

[N.J. Stat. § 34:1B-322](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 64 and J.R. 10

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§ 34:1B-322. Short title

Sections 54 through 67 of [P.L. 2020, c. 156](#) ([C.34:1B-322](#) through [C.34:1B-335](#)) shall be known and may be cited as the “New Jersey Aspire Program Act.”

History

L. [2020, c. 156](#), § 54, effective January 7, 2021.

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§ 34:1B-323. Definitions

As used in sections 54 through 67 of [P.L.2020, c.156 \(C.34:1B-322 through C.34:1B-335\)](#):

“Agency” means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L.1983, c.530 ([C.55:14K-1](#) et seq.).

“Authority” means the New Jersey Economic Development Authority established by section 4 of P.L.1974, c.80 ([C.34:1B-4](#)).

“Aviation district” means all areas within the boundaries of the Atlantic City International Airport, established pursuant to section 24 of [P.L.1991, c.252 \(C.27:25A-24\)](#), and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center.

“Board” means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L.1974, c.80 ([C.34:1B-4](#)).

“Building services” means any cleaning or routine building maintenance work, including but not limited to sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. “Building services” shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the “prevailing wage” as defined in section 2 of P.L.1963, c.150 ([C.34:11-56.26](#)).

“Cash flow” means the profit or loss that an investment property earns from rent, deposits, and other fees after financial obligations, such as debt, maintenance, government payments, and other expenses, have been paid.

“Collaborative workspace” means coworking, accelerator, incubator, or other shared working environments that promote collaboration, interaction, socialization, and coordination among tenants through the clustering of multiple businesses or individuals. For this purpose, the collaborative workspace shall be the greater of: 2,500 of dedicated square feet or 10 percent of the total property on which the redevelopment project is situated. The collaborative workspace shall include a community manager, be focused on collaboration among the community members, and include regularly scheduled education events for the community members. The collaborative workspace shall also include a physical open space that supports the engagement of its community members.

“Commercial project” means a redevelopment project, which is predominantly commercial and contains 100,000 or more square feet of office and retail space, industrial space, or film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, for purchase or lease and may include a parking component.

“Developer” means a person who enters or proposes to enter into an incentive award agreement pursuant to the provisions of section 60 of [P.L.2020, c.156 \(C.34:1B-328\)](#), including, but not limited, to a lender that

completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Distressed municipality” means a municipality that is qualified to receive assistance under P.L.1978, c.14 ([C.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 (1947),” P.L.1947, c.151 ([C.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, a SDA municipality, or a municipality in which a major rail station is located.

“Economic development incentive” means a financial incentive, awarded by the authority, or agreed to between the authority and a business or person, for the purpose of stimulating economic development or redevelopment in New Jersey, including, but not limited to, a bond, grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure.

“Eligibility period” means the period not to exceed 15 years for a commercial or mixed-use project or the period not to exceed 10 years for a residential project specified in an incentive award agreement during which a developer may claim a tax credit under the program.

“Enhanced area” means (1) a municipality that contains an urban transit hub, as defined in section 2 of [P.L.2007, c.346 \(C.34:1B-208\)](#); (2) the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and (3) the three municipalities with the highest percentage of SNAP recipients according to the 2017 Municipal Revitalization Index.

“Food delivery source” means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to a full-service supermarket or grocery store, and other healthy food retailers of at least 16,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals.

“Food desert community” means a physically contiguous area in the State in which residents have limited access to nutritious foods, such as fresh fruits and vegetables, and that has been designated as a food desert community pursuant to subsection b. of section 38 of [P.L.2020, c.156 \(C.34:1B-306\)](#).

“Government-restricted municipality” means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date [Jan. 7, 2021] of [P.L.2020, c.156 \(C.34:1B-269](#) et al.), is subject to financial restrictions imposed pursuant to the “Municipal Stabilization and Recovery Act,” [P.L.2016, c.4 \(C.52:27BBBB-1](#) et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

“Health care or health services center” means an establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists, or other medical practitioners.

“Incentive area” means an aviation district, a port district, or an area designated pursuant to the “State Planning Act,” P.L.1985, c.398 ([C.52:18A-196](#) et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a Designated Center, provided an area designated as Planning Area 2 (Suburban) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation.

“Incentive award” means an award of tax credits to reimburse a developer for all or a portion of the project financing gap of a redevelopment project pursuant to the provisions of sections 54 through 67 of [P.L.2020, c.156](#) ([C.34:1B-322](#) through [C.34:1B-335](#)).

“Incentive award agreement” means the contract executed between a developer and the authority pursuant to section 60 of [P.L.2020, c.156](#) ([C.34:1B-328](#)), which sets forth the terms and conditions under which the developer may receive the incentive awards authorized pursuant to the provisions of sections 54 through 67 of [P.L.2020, c.156](#) ([C.34:1B-322](#) through [C.34:1B-335](#)).

“Incubator facility” means a commercial property, which contains 5,000 or more square feet of office, laboratory, or industrial space, which is located near, and presents opportunities for collaboration 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.

“Individuals with special needs” means individuals with mental illness, individuals with physical or developmental disabilities, and individuals in other emerging special needs groups identified by the authority, based on guidelines established for the administration of the Special Needs Housing Trust Fund established pursuant to section 1 of [P.L.2005, c.163](#) ([C.34:1B-21.25a](#)) or developed in consultation with other State agencies.

“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 that is located within a qualified incentive area and that provides to the public access to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

“Minimum environmental and sustainability standards” means 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.

“Moderate-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 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 Revitalization Index” means the index by the Department of Community Affairs ranking New Jersey’s municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.

“Port district” means the portions of a qualified incentive area that are located within:

- a. the “Port of New York District” of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or
- b. a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to “The South Jersey Port Corporation Act,” P.L.1968, c.60 ([C.12:11A-1](#) et seq.).

“Program” means the New Jersey Aspire Program established by section 56 of [P.L.2020, c.156](#) ([C.34:1B-324](#)).

“Project cost” means the costs incurred in connection with a redevelopment project by a developer until the issuance of a permanent certificate of occupancy, or until such other time specified by the authority, for a

specific investment or improvement, including the costs relating to lands, except the cost of acquiring such 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, including capitalized interest paid to third parties, of an amount not to exceed 20 percent of the total costs and the cost of infrastructure improvements, including ancillary infrastructure projects. The fees associated with the application or administration of a grant under sections 54 through 67 of [P.L.2020, c.156](#) ([C.34:1B-322](#) through [C.34:1B-335](#)) shall not constitute a project cost.

“Project financing gap” means the part of the total project cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to developer contributed capital, which shall not be less than 20 percent of the total project cost, 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; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer contributed capital shall not be less than 10 percent of the total project cost. Developer contributed capital may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by the authority, as provided by regulations promulgated by the authority. Property value shall be valued at the lesser of: (i) the purchase price, provided the property was purchased pursuant to an arm’s length transaction within 12 months of application; or (ii) the value as determined by a current appraisal.

“Project labor agreement” means a form of pre-hire collective bargaining agreement covering terms and conditions of a specific project that satisfies the requirements set forth in section 5 of [P.L.2002, c.44](#) ([C.52:38-5](#)).

“Qualified incentive tract” means (i) a population census tract having a poverty rate of 20 percent or more; or (ii) a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Quality childcare facility” is a child care center licensed by the Department of Children and Families or a registered family child care home with the Department of Human Services, operating continuously, which has not been subject to an enforcement action, and which has and maintains a licensed capacity for children age 13 years or younger who attend for less than 24 hours a day.

“Redevelopment project” means a specific construction project or improvement or phase of a project or improvement undertaken by a developer, owner or tenant, or both, and any ancillary infrastructure project. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

“Residential project” means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component.

“SDA district” means an SDA district as defined in section 3 of [P.L.2000, c.72](#) ([C.18A:7G-3](#)).

“SDA municipality” means a municipality in which an SDA district is situated.

“Technology startup company” means a for-profit business that has been in operation fewer than seven years at the time that it initially occupies or expands in a qualified business facility and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which proprietary technology or business method the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

“Total 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.

“Tourism destination project” means a non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which has been determined by the authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business within an established Tourism District with a significant impact on the economic viability of that district.

“Transit hub” means an urban transit hub, as defined in section 2 of [P.L.2007, c.346 \(C.34:1B-208\)](#), that is located within an eligible municipality, as defined in section 2 of [P.L.2007, c.346 \(C.34:1B-208\)](#) and also located within a qualified incentive area.

“Transit hub municipality” means a Transit Village or a municipality: a. which qualifies for State aid pursuant to P.L.1978, c.14 ([C.52:27D-178](#) et seq.), or which has continued to be a qualified municipality thereunder pursuant to [P.L.2007, c.111](#); and b. in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

“Transit Village” means a municipality that has been designated as a transit village by the Commissioner of Transportation and the Transit Village Task Force established pursuant to P.L.1985, c.398 ([C.27:1A-5](#)).

History

L. [2020, c. 156](#), § 55, effective January 7, 2021; amended by [2021, c. 160](#), § 22, effective July 2, 2021.

Annotations

Notes

Publisher's Notes

The bracketed material was added by the Publisher to provide a reference.

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: “This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160](#) ([C.34:1B-370](#) et al.), shall apply to applications submitted pursuant section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)), section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)), and 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) shall apply to applications submitted on and after the effective date of this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act.” Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2021 amendment, by Chapter 160, rewrote the section.

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§ 34:1B-324. New Jersey Aspire Program

- a. The New Jersey Aspire Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority. The authority shall administer the program to encourage redevelopment projects through the provision of incentive awards to reimburse developers for certain project financing gap costs. The board may approve the award of an incentive award to a developer upon application to the authority pursuant to sections 58 and 59 of [P.L.2020, c.156](#) ([C.34:1B-326](#) and [C.34:1B-327](#)). The value of all tax credits approved by the authority pursuant to sections 54 through 67 of [P.L.2020, c.156](#) ([C.34:1B-322](#) through [C.34:1B-335](#)), shall be subject to the limitations set forth in section 98 of [P.L.2020, c.156](#) ([C.34:1B-362](#)).
- b. The chief executive officer of the authority shall designate one staff member per government-restricted municipality in order to keep the municipality informed on activities within the municipality and to coordinate economic development initiatives.

History

L. [2020, c. 156](#), § 56, effective January 7, 2021.

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§ 34:1B-325. Eligibility for incentive award for redevelopment project

- a. Prior to March 1, 2027, a developer shall be eligible to receive an incentive award for a redevelopment project only if the developer demonstrates to the authority at the time of application that:
- (1) without the incentive award, the redevelopment project is not economically feasible;
 - (2) a project financing gap exists, or the authority determines that the redevelopment project will generate a below market rate of return;
 - (3) the redevelopment project, except a film studio, professional stage, television studio, recording studio, screening room, or other infrastructure used for film production, is located in the incentive area;
 - (4) except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application, unless the authority determines that the redevelopment project would not be completed otherwise or, in the event the redevelopment project is to be undertaken in phases, the requested incentive award is limited to only phases for which construction has not yet commenced;
 - (5) the redevelopment project shall comply with minimum environmental and sustainability standards;
 - (6) the redevelopment project shall comply with the authority's affirmative action requirements, adopted pursuant to section 4 of P.L.1979, c.303 ([C.34:1B-5.4](#));
 - (7) during the eligibility period, each worker employed to perform construction work or building services work at the redevelopment project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 ([C.34:11-56.25](#) et seq.) and [P.L.2005, c.379](#) ([C.34:11-56.58](#) et seq.). In the event a redevelopment project is undertaken by a tenant and the tenant has a leasehold of more than 55 percent of space in the building owned or controlled by the developer, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire building;
 - (8)
 - (a) the redevelopment project shall be completed, and the developer shall be issued a certificate of occupancy for the redevelopment project facilities by the applicable enforcing agency within four years of executing the incentive award agreement, or in the case of a redevelopment project with a project cost in excess of \$50,000,000, the incentive phase agreement corresponding to the redevelopment project; or
 - (b) in the discretion of the authority, a redevelopment project with a project cost in excess of \$50,000,000, and that is authorized to be completed in phases, may be allowed no more than six years from the date on which the incentive award agreement is executed to be issued a certificate of occupancy by the applicable enforcement agency;

- (9) the developer has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 of [P.L.2007, c.101 \(C.54:50-39\)](#); and
- (10) the developer is not more than 24 months in arrears at the time of application.
- b. In addition to the requirements set forth in subsection a. of this section, for a commercial project to qualify for an incentive award the developer shall demonstrate that the developer shall contribute capital of at least 20 percent of the total project cost, except that if a redevelopment project is located in a government-restricted municipality, the developer shall contribute capital of at least 10 percent of the total project cost.
- c. In addition to the requirements set forth in subsection a. of this section, for a residential project to qualify for an incentive award, the residential project shall:
- (1) have a total project cost of at least \$17,500,000, if the project is located in a municipality with a population greater than 200,000 according to the latest federal decennial census;
 - (2) have a total project cost of at least \$10,000,000 if the project is located in a municipality with a population less than 200,000 according to the latest federal decennial census; or
 - (3) have a total project cost of at least \$5,000,000 if the project is in a qualified incentive tract or government-restricted municipality.
- d. In addition to the requirements set forth in subsections a. and c. of this section, for a residential project consisting of newly-constructed residential units to qualify for an incentive award, the developer shall reserve at least 20 percent of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the “Fair Housing Act,” P.L.1985, c.222 ([C.52:27D-301](#) et al.).
- e. Prior to the board considering an application submitted by a developer, the authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury whether the developer is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the developer. The developer shall certify that any contractors or subcontractors that will perform work at the redevelopment project: (1) are registered as required by “The Public Works Contractor Registration Act,” [P.L.1999, c.238 \(C.34:11-56.48](#) et seq.); (2) have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and (3) possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The authority may also contract with an independent third party to perform a background check on the developer.

History

L. [2020, c. 156](#), § 57, effective January 7, 2021; amended by [2021, c. 160](#), § 23, effective July 2, 2021.

Annotations

Notes

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: “This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160](#) ([C.34:1B-370](#) et al.), shall apply to applications submitted pursuant

section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)), section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)), and 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) shall apply to applications submitted on and after the effective date of this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act.” Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2021 amendment, by Chapter 160, inserted “except a film studio, professional stage, television studio, recording studio, screening room, or other infrastructure used for film production” in a.(3); redesignated and rewrote former a.(8) as a.(8)(a) and added a.(8)(b); redesignated and rewrote the former introductory language of b., b.(1), and b.(2) as b.; in d., in the first sentence, deleted “but not more than 50 percent” following “20 percent” and deleted “and at least 5 percent of the residential units constructed as workforce 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; 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” at the end and deleted the former second sentence; and rewrote e.

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§ 34:1B-326. Application for incentive award

- a. Prior to March 1, 2027, for redevelopment projects eligible pursuant to section 57 of [P.L.2020, c.156 \(C.34:1B-325\)](#) for which a developer is seeking an incentive award for the redevelopment project, the developer shall submit an application to the authority and, in the case of a residential project, shall submit an application to the authority and the agency, in a form and manner prescribed in regulations adopted by the authority, in consultation with the agency, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 ([C.52:14B-1](#) et seq.). The authority shall accept applications for incentive awards during the grant periods established pursuant to section 59 of [P.L.2020, c.156 \(C.34:1B-327\)](#).
- b. The authority shall not consider an application for a commercial project unless the developer submits a letter evidencing support for the commercial project from the governing body of the municipality in which the commercial project is located with the application.
- c. The authority shall review the project cost, 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 a net positive benefit to the State, provided that the net benefit analysis shall not apply to capital investment for a food delivery source; a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of Health; or a residential project. In determining whether a project will result in a net positive benefit to the State, the authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the "Five-Year Exemption and Abatement Law," [P.L.1991, c.441 \(C.40A:21-1](#) et seq.), the "Long Term Tax Exemption Law," [P.L.1991, c.431 \(C.40A:20-1](#) et al.), the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 ([C.52:27H-60](#) et seq.), or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The authority shall assess the cost of these reviews to the applicant. A developer shall pay to the authority the full amount of the direct costs of an analysis concerning the developer's application for a tax credit that a third party retained by the authority performs, if the authority deems such retention to be necessary. The authority shall evaluate the net economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed redevelopment project for which an award of tax credits is being sought.
- d. For a redevelopment project subject to the requirement of subsection c. of this section to be eligible for any tax credits under the program, a developer shall demonstrate to the authority that the award of tax credits will yield a net positive benefit to the State equaling an amount determined by the authority through regulation that exceeds the requested tax credit amount. The developer shall certify, under the penalty of perjury, that all documents submitted, and factual assertions made, to the authority to demonstrate that the award of tax credits will yield a net positive benefit to the State in accordance with this subsection are true

and accurate at the time of submission. A redevelopment project located in a government-restricted municipality shall yield a net positive benefit to the State that exceeds the requested tax credit amount, but the net benefit requirement set by the authority for such redevelopment projects may be up to 35 percentage points lower than the net benefit requirement set by the authority for all other eligible redevelopment projects.

e. If at any time during the eligibility period the authority determines that the developer made a material misrepresentation on the developer's application, the developer shall forfeit the incentive award.

f. If circumstances require a developer to amend its application to the authority, then the developer, or an authorized agent of the developer, shall certify to the authority that the information provided in its amended application is true under the penalty of perjury.

History

L. [2020, c. 156](#), § 58, effective January 7, 2021; amended by [2021, c. 160](#), § 24, effective July 2, 2021.

Annotations

Notes

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: "This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160](#) ([C.34:1B-370](#) et al.), shall apply to applications submitted pursuant section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)), section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)), and 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) shall apply to applications submitted on and after the effective date of this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act." Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2021 amendment, by Chapter 160, in the first sentence of a., substituted "for redevelopment projects eligible pursuant to" for "a developer that meets the eligibility criteria in," "for which a developer is" for "and is," and "the redevelopment project, the developer" for "a redevelopment project."

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[N.J. Stat. § 34:1B-327](#)

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§ 34:1B-327. Awarding of incentive awards

- a. Prior to March 1, 2027, for redevelopment projects eligible pursuant to section 57 of [P.L.2020, c.156 \(C.34:1B-325\)](#), the authority shall award incentive awards based on the order in which complete, qualifying applications were received by the authority. If a developer intends to apply to both the authority and the agency for subsidies, the developer shall notify the agency simultaneously with any application made to the authority. The authority shall transmit its grant determination for such residential projects to the agency along with any information developed by the authority and confirmation of the authority's intent to provide an incentive award or award to the project. Approval of an application by the agency shall be the final determination required for an incentive award for a residential project under this section.
- b. Prior to allocating an incentive award to a redevelopment project, the authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer is in substantial good standing with the respective department, or a developer not in substantial good standing with each department has entered into an agreement with the respective department that includes a practical corrective action plan for the developer, and that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: (1) is registered as required by "The Public Works Contractor Registration Act," [P.L.1999, c.238 \(C.34:11-56.48](#) et seq.); (2) has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and (3) possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The authority may also contract with an independent third party to perform a background check on the developer. Provided that the developer, and all contractors and subcontractors, are in compliance with this subsection, the authority shall allocate incentive awards to redevelopment projects according to the redevelopment project's score and until either the available incentive awards are exhausted or all redevelopment projects obtaining the minimum score receive an incentive award, whichever occurs first. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

History

L. [2020, c. 156](#), § 59, effective January 7, 2021; amended by [2021, c. 160](#), § 25, effective July 2, 2021.

Annotations

Notes

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: “This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160](#) ([C.34:1B-370](#) et al.), shall apply to applications submitted pursuant section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)), section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)), and 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) shall apply to applications submitted on and after the effective date of this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act.” Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2021 amendment, by Chapter 160, in b., rewrote the first sentence, which read: “Prior to allocating an incentive award to a redevelopment project, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the developer and each contractor and subcontractor performing work at the redevelopment project is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan” and substituted “compliance with this subsection” for “substantial good standing, or have entered into such agreements” in the second sentence; and made stylistic changes.

[N.J. Stat. § 34:1B-328](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 64 and J.R. 10

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§ 34:1B-328. Incentive award agreement

a.

(1) Following approval and selection of an application pursuant to sections 58 and 59 of [P.L.2020, c.156 \(C.34:1B-326 and C.34:1B-327\)](#), the authority shall enter into an incentive award agreement with the developer. The chief executive officer of the authority shall negotiate the terms and conditions of the incentive award agreement on behalf of the State.

(2) For a phased project, the incentive phase agreement shall set forth, for each phase of the project and for the total project, the capital investment requirements and the time periods in which each phase of the project shall be commenced and completed. The awarding of tax credits shall be conditioned on the developer's compliance with the requirements of the agreement. A redevelopment project may be completed in phases in accordance with rules adopted by the authority if the redevelopment project has a total project cost in excess of \$50,000,000.

b. An incentive award agreement shall specify the amount of the incentive award the authority shall award to the developer and the duration of the eligibility period, which shall not exceed 15 years for a commercial or mixed-use project and shall not exceed 10 years for a residential project. The incentive award agreement shall provide an estimated date of completion and include a requirement for periodic progress reports, including the submittal of executed financing commitments and documents that evidence site control. If the authority does not receive periodic progress reports, or if the progress reports demonstrate unsatisfactory progress, then the authority may rescind the incentive award. If the authority rescinds an incentive award in the same calendar year in which the authority approved the incentive award, then the authority may assign the incentive award to another applicant. The incentive award agreement may also provide for a verification of the financing gap at the time the developer provides executed financing commitments to the authority and a verification of the developer's projected cash flow at the time of certification that the project is completed.

c. To ensure the protection of taxpayer money, if the authority determines at project certification that the actual capital financing approach utilized by the project has resulted in a financing gap that is smaller than the financing gap determined at board approval, the authority shall reduce the amount of the tax credit or accept payment from the developer on a pro rata basis. If there is no project financing gap due to the actual capital financing approach utilized by the project, then the developer shall forfeit the incentive award. At the end of the seventh year of the eligibility period, the authority shall evaluate the developer's rate of return on investment and compare that rate of return on investment to the reasonable and appropriate rate of return at the time of board approval. If the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of board approval by more than 15 percent, the authority shall require the developer to pay up to 20 percent of the amount in excess of the reasonable and appropriate rate of return on investment. The authority shall require an escrow account to be held by the authority until the end of the eligibility period. Following the final year of the eligibility period, the authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return

determined at board approval. If the final rate of return does not exceed the reasonable and appropriate rate of return determined at board approval, the authority shall release to the developer the escrowed funds. If the project final rate of return exceeds the reasonable and appropriate rate of return determined at board approval, the authority shall require the developer to pay up to 20 percent of the amount of the excess, which shall include the funds held in escrow, and such funds shall be deposited in the State General Fund.

d. The incentive award agreement shall include a requirement that the authority confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the developer is in substantial good standing with the respective department, or the developer has entered into an agreement with the respective department that includes a practical corrective action for the developer, and the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: (1) is registered as required by "The Public Works Contractor Registration Act," [P.L.1999, c.238 \(C.34:11-56.48](#) et seq.); (2) has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and (3) possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The incentive award agreement shall also include a provision that the developer shall forfeit the incentive award in any year in which the developer is neither in substantial good standing with each department nor has entered into a practical corrective action. The incentive award agreement shall also require a developer to engage in on-site consultations with the Division of Workplace Safety and Health in the Department of Health.

e.

(1) Except as provided in paragraph (2) of this subsection, the authority shall not enter into an incentive award agreement for a redevelopment project that includes at least one retail establishment which will have more than 10 employees, at least one distribution center which will have more than 20 employees, or at least one hospitality establishment which will have more than 10 employees, unless the incentive award agreement includes a precondition that any business that serves as the owner or operator of the retail establishment or distribution center enters into a labor harmony agreement with a labor organization or cooperating labor organizations which represent retail or distribution center employees in the State.

(2) A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The authority may enter into an incentive award agreement with a developer without the labor harmony agreement required under paragraph (1) of this subsection if the authority determines that the redevelopment project would not be able to go forward if a labor harmony agreement is required. The authority shall support the determination by a written finding, which provides the specific basis for the determination.

(3) As used in this subsection:

"Hospitality establishment" means a hotel, motel, or any business, however organized, that sells food, beverages, or both for consumption by patrons on the premises.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually

agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations which have requested to be on the list and which the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

f.

(1) For a redevelopment project whose total project cost equals or exceeds \$10 million, in addition to the incentive award agreement, a developer shall enter into a community benefits agreement with the authority and the county or municipality in which the redevelopment project is located. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the redevelopment project is located. Prior to entering a community benefits agreement, the governing body of the county or municipality in which the redevelopment project is located shall hold at least one public hearing at which the governing body shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address.

(2) The community benefits agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, ensure compliance with the terms of the agreement, and produce an annual public report. The community advisory committee created pursuant to this paragraph shall be comprised of representatives of diverse community groups and residents of the county or municipality in which the redevelopment project is located.

(3) At the time the developer submits the annual report required pursuant to section 62 of [P.L.2020, c.156 \(C.34:1B-330\)](#) to the authority, the developer shall certify, under the penalty of perjury, that it is in compliance with the terms of the community benefits agreement. If the developer fails to provide the certification required pursuant to this paragraph or the authority determines that the developer is not in compliance with the terms of the community benefits agreement based on the reports submitted by the community advisory committee pursuant to paragraph (2) of this subsection, then the authority may rescind an award or recapture all or part of any tax credits awarded.

(4) A developer shall not be required to enter into a community benefits agreement pursuant to this subsection if the developer submits to the authority a copy of either the developer's approval letter from the authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement is certified by the municipality in which the redevelopment project is located, and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the chief executive officer pursuant to rules adopted by the authority.

g. A developer shall submit, prior to the first disbursement of tax credits under the incentive award agreement, but no later than six months following project completion, 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 award agreement. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a developer to the authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

h. The incentive award agreement shall include a provision allowing the authority to extend, in individual cases, the deadline for any annual reporting or certification requirement.

History

L. [2020, c. 156](#), § 60, effective January 7, 2021; amended by [2021, c. 160](#), § 26, effective July 2, 2021.

Annotations

Notes

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: “This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160](#) ([C.34:1B-370](#) et al.), shall apply to applications submitted pursuant section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)), section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)), and 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) shall apply to applications submitted on and after the effective date of this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act.” Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2021 amendment, by Chapter 160, added a.(2); rewrote c. and d.; in f.(4), inserted “either” and “approval letter from the authority or a,” substituted “applicable to the qualified business facility, provided that the approval letter or redevelopment agreement is” for “that is,” and added “and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the chief executive officer pursuant to rules adopted by the authority.”

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[N.J. Stat. § 34:1B-329](#)

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§ 34:1B-329. Total tax credit

a. Up to the limits established in subsection b. of this section and in accordance with an incentive award agreement, beginning upon the receipt of occupancy permits for any portion of the redevelopment project, or upon any other event evidencing project completion as set forth in the incentive award agreement, a developer shall be allowed a total tax credit that shall not exceed:

- (1) 60 percent of the total project cost for the new construction of a residential project that receives a four-percent allocation from the federal Low Income Housing Tax Credit Program administered by the agency;
- (2) 50 percent of the total project cost for a commercial project that is located in a government-restricted municipality; or
- (3) 45 percent of the total project cost for any other redevelopment project.

b. The value of all tax credits approved by the authority under the program for a redevelopment project phase shall not exceed:

- (1) \$60,000,000 per redevelopment project or phase for a residential project that is allowed a tax credit under paragraph (1) of subsection a. of this section, or a redevelopment project or phase that is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50; and
- (2) \$42,000,000 for any other redevelopment project or phase.

History

L. [2020, c. 156](#), § 61, effective January 7, 2021; amended by [2021, c. 160](#), § 27, effective July 2, 2021.

Annotations

Notes

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: "This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160](#) ([C.34:1B-370](#) et al.), shall apply to applications submitted pursuant section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)), section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)), and 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to

paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) shall apply to applications submitted on and after the effective date of this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act.” Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2021 amendment, by Chapter 160, redesignated and rewrote former a. as the introductory language of of a. and a.(3); added a.(1) and a.(2); and redesignated and rewrote former b. as the introductory language of b., b.(1), and b.(2).

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§ 34:1B-330. Report by developer

a. A developer approved for an incentive award pursuant to sections 58 and 59 of [P.L.2020, c.156 \(C.34:1B-326 and C.34:1B-327\)](#) and that enters an incentive award agreement pursuant to section 60 of [P.L.2020, c.156 \(C.34:1B-328\)](#) shall submit annually, commencing in the year in which the incentive award is issued and for the remainder of the eligibility period, a report indicating whether the developer is aware of any condition, event, or act that would cause the developer not to be in compliance with the incentive award agreement or the provisions of sections 54 through 67 of [P.L.2020, c.156 \(C.34:1B-322 through C.34:1B-335\)](#) and any additional reporting requirements contained in the incentive award agreement or tax credit certificate. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury.

b.

(1) Upon receipt and review of each report submitted during the eligibility period, the authority shall provide to the developer and the director a certificate of compliance indicating the amount of tax credits that the developer may apply against the developer's tax liability.

(2) Upon receipt by the director of the certificate of compliance, the director shall allow the developer a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 ([C.54:10A-5](#)). A developer shall apply the credit awarded against the developer's liability under section 5 of P.L.1945, c.162 ([C.54:10A-5](#)), sections 2 and 3 of P.L.1945, c.132 ([C.54:18A-2](#) and [C.54:18A-3](#)), section 1 of P.L.1950, c.231 ([C.17:32-15](#)), or [N.J.S.17B:23-5](#) for the privilege period during which the director allows the developer a tax credit pursuant to this subsection. A developer may carry forward an unused credit resulting from the limitations of paragraph (3) of this subsection, if necessary, for use in the seven privilege periods next following the privilege period for which the credits are awarded. Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the director accompanied by any additional information as the director may prescribe.

(3) The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under section 5 of P.L.1945, c.162 ([C.54:10A-5](#)). The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 ([C.54:10A-5](#)) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 ([C.54:10A-5](#)).

History

L. [2020, c. 156](#), § 62, effective January 7, 2021; amended by [2022, c. 46](#), § 1, effective June 30, 2022.

Annotations

Notes

Amendment Notes

2022 amendment, by Chapter 46, rewrote the third sentence of b.(2), which formerly read: “A developer shall not carry forward an unused credit unless the developer was unable to use the credit because the developer’s redevelopment project was directly impacted due to a natural disaster, state emergency, national emergency, or a situation that was out of the developer’s control that impacted the developer’s use of the credit that year, in which case the developer is permitted to carry forward an unused credit for up to two years upon submitting evidence of the developer’s redevelopment project being directly impacted by such a circumstance and receiving approval from the authority.”

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§ 34:1B-331. Tax credit transfer certificate

- a. A developer may apply to the director and the chief executive officer of the authority for a tax credit transfer certificate, 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, in the privilege period during which the developer receives the tax credit transfer certificate from the director, to another person, who may apply the credit against a tax liability pursuant to section 5 of P.L.1945, c.162 ([C.54:10A-5](#)), sections 2 and 3 of P.L.1945, c.132 ([C.54:18A-2](#) and [C.54:18A-3](#)), section 1 of P.L.1950, c.231 ([C.17:32-15](#)), or [N.J.S.17B:23-5](#). The certificate provided to the developer shall include a statement waiving the developer's right to claim the amount of the credit that the developer has elected to sell or assign against the developer's tax liability.
- b. The developer shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed under this section for consideration received by the developer of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted, except a developer of a residential project consisting of newly-constructed residential units may assign a tax credit transfer certificate for consideration of less than 85 percent subject to the submission of a plan to the authority and the agency to use the proceeds derived from the assignment of tax credits to complete the residential project, except a developer of a residential project consisting of newly-constructed residential units that has received federal low income housing tax credits under [26 U.S.C. § 42\(b\)\(1\)\(B\)\(i\)](#) may assign a tax credit transfer certificate for consideration of no less than 65 percent subject to the submission of a plan to the authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project. The tax credit transfer certificate issued to a developer by the director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 54 through 67 of [P.L.2020, c.156](#) ([C.34:1B-322](#) through [C.34:1B-335](#)) and any other terms and conditions that the director may prescribe.
- c. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.
- d. The authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the authority and the director pursuant to this section:
- (1) the name of the transferrer;
 - (2) the name of the transferee;
 - (3) the value of the tax credit transfer certificate; and
 - (4) the consideration received by the transferrer.

History

L. [2020, c. 156](#), § 63, effective January 7, 2021; amended by [2021, c. 160](#), § 28, effective July 2, 2021.

Annotations

Notes

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: “This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160](#) ([C.34:1B-370](#) et al.), shall apply to applications submitted pursuant section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)), section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)), and 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) shall apply to applications submitted on and after the effective date of this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act.” Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2021 amendment, by Chapter 160, in the first sentence of b., substituted “s.42(b)(1)(B)(i)” for “s.42(b)(2)(B)(i)” and “65 percent” for “75 percent.”

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[N.J. Stat. § 34:1B-332](#)

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§ 34:1B-332. Assignment of rights of incentive award agreement

- a. A developer who has entered into an incentive award agreement pursuant to section 60 of [P.L.2020, c.156 \(C.34:1B-328\)](#) may, upon notice to and written consent of the authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in and to the incentive award agreement and in the incentive awards payable under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the developer under the incentive award agreement. Any assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code.
- b. Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the authority. The incentive award 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 against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. As a condition of any incentive grant, the grantee, assignee, pledgee or subsequent holder of the incentive grant shall immediately file notice of the same with the clerk of the county in which the project is located.
- c. The authority shall publish on its Internet website the following information concerning each pledge, assignment, transfer, or sale approved by the authority pursuant to this section:
- (1) the name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in an incentive grant agreement or tax credit agreement;
 - (2) the name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the incentive grant agreement or tax credit agreement;
 - (3) the value of the right, title, or interest in the incentive grant agreement or tax credit agreement; and
 - (4) the consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the incentive grant agreement or tax credit agreement.

History

L. [2020, c. 156](#), § 64, effective January 7, 2021.

[N.J. Stat. § 34:1B-333](#)

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§ 34:1B-333. “Transformative project”

a. As used in this section, “transformative project” means a redevelopment project that has a project financing gap, that has a total project cost of at least \$100,000,000, and that includes 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space or that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production and which is of special economic importance as measured by the level of new jobs, new capital investment, opportunities to leverage leadership in a high-priority targeted industry, or other state priorities as determined by the authority pursuant to rules and regulations promulgated to implement this section. A transformative project may be completed in phases, which phases may be determined by the authority based on factors such as written architectural plans and specifications completed before or during the physical work, certificates of occupancy, or financial and operational plans. The criteria developed by the authority shall include, but shall not be limited to:

(1) the extent to which the proposed transformative project would create modern facilities that enhance the State’s competitiveness in attracting targeted industries;

(2)

(a) for a residential project, the construction of 1,000 or more new residential units;

(b) for a residential project containing less than 1,000 new residential units, the construction of 250 or more new residential units if the project is located in a government-restricted municipality, 350 or more residential units if the project is located in an enhanced area, or 600 or more residential units for all other mixed-use projects;

(c) for a residential project containing less than 1,000 new residential units, the construction of 100,000 square feet or more of retail or commercial space, with the majority being commercial; and

(d) for a residential project, 20 percent of the new residential units shall be constructed for occupancy by low- and moderate-income households with affordability controls as required under the “Fair Housing Act,” P.L.1985, c.222 ([C.52:27D-301](#) et al.); and

(3) the extent to which the proposed project would leverage the competitive economic development advantages of the State’s mass transit assets, higher education assets, and other economic development assets in attracting or retaining both employers and skilled workers generally or in targeted industries.

A “transformative project” shall not include a redevelopment project at which more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail.

b.

(1) The authority may award incentive awards to transformative projects in accordance with the provisions of sections 55 through 67 of [P.L.2020, c.156](#) ([C.34:1B-323](#) through [C.34:1B-335](#)).

(2)

(a) For transformative projects completed in phases, the developer shall enter into a transformative phase agreement with the authority.

(b) As used in this subsection, “transformative phase agreement” shall mean a sub-agreement of the incentive award agreement that governs the timing, capital investment, and other applicable details of the respective phase of a phased project.

(3) Notwithstanding the provisions of section 57 of [P.L.2020, c.156 \(C.34:1B-325\)](#), or any other section of [P.L.2020, c.156 \(C.34:1B-269 et al.\)](#), to the contrary, for transformative projects completed in phases, the transformative project shall be completed, and the developer shall be issued certificates of occupancy for all phases of the transformative project facilities by the applicable enforcing agency, within eight years of executing either the incentive award agreement or the first transformative phase agreement corresponding to the transformative project.

(4) Notwithstanding the provisions of sections 55 and 60 of [P.L.2020, c.156 \(C.34:1B-323 and C.34:1B-328\)](#), or any other section of [P.L.2020, c.156 \(C.34:1B-269 et al.\)](#), to the contrary, each phase of a transformative project completed in phases shall have a separate eligibility period. After completing each phase, the developer shall submit a certification that the phase is completed. If the authority approves the certification, the tax credit allowed to the developer shall be increased by the tax credit amount corresponding to that phase. Notwithstanding the different eligibility periods for each phase, all conditions and requirements applicable during an eligibility period pursuant to sections 55 through 67 of [P.L.2020, c.156 \(C.34:1B-323 through C.34:1B-335\)](#) shall apply to the entire transformative project until the end of the eligibility period for the last phase.

(5) Notwithstanding the provisions of section 60 of [P.L.2020, c.156 \(C.34:1B-328\)](#), or any other section of [P.L.2020, c.156 \(C.34:1B-269 et al.\)](#), to the contrary, for a transformative project completed in phases, a review of the project financing gap shall be performed at the certification of completion of each phase, and the authority shall re-evaluate the developer’s rate of return in the seventh year and at the end of the eligibility period for the last phase, provided that the authority may also re-evaluate the developer’s rate of return during the fifth year of any earlier phase.

(6) A transformative project receiving an incentive award pursuant to this section, other than a project that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production, shall be located in an incentive area, a distressed municipality, a government-restricted municipality, or an enhanced area. A transformative project receiving an incentive award pursuant to this section that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production may be located anywhere in the State. No more than two transformative projects receiving an incentive award pursuant to this section shall be located in the same municipality. The authority shall not consider an application for a transformative project unless the applicant submits with its application a letter evidencing support for the transformative project from the governing body of the municipality in which the transformative project is located.

c. The authority shall review the transformative project cost, 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 transformative project will result in a net positive benefit to the State. In determining whether a transformative project will result in a net positive benefit to the State, the authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the “Five-Year Exemption and Abatement Law,” [P.L.1991, c.441 \(C.40A:21-1 et seq.\)](#), the “Long Term Tax Exemption Law,” [P.L.1991, c.431 \(C.40A:20-1 et al.\)](#), the “New Jersey Urban Enterprise Zones Act,” P.L.1983, c.303 ([C.52:27H-60 et seq.](#)), or any other law that has the effect of lowering or eliminating the developer’s State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The authority shall assess the cost of these reviews to the applicant. A developer shall pay to the authority the full amount of the direct costs of an analysis concerning the developer’s application for an

incentive award that a third party retained by the authority performs, if the authority deems such retention to be necessary. The authority shall evaluate the net economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed transformative project for which an award of tax credits is being sought. Projects that are predominantly residential shall be excluded from the calculation of the net benefit test required pursuant to this subsection.

d. In determining net benefits for any business or person considering locating in a transformative project and applying to receive from the authority any other economic development incentive subsequent to the award of transformative project tax credits pursuant to section 65 of [P.L.2020, c.156 \(C.34:1B-333\)](#), the authority shall not credit the business or person with any benefit that was previously credited to the transformative project pursuant to section 65 of [P.L.2020, c.156 \(C.34:1B-333\)](#).

e. The authority shall administer the credits awarded pursuant to this section in accordance with the provisions of sections 62 and 63 of [P.L.2020, c.156 \(C.34:1B-330 and C.34:1B-331\)](#).

f. Prior to allocating an incentive award to a developer, the authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer is in substantial good standing with the respective department, or the developer has entered into an agreement with the respective department that includes a practical corrective action plan, and the developer shall certify that each contractor or subcontractor performing work at the transformative project: (1) is registered as required by “The Public Works Contractor Registration Act,” [P.L.1999, c.238 \(C.34:11-56.48 et seq.\)](#); (2) has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and (3) possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The authority may also contract with an independent third party to perform a background check on the developer.

g. Notwithstanding the limitation on incentive awards set forth in subsection b. of section 61 and section 98 of [P.L.2020, c.156 \(C.34:1B-329 and C.34:1B-362\)](#) to the contrary, the authority may allow a developer of a transformative project a tax credit, as reimbursement for certain project financing gap costs, in an amount not to exceed 40 percent of the total project cost, the total value of the project financing gap, or \$350,000,000 whichever is less; provided, however, that for a transformative project that is developed in phases, the \$350,000,000 limitation on incentive awards set forth in this subsection shall apply to the total aggregate award for all phases of the transformative project.

History

L. [2020, c. 156](#), § 65, effective January 7, 2021; amended by [2021, c. 160](#), § 29, effective July 2, 2021.

Annotations

Notes

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: “This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160 \(C.34:1B-370 et al.\)](#), shall apply to applications submitted pursuant section 72 of [P.L.2020, c.156 \(C.34:1B-340\)](#), section 1 of [P.L.2018, c.56 \(C.54A:4-12a\)](#), and 2 of [P.L.2018, c.56 \(C.54A:4-12b\)](#) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56 \(C.54A:4-12a\)](#) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56 \(C.54A:4-12b\)](#) shall apply to applications submitted on and after the effective date of

this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act.” Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2021 amendment, by Chapter 160, inserted the second sentence of the introductory paragraph of a.; redesignated and rewrote former a.(2) as a.(2)(a) through a.(2)(d); rewrote b.; in f., rewrote the first sentence and substituted “developer” for “applicant” in the second sentence; and in g., substituted “40 percent” for “30 percent,” “\$350,000,000” for “\$250,000,000,” and added “provided, however, that for a transformative project that is developed in phases, the \$350,000,000 limitation on incentive awards set forth in this subsection shall apply to the total aggregate award for all phases of the transformative project.”

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[N.J. Stat. § 34:1B-334](#)

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§ 34:1B-334. Report by State college, university

Beginning the year next following the year in which [P.L.2020, c.156 \(C.34:1B-269](#) et al.) takes effect and every two years thereafter, a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the authority, prepare a report on the implementation of the program, and submit the report to the authority, the Governor, and, pursuant to section 2 of [P.L.1991, c.164 \(C.52:14-19.1\)](#), to the Legislature. Each biennial report required under this section shall include a description of each redevelopment project receiving a tax credit under the program, a detailed analysis of the consideration given in each project to the factors set forth in sections 58 and 59 of [P.L.2020, c.156 \(C.34:1B-326](#) and [C.34:1B-327](#)), in the case of a commercial project, the return on investment for incentive awards provided and the commercial project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The authority shall prepare a written response to the report, which the authority shall submit to the Governor and, pursuant to section 2 of [P.L.1991, c.164 \(C.52:14-19.1\)](#), to the Legislature.

History

L. [2020, c. 156](#), § 66, effective January 7, 2021.

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§ 34:1B-335. Regulations

Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 ([C.52:14B-1](#) et seq.), to the contrary, the chief executive officer of the authority may adopt, immediately, upon filing with the Office of Administrative Law, regulations that the chief executive officer deems necessary to implement the provisions of sections 54 through 67 of [P.L.2020, c.156](#) ([C.34:1B-322](#) through [C.34:1B-335](#)), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The chief executive officer shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 ([C.52:14B-1](#) et seq.).

History

L. [2020, c. 156](#), § 67, effective January 7, 2021.

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