted industry.

- A bonus of $500 per job/per year is available to Small Businesses.

Fiscal Protections

The Emerge Program includes a number of measures designed to ensure transparency, equity, and responsible stewardship of taxpayer resources. This includes a per job cap, reduction based on the median job salary in comparison to the county median salary and ineligibility if the median job salary is 30 percent or more below the county median salary, and a reduction for retained job credit to 50% of the calculated amount.

After all caps are applied, the ERA requires a determination by the Authority of the amount "necessary to induce the project to be sited in New Jersey". The ERA does not provide for a negotiation but rather a determination based on economic and policy factors. Specifically, staff proposes establishing the cost differential between New Jersey and the alternative site(s) as the minimum award. A standardized methodology will be used to determine much of the award amount in addition to the cost differential should be offered to the applicant. The methodology considers economic and policy factors that quantify the importance of the project to the State and the alternatives available to the applicant, including competition by other States, such as the size of the net benefit relative to the calculated award size, the gap in financing between New Jersey in comparison to alternative state sites, high priority locations, opportunities for the State to capture leadership in a targeted industry and consideration of public policy objectives. If any of the assumptions and projections used in determining the amount necessary to induce the project to located in NJ change by the time the project is completed (for example, the project did not create a headquarter), the inducement methodology will be re-run and may cause the award to be reduced. Please refer to the Appendix D for the discussion of the inducement calculation.

Community Benefits Agreement

Section 73b(1) of the ERA requires businesses with total project costs equaling or exceeding $10 million to enter into a "Community Benefits Agreement" with the Authority and the county or municipality in which the project is located. An eligible business is not required to enter into a Community Benefits Agreement if the eligible business's redevelopment agreement and approval letter are certified by the chief executive of the municipality where the project is located. The rules require that the Agreement list a list of contributions by the business and the monetary equivalent for any non-monetary contribution.

Section 73b(2) of the ERA also requires that the Agreement create a community advisory committee (CAC). The CAC is required to produce an annual report evaluating whether the eligible business is in compliance with the terms of the Community Benefits Agreement.

The Emerge Program rules, at N.J.A.C. 19:31-22.9 (d)(6)(ii), provide for a non-binding mediation process to be implemented if the CAC's annual report indicates that the eligible business is not in compliance with the Community Benefits Agreement. The Authority will serve as or identify a mediator. The CAC, municipality or county, as applicable, and the eligible business will have 60 days of the Authority's notice of the mediator to resolve any differences. The results of the mediation will be reported to the Authority. If resolution is not achieved, then the Authority will assign a hearing officer to perform a review of the written record, with discretion to require an in-person hearing, and to issue an advisory written report to the Authority's Chief Executive Officer with finding(s) and recommendation(s). The business, municipality or county, and the CAC will also have the opportunity to file written comments and exceptions regarding the report within five business days from receipt of the report. Based on the review of the written report and submitted comments and exceptions, the Chief Executive Officer will determine compliance or non-compliance.

If the non-compliance is not due to the business and the business has been using best efforts, then the tax credit amount that the business may apply in the relevant tax period will be reduced by 120% of the sum of the monetary values of the contributions for which the business is not in compliance. For any other non-compliance, the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period where documentation demonstrates compliance has been approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit will be allowed.

Post-Approval Process

Emerge, as Grow NJ, is a performance-based program. After approval, the business must sign an approval letter and subsequently a commitment agreement with the terms and conditions to receive the tax credit. Upon completion of the project, the business must submit certifications regarding the capital investment, jobs, and other eligibility requirements and conditions. The project must comply with eligibility criteria and the award will be adjusted based on, among other things, the amount of capital investment, jobs, salaries, and whether the company satisfies any of the Board approved bonuses. If the amount of capital investment, the number of new and retained full-time jobs, or the median salary are reduced more than 10% from the amounts approved by the Board (e.g., less than 410% for a project that must yield a 400% net positive economic benefit), the net positive economic benefit amount will be re-evaluated, which may result in a lower award. The actual amount of the tax credits issued will be based on the certifications and any adjustment or resizing. Additionally, the number of new and retained jobs and the amount of withholdings from the incented jobs in the certification establishes the number of jobs that the company must maintain during the commitment period.

For each year of the compliance period, the business must submit annual reports stating, among other things, the amount of new and retained full-time jobs and the amount of jobs Statewide. Staff reviews each report for compliance with the Program and commitment agreement requirements. Reductions in jobs result in tax credit reduction if within 20% of the jobs at certification. If the company reduces the number of jobs or median salary by more than 10% from the prior year, the net positive economic benefit will be re-evaluated, which may result in a reduced award. Additionally, the business will forfeit its tax credit awards as follows:

- For as long as job or withholdings from incented jobs are reduced by more than 20% from the amount at certification;
- For as long as the reduction in the Statewide jobs by more than 20% of the number of jobs Statewide at the end of the company's fiscal year prior to Board approval;
- With certain exceptions for relocations in the State, the remainder of the tax credits if the business sells, leases, or subleases the qualified business facility; and
- All tax credits if at any time during the eligibility period, the Authority determines that the eligible business made a material misrepresentation on the eligible business's application.

If the business does not maintain the project for the commitment period, or forfeits tax credits as described above for two or more successive tax periods, the Authority may recapture all or part of the tax credits based on the type of noncompliance, number of years in compliance, and actual number of jobs created or retained.

Rulemaking Process

The ERA authorizes the Authority to promulgate special adoption rules for the Emerge Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 180 days. In addition, Staff proposes pursuing concurrently the proposal of long-term rules, which will include a 60-day public comment process pursuant to the Administrative Procedures Act rulemaking procedures.

Compliance with Executive Order 63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority issued a news release advising the public that the draft Emerge Program rules, including definitions of targeted industries, were available for review and of the opportunity to provide informal input.

The Authority staff convened three virtual public "Listening Sessions", which provided an overview of the Emerge Program draft rules and the opportunity for the public feedback, on:

- Thursday, April 8th, 2021 at 5:00 p.m.
- Monday, April 12th, 2021 at 3:00 p.m.
- Wednesday, April 14th, 2021 at 3:00 p.m.

Additionally, the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) or through the newly established email account (emerge@njeda.com) from April 5th through April 16th, 2021.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(a) of the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, "review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse".

Bruce Ciallella has been designated the CCO. In that capacity, Mr. Ciallella has reviewed the proposed rules and regulations for the Emerge Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Fees

The specific fee structure is outlined in the proposed new rules. Prior to establishing the proposed fee structure for this program as outlined in the proposed new rules, the Authority conducted an internal review to estimate what the administrative costs to the authority are likely to be to administer the Emerge Program. This review considered areas cross-organizationally where the Emerge Program may require staff time, and the estimated percentage of staff time that would be required.

An applicant for the Emerge Program will be responsible for a one-time, non-refundable application fee, on a tiered basis based on the number of new or retained full-time jobs. Additionally, prior to the approval of a tax credit award by the Members, the applicant will be responsible for a one-time approval fee, which may be refunded if the project is not approved for a tax credit award. The approval fee is also tiered based on the number of new or retained full-time jobs.

Prior to the receipt of a tax credit, the grantee will be responsible for an issuance fee, with the specific amount tiered based on the number of new or retained full-time jobs.

Throughout the term of the grant, the grantee will be responsible for a servicing fee, and may be responsible for a modification fee should the project require modifications to the tax credit. If the grantee elects to sell the tax credit, a transfer fee will also apply.

If a grantee requests an extension to the date by which the business shall submit the certification with respect to the capital investment, employment, and other eligibility requirements of the program, a non-refundable extension fee will apply.

Finally, a business seeking to terminate an existing incentive agreement will be responsible for a termination fee.

Please refer to the proposed new rules for more information on the specific fees and tiered fee amounts.

Program Evaluation Plan

Staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the Emerge Program will meet the NJEDA's operational and strategic goals. Along with the goals and outcome of the program, the Authority will also request demographic information related to the businesses applying for the Emerge Program, including demographic information with respect to the company's leadership. This is part of the Authority's ongoing efforts to measure to what extent its programs and services are serving New Jersey's diverse residents, communities, and businesses.. Other metrics are anticipated to focus on the Emerge Program's outreach efforts and volume of applicants, process and operational effectiveness, and economic development outcomes. The KPIs will provide valuable insight for staff and the Board to assess the effectiveness of the Emerge Program. These KPIs are still under development.

Recommendation

The Members are requested to approve: (1) The attached special adopted new rules and concurrent proposed new rules for the new Emerge Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and; (2) the creation of the Emerge Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 (Sections 68 through 81 of P.L. 2020, c. 156), to encourage economic development, targeting the Governor's priority sectors through job creation and the retention of a significant number of jobs.

Tim Sullivan
Chief Executive Officer

Prepared by**:** Mathew Abraham and Elizabeth George-Cheniara

Attachments:
Appendix A – Proposed New Rules – Emerge Program
Appendix B – Net Benefit Analysis
Appendix C – Targeted Industry Definitions
Appendix D – Additional Material Factor Considerations
Appendix E – Green Building Standards