

## **OTHER AGENCIES**

### **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

#### **Authority Assistance Programs**

#### **Next New Jersey (AI) Program**

#### **Special Adopted and Concurrent Proposed New Rules: N.J.A.C. 19:31CC**

Filed: \_\_\_\_\_

Authority: P.L. 2024, c. 49.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2025-\_\_\_\_.

Effective Date: March 27, 2025

Expiration Date: September 23, 2026

Submit written comments by July 4, 2025, to:

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**Take notice** that in accordance with P.L. 2024, c. 49, the New Jersey Economic Development Authority (“NJEDA” or “Authority”) has specially adopted the following new rules to implement the provisions of the Next New Jersey Program Act, P.L.2024, c.49.

The specially adopted new rules shall be effective on March 27, 2025, upon acceptance for filing by the Office of Administrative Law (“OAL”). The specially adopted new rules shall be effective for a period not to exceed 365 days from the date of filing, that is, until March 27, 2026.

Concurrently, the provisions of the new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA has filed this notice of readoption before March 27,

2026, the expiration date is extended 180 days to September 23, 2026, pursuant to N.J.S.A. 52:14B-5.1.c. The concurrently proposed new rules will become effective and permanent upon acceptance for filing by the OAL (see N.J.A.C. 1:30-6.4(f)), if filed on or before September 23, 2026.

The specially adopted and concurrently proposed new rules follow.

### **Summary**

As set forth at N.J.S.A. 34:1B-394 through -402, the Next New Jersey (AI) Program (“Program”) is established as a program under the jurisdiction of the NJEDA. The purpose of the Program is to provide substantial tax credits to eligible businesses to attract new investment to New Jersey in the artificial intelligence (“AI”) and AI-related industries, create new jobs and economic opportunities, and position New Jersey as a leader in the innovation economy.

This Program awards tax credits to eligible businesses investing in large-scale AI data centers and AI-related development projects, including visual perception, speech recognition, decision-making, translation between languages, and generative AI. Eligible businesses must make a minimum capital investment of at least \$100 million and create at least 100 new-full time jobs in the State. The tax credits are awarded on a first-come, first-served basis up to the lesser of either the product of 0.1 percent of the eligible business’s total capital investment multiplied by the number of new full-time jobs; 25 percent of the eligible business’s total capital investment; or \$250 million. The total value of tax credits approved by the Authority shall not exceed the limitations set forth in N.J.S.A. 34:1B-362.

The following paragraphs summarize the contents of each section of the specially adopted and concurrently proposed new rules implementing the Next New Jersey (AI) Program.

N.J.A.C. 19:31CC-1 provides that this subchapter is promulgated by the NJEDA to implement the provisions of the Next New Jersey Program Act, P.L. 2024, c. 39 (codified N.J.S.A. 34:1B-394 through -402).

N.J.A.C. 19:31CC-2 sets forth the definitions used throughout the Program rules, such as, “AI data center”; “artificial intelligence”; “capital investment”; “collaborative relationship”; “full-time employee”; “new full-time job”; “New Jersey-based public or private research university”; “qualified business facility”; and “technology startup company”.

N.J.A.C. 19:31CC-3 sets forth the eligibility criteria for participation in the Program, including that the business: will make, acquire, or lease a capital investment at the qualified business facility of at least \$100 million; will create at least 100 new-full time jobs in the state; is primarily engaged in AI or large-scale AI data centers; will enter into a collaborative relationship; and will meet the affirmative action, prevailing wage, and minimum environmental and sustainability standards requirements.

N.J.A.C. 19:31CC-4 sets forth restrictions on the awarding of tax credits under the Program, including if a business has received a tax credit or other incentive award relating to the same capital investment and/or employees that qualify the business for a tax credit under the Program.

N.J.A.C. 19:31CC-5 sets forth the Program application requirements, which include but are not limited to: information on the business, including all affiliates contributing either full-time employees or capital investment; documentation demonstrating that more than 50 percent of employees at the business are engaged in AI related activities or that more than 50 percent of the revenue is generated from AI-related activities, or both; a letter of intent evidencing a proposed collaborative relationship; a description of the proposed project, including capital investments planned by the business at the proposed qualified business facility; a description of how the proposed qualified business facility supports AI or activities related to AI development, implementation, or innovation; and a list of proposed new full-time jobs, the anticipated salaries of the employees filling such new full-time jobs, and a description of how these proposed new full-time jobs support AI or activities related to AI development, implementation, or innovation.

N.J.A.C. 19:31CC-1.6 sets forth the fee schedule for the Program.

N.J.A.C. 19:31CC-1.7 sets forth the process for reviewing completed applications. Completed applications will be reviewed on a first come, first served basis, but must be submitted prior to March 1, 2029. Each completed application will be reviewed to check whether the applicant meets the Program eligibility criteria, satisfies the Program submission requirements, and provides adequate information in support of its application. The Authority will additionally confirm that the applicant is in good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Division of Taxation as part of its review process.

N.J.A.C. 19:31CC-1.8 sets forth the requirements for determination of the tax credit award amount. The amount of tax credit allowed under the Program is the lesser of either the product of 0.1 percent of the eligible business's total capital investment multiplied by the number of new full-time jobs; 25 percent of the eligible business's total capital investment; or \$250 million.

N.J.A.C. 19:31:CC-1.9 sets forth the requirements for the approval letter. The Board shall determine whether to approve an application. The approval letter shall contain conditions, including but not limited to: evidence that the business has entered a collaborative relationship, that the project complies with prevailing wage and affirmative action requirements, and documentation evidencing project financing and planning approvals. The Authority's approval of tax credits shall expire if the business does not submit the required documentation within one year after approval.

N.J.A.C. 19:31:CC-1.10 sets forth the project agreement and certification requirements. The project agreement shall include, but is not limited to, the following: a detailed description of the proposed project, any personnel information, and a requirement that the business be in New Jersey. Upon completion of the capital investment and employment requirements of the Program, an eligible business shall submit certifications evidencing that the eligible business has satisfied the conditions relating to the capital investment, employment requirements, and other eligibility requirements.

N.J.A.C. 19:31:CC-1.11 sets forth the project completion certification requirements. The eligible business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to capital investment, number of employees, and salaries. The eligible business shall also submit other documents as required, including but not limited to, a certification from a licensed engineer, evidence of a collaborative relationship, and floor or site plan.

N.J.A.C. 19:31:CC-1.12 sets forth the annual reporting requirements. This section sets forth the timing for when these reports must be submitted to the Authority, the submission requirements for these reports, and the penalties if the reports are incomplete or not timely submitted.

N.J.A.C. 19:31:CC-1.13 sets forth that the Director of the Division of Taxation shall allow the eligible business a tax credit upon receipt of the certificate of compliance, the amount of tax credit that may be applied against the tax liability otherwise due, how tax credits granted to a partnership shall be passed through, and the order of priority of the credits allowed.

N.J.A.C. 19:31:CC-1.14 sets forth the requirements for application for a tax credit transfer certificate. This subsection permits an eligible business to apply to the Authority and the Division of Taxation for a tax credit transfer certificate covering one or more years. Additionally, the tax credit transfer certificate may be sold or assigned, as specified in and subject to certain limitations.

N.J.A.C. 19:31:CC-1.15 sets forth the cap on total credits. The combined value of all credits approved by the Authority pursuant to this Program shall be subject to certain limitations.

N.J.A.C. 19:31:CC-1.16 sets forth the process and basis for any reduction, forfeiture, or recapture of tax credits under the Program. Reduction, forfeiture, or recapture may result if the eligible business does not remain in compliance with the eligibility requirements, fails to be in compliance with prevailing wage requirements, or fails to meet certain post-approval compliance requirements as specified.

N.J.A.C. 19:31:CC-1.17 sets forth the effect of sale or lease of the qualified business facility and relocation of the eligible business. If the qualified business facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller. If the qualified business merges or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner for the purposes of the Program. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods.

N.J.A.C. 19:31:CC-1.18 sets forth the affirmative action and prevailing wage requirements. The affirmative action requirements of the Program apply to construction contracts valued more than \$2,000 at the qualified business facility undertaken until two years after the first certificate of compliance is issued. The Authority's prevailing wage requirements for construction work and building services work are also applicable. The prevailing wage requirements are applicable during the commitment period for both construction work and building services work.

N.J.A.C. 19:31:CC-1.19 sets forth the appeal process for the Program.

N.J.A.C. 19:31:CC-1.20 sets forth the severability of any section, subsection, provision, clause, or portion of the Program rules if adjudged to be unconstitutional or invalid by a court of competent jurisdiction.

### **Social Impact**

The Program will have a positive social impact throughout the state as it will attract new investment to New Jersey in the AI industry and related industries, creating new jobs and opportunities for students, researchers, entrepreneurs, and innovators. The Program's support for the growth of AI-related businesses could also lead to scientific breakthroughs and lifesaving discoveries having the potential to enrich the lives of New Jersey residents.

### **Economic Impact**

The specially adopted and concurrently proposed new rules are intended to position New Jersey as a leader in the innovation economy by providing tax credits to eligible AI and AI-related businesses. This, in turn, will boost new, high-quality economic development in one of the fastest growing and transformational sectors. Furthermore, the Program will potentially have a high economic spill-over effect into other parts of the economy as the capital investment and the employment commitment required by the Program will create well-paying jobs, fueling commerce and economic growth on a broader scale throughout the State. The Program rules set fees that have been analyzed to ensure a source of necessary revenue for the Authority to cover the costs of administering the Program.

### **Federal Standards Statement**

A Federal standards analysis is not required because the specially adopted and concurrently proposed new rules are not subject to any Federal requirements or standards. Accordingly, no further analysis is required.

### **Jobs Impact**

The EDA anticipates that the specially adopted and concurrently proposed new rules will incentivize an indeterminate amount of increased job creation throughout New Jersey.

### **Agriculture Industry Impact**

An agricultural industry analysis is not required because the proposed new rules are not related to the agricultural industry. Accordingly, no further analysis is required.

### **Regulatory Flexibility Statement**

The specially adopted and concurrently proposed new rules are unlikely to impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any requirements are discussed in the Summary above, and if applicable to small businesses, any costs will be minimal and fully offset by the amount of financial assistance received.

### **Housing Affordability Impact Analysis**

The specially adopted and concurrently proposed new rules will not have an impact on the average costs associated with housing or on the affordability of housing. Accordingly, no further analysis is required.

### **Smart Growth Development Impact Analysis**

The specially adopted and concurrently proposed new rules will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. Accordingly, no further analysis is required.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The specially adopted and concurrently proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

#### **19:31CC-1.1 Applicability and Scope**

The rules in this chapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the Next New Jersey Program Act, P.L. 2024, c. 49 (codified N.J.S.A. 34:1B-394 through 402) and shall apply to all Next New Jersey (AI) Program applications.

#### **19:31CC-1.2 Definitions**

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

"Act" means the Next New Jersey Program Act, P.L. 2024, c. 49 (N.J.S.A. 34:1B-394 through 402).

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by an eligible business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the federal Internal Revenue Code (26 U.S.C. §1563) or the entity is an organization in a group of organizations under common control that is subject to the regulations applicable to organizations pursuant to subsection (b) or (c) of section 414 of the federal Internal Revenue Code (26 U.S.C. §414). An eligible business may establish by clear and convincing evidence, as determined by the authority, that control exists in situations involving lesser percentages of ownership than required by the above referenced federal statutes if the eligible business shall have control, at a minimum, of all aspects of compliance with this program. An affiliate of an eligible business may contribute towards the capital investment and new full-time job requirements and may satisfy the requirement for site control during construction and the eligibility period, but in no event shall the tax credit certificate be issued to any affiliate.

"AI data center" means a scalable facility specifically to handle the demanding computational needs of artificial intelligence applications, designed for tasks like machine learning training, deep learning algorithms, and complex data analysis utilizing purpose-built processing units, whose services are the storage, management, and processing of digital data; that is used to house: computer and network systems, including, but not limited to, associated components such as servers, network equipment and appliances, telecommunications, and data storage systems; systems for monitoring and managing infrastructure performance; Internet-related equipment and services; data communications connections; environmental controls; fire protection systems; and security systems and services specifically for artificial intelligence applications.

"Approval letter" means the letter sent by the Authority to the eligible business awarded tax credits pursuant to the program and countersigned by the eligible business pursuant to N.J.A.C. 19:31CC-1.9, which sets forth the conditions that must be met by the eligible business before the execution of a project agreement.

"Artificial intelligence" or "AI" means the development of software, the development of hardware, and the end-use application of technologies, or any one of the preceding, that are able



to perform tasks normally requiring human intelligence, including, but not limited to, visual perception, speech recognition, decision-making, translation between languages, quantum computing, and generative artificial intelligence, which generates new content in response to user inputs of data.

"Authority" means the New Jersey Economic Development Authority established by N.J.S.A. 34:1B-4.

"Board" means the Board of members of the New Jersey Economic Development Authority, established pursuant to N.J.S.A. 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 N.J.S.A. 34:11-56.26.

"Business" means an applicant proposing to own or lease premises in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to N.J.S.A. 54:10A-5, N.J.S.A. 54:18A-2 and -3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5, or is a partnership, S corporation, limited liability company, or non-profit corporation. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by or full-time employees of an affiliate. If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates.

"Capital investment" or "total capital investment" means expenses at the qualified business facility that a business or an affiliate of the business incurs, or is incurred on behalf of the business or affiliate by its landlord, which may be demonstrated through an executed letter of intent or lease, following its submission of a completed application to the authority pursuant to

N.J.S.A. 34:1B-398 and N.J.A.C. 19:31CC-1.5, but prior to the project completion date, as shall be defined in the project agreement, for:

a. Site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, including security systems such as surveillance cameras, access control systems, and secure entry points to protect the physical infrastructure, site-related utilities, including, but not limited to, water, electric, sewer, and stormwater; and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems, or other environmental components required to attain the minimum environmental and sustainability standards, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source, including N.J.S.A. 52:27H-80 et seq., but does not include site acquisition;

b. Obtaining and installing furnishings and machinery, apparatus, equipment, or software bundled with hardware, including but not limited to material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property; or any combination of the foregoing. Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Capital investment shall include the value of a capital lease, as defined by generally accepted accounting practices (GAAP), of furnishings and machinery, apparatus, or equipment, based on the shorter of the useful life of the leased property or the commitment period. Capital investment shall exclude furnishings, machinery, apparatus, equipment, or software bundled with hardware that is not placed into operation before the eligible business submits the certification pursuant to N.J.A.C. 19:31CC-1.11;

c. Site-related connectivity and telecommunications installation costs, including, but not limited to, fiber optic cables; energy power generation, including energy storage components, distributed storage systems, redundant power supplies, backup generators and uninterruptible power supplies (UPS); and advanced cooling technologies, such as liquid cooling or HVAC systems, to manage the heat generated by high-performance computing equipment;

d. Associated soft costs and the acquisition and installation of software that is not bundled with hardware, which aggregate costs under this paragraph (d) shall not exceed 20 percent of capital investment.

“Collaborative relationship” means a contractual relationship over the term of the commitment period, which may be renewed annually, between an eligible business and a (1) New Jersey-based public or private research university or universities; (2) New Jersey-based technology startup company or companies; or (3) New Jersey-based incubator(s), accelerator(s), studio(s), or other similar entity or entities in which a majority of the member businesses of such entity or entities are New Jersey-based technology startup companies that benefit from the collaborative relationship. This collaborative relationship is evidenced by measures such as price concessions, artificial intelligence support services, or other measures related to artificial intelligence as determined to be appropriate by the Authority. The net cost value of any collaborative relationship shall be at least 10 percent of the total awarded amount. A collaborative relationship shall not include an agreement with trade groups, industry associations, venture funds, or similar entities.

“Commitment period” means a period that is no less than two times the eligibility period specified in the project agreement entered into pursuant to N.J.S.A. 34:1B-399.

“Complex of buildings” means buildings that are part of the same financing plan and operational plan. The buildings comprising a complex of buildings may be in non-contiguous geographical locations.

“Compliance period” means the portion of the commitment period starting immediately after the conclusion of the eligibility period through the conclusion of the commitment period.

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

“Eligibility period” means the period in which an eligible business may claim a tax credit under the program, beginning with the tax period in which the authority accepts certification of the eligible business that it has met the capital investment and employment requirements of the program pursuant to N.J.A.C. 19:31CC-1.11 and extending thereafter for a term of five years.

"Eligible business" means any business that satisfies the criteria set forth in N.J.S.A. 34:1B-397 and N.J.A.C. 19:31CC-1.3 at the time of application for tax credits under the program.

"Eligible position" or "full-time job" means a full-time position in a business in this State which a business has filled with a full-time employee who is paid no less than 120 percent of the median salary for the county in which the qualified business facility is located, or if the qualified business facility is a complex of buildings which spans multiple counties, the county with the highest median salary among the counties where the buildings comprising a complex of buildings are located, and for which the business provides employee health benefits under a group health plan as defined in N.J.S.A. 17B:27-54, a health benefits plan as defined in N.J.S.A. 17B:27A-17, or a policy or contract of health insurance covering more than one person issued pursuant to N.J.S.A. 17B:27-27, et seq; provided, however, the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided by the business or pursuant to a collective bargaining agreement, no later than 90 days of employee start date, under a health benefits plan authorized pursuant to State or federal law. An eligible position shall not include an independent contractor or a consultant. To be eligible as an eligible position or full-time job, the employee must spend at least 80 percent of their work time in the State, or spend any other period of work time generally accepted by custom or practice as full-time employment in the State, as determined by the Authority in its sole discretion based on the characteristics of the employee's job and work time in the State. "Eligible position" shall not include a full-time position filled by a full-time employee who is otherwise in an eligible position but which full-time employee, prior to project application, was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

"Full-time employee" means a person:

a. Who is employed by a business for consideration for at least 35 hours a week and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.; or

b. Who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, pursuant to N.J.S.A. 34:8-67 et seq., for at least 35 hours a week and whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.;

c. Who is a partner of a business, who works for the partnership for at least 35 hours a week and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.; or

d. Who is a resident of another state, and would be eligible pursuant to subparagraphs a., b., or c. above, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., due to a reciprocity agreement with the other state.

The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for subparagraphs a. through d. above.

A "full-time employee" shall include, but shall not be limited to, an employee that has been hired by way of a labor union hiring hall or its equivalent, provided that the 35 hours of employment per week in the State shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons.

"Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business or a contract worker.- "Full-time employee" shall not include any person who, at the time of project application, works in New Jersey for consideration for at least 35 hours per week for the business, or who renders any other standard of service generally accepted by custom or practice as full-time employment, but who, prior to project application, works under an employee leasing agreement between the business and an employee leasing company that is not a professional employer organization.

"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 N.J.S.A. 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.

"New full-time job" means an eligible position created by a business, following approval of such business's application by the Board, that did not previously exist in this State, and which eligible position supports artificial intelligence (AI) or activities related to AI development, implementation, or innovation. For the purposes of determining the number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For the purpose of calculating the number of new full-time jobs, a position shall not be considered a new full-time job unless it is in addition to the number of full-time jobs in the business's Statewide workforce in the last tax accounting or privilege period prior to the tax credit amount approval.

"New Jersey-based public or private research university" shall mean the institutions located in New Jersey and designated in the Carnegie Classification of Institutions of Higher Education as R1 and R2 Doctoral Universities, or designated by the State as an urban research university pursuant to N.J.S.A. 18A:64O-2.

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

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

"Program" means the Next New Jersey (AI) Program established by N.J.S.A. 34:1B-396 and this subchapter.

"Project" means the capital investment at a qualified business facility and the employment commitment pursuant to the project agreement.

"Project agreement" means the contract executed between an eligible business and the authority pursuant to N.J.S.A. 34:1B-399, which sets forth the terms and conditions under which the eligible business may receive the tax credits authorized pursuant to the program.

"Qualified business facility" means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located therein, in this State used in

connection with the operation of an eligible business, which operations must support artificial intelligence (AI) or activities related to AI development, implementation, or innovation.

"Soft costs" means all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery, but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

"Statewide workforce" means the total number of Statewide full-time employees in the workforce of the business and any affiliate of the business, if the affiliate contributes any capital investment or full-time employees. "Statewide workforce" shall not include full-time employees at any final point-of-sale retail facilities unless the project, as approved by the Board, includes full-time employees engaged in final point-of-sale retail.

"Technology startup company" means a for-profit business located in the State that has been in operation fewer than seven years and is developing or possesses a proprietary technology, including but not limited to artificial intelligence, 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. For purposes of this definition, a technology startup company is located in the State if at least 50 percent of the company's employees, whether full-time or part-time, have their primary office in New Jersey and spend at least 80 percent of their work time in New Jersey, or any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

"Total development cost" means any and all costs incurred for and in connection with the project by the eligible business or its landlord until the issuance of a temporary certificate of occupancy, or upon such other event evidencing project completion, as set forth in the project agreement.

### 19:31CC-1.3 Eligibility criteria

(a) A business eligible pursuant to this section may submit an application to the Authority in accordance with the provisions of N.J.S.A. 34:1B-397 and N.J.A.C. 19:31CC-1.5 on or after XX, the effective date of this subchapter, but prior to March 1, 2029.

(b) The Authority shall make the determination that an applicant has met the criteria for eligibility for a tax award and shall determine the amount of the award. In order for a business to be eligible for tax credits under the program, the chief executive officer of the business or an equivalent officer shall demonstrate to the Authority at the time of application that:

1. The business will make, acquire, or lease a capital investment at the qualified business facility equal to or greater than \$100,000,000;
2. The business will create new full-time jobs in the State in an amount equal to or greater than 100 new full-time jobs;
3. The business or its division is primarily engaged in the artificial intelligence industry or the large-scale artificial intelligence data center industry. A business or its division shall be considered to be primarily engaged in an industry set forth herein if more than 50 percent of the business's or the division's employees, respectively, are engaged in AI-related activities or more than 50 percent of the business's or the division's revenue, respectively, is generated from AI-related activities, or both; provided, however, the use of AI applications in the furtherance of a business's or division's own operations shall not be considered in determining whether a business or division is primarily engaged in artificial intelligence or large-scale artificial intelligence data centers. AI-related activities include, but are not limited to: developing new AI algorithms and techniques, such as machine learning, natural language processing, and computer vision; creating AI-powered software and hardware products for various applications; medical AI modelling or programing; development of AI chatbots for customer service; AI development for vehicles; and collecting, storing, and managing the vast amount of data needed to train and use AI models;
4. The business will enter into a collaborative relationship;



5. The qualified business facility shall be in compliance with minimum environmental and sustainability standards;
  6. For construction contracts valued in excess of \$2,000, the project shall comply with the authority's affirmative action requirements at N.J.A.C. 19:30-3.1, et seq adopted pursuant to N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:31CC-1.18(a);
  7. Each worker employed to perform construction work in connection with a capital improvement at the qualified business facility 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 N.J.S.A. 34:11-56.25, et seq, and N.J.A.C. 19:31CC-1.18(b);
  8. Each worker employed to perform building services work at the qualified business facility 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 N.J.S.A. 34:11-56.25, et seq, N.J.S.A. 34:11-56.58, et seq, and N.J.A.C. 19:31CC-1.18(c).
- (c) Eligibility requirements shall be considered in the aggregate for a qualified business facility consisting of a complex of buildings.
- (d) The chief executive officer of the business, or an equivalent officer, shall certify that all factual representations made by the business to the Authority pursuant to (b) above are true under the penalty of perjury.

#### 19:31CC-1.4 Restrictions

- (a) A business shall not be awarded a tax credit pursuant to the program and shall not receive a certificate of compliance if the business received or receives a tax credit or other incentive award relating to the same capital investment and employees that qualify the business for a tax credit under the program, including, but not limited to, those under the "Emerge Program Act," N.J.S.A. 34:1B-336, et seq., or N.J.S.A. 34:1B-209.4.
- (b) A business with full-time employees that are the subject of an existing incentive award shall maintain 100 percent of the full-time employees subject of the existing incentive award before any full-time employee may be counted as an eligible position.

#### 19:31CC-1.5 Application submission requirements

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

1. Information on the business and, if applicable, the division, including all affiliates contributing either full-time employees or capital investment, or both, to the project, which shall include the following:

- i. The name of the business and, if applicable, the division;
- ii. The contact information of the person identified as the primary contact for the business;
- iii. The prospective future address of the business, if different;
- iv. The type of the business;
- v. Documentation demonstrating that more than 50 percent of employees of the business, or, if applicable, the division, are engaged in AI related activities, or that more than 50 percent of the applicant's, or, if applicable, the division's, revenue is generated from AI-related activities, or both;
- vi. The principal products and services and North American Industry Classification System number;
- vii. The New Jersey tax identification number;
- viii. The Federal tax identification number;
- ix. The total number of full-time employees in New Jersey on the date of the application and in the business's last tax period prior to the date of the application. If the application is approved in the business's subsequent tax period, the business must provide the total number of full-time employees in New Jersey in the tax period prior to credit amount approval;
- x. The total list of the business's locations in New Jersey and the function performed at each location;
- xi. A list of all locations in this State of the business and affiliates that will be contributing to the capital investment or full-time employees to the project;

- xii. Evidence documenting formation status and membership in a cooperative agreement, if applicable;
- xiii. A list of members of any cooperative that will be contributing capital investment or full-time employees to the project, if applicable;
- xiv. A letter of intent evidencing a proposed collaborative relationship;
- xv. The chief executive officer or equivalent officer of the business shall certify that the business applying for the program satisfies the criteria at N.J.A.C. 19:31CC-1.7(c)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury; that contractors or subcontractors that will perform work at the qualified business facility are registered as required pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury, and that they have reviewed the application information submitted and that the representations contained therein are accurate;
- xvi. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- xvii. Submission of a tax clearance certificate, pursuant to N.J.S.A. 54:50-39;
- xviii. A list of all the development subsidies, as required by “The Development Subsidy Job Goals Accountability Act,” N.J.S.A. 52:39-1, et seq., that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received; and
- xix. Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information, which shall include the following:

- i. An overall description of the proposed project;
- ii. A description of the capital investments planned by the business at the proposed qualified business facility;

- iii. The estimated value of the capital investment and financial information demonstrating ability to complete the capital investment;
- iv. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project;
- v. Identification of the site or sites of the proposed qualified business facility, including the block and lot of the site or sites as indicated upon the local tax map;
- vi. A narrative description of the proposed qualified business facility, including a description of how the qualified business facility supports artificial intelligence (AI) or activities related to AI development, implementation, or innovation, and a floor plan or site plan identifying the uses and square feet and gross leasable area for each use and a description of how each use meets the requirements under the definition of qualified business facility;
- vii. A project schedule that identifies the anticipated date of commencement and completion of construction, as well as the anticipated date of project completion;
- viii. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants, and total net leasable area) and/or details of the purchase or building of the proposed qualified business facility; as well as all lease agreements, ownership documents, or substantially similar documentation for the business's proposed in-State locations and all lease agreements, ownership documents, to the extent they exist;
- ix. The total number of anticipated new full-time jobs in New Jersey, and the distribution of such totals identified by business entity if any such jobs and employees will be provided by affiliates; and
- x. Any other necessary and relevant information as determined by the Authority for a specific application.

3. Employee information, which shall include the following:

- i. A list of proposed new full-time jobs in the State, the anticipated salaries of the employees filling such new full-time jobs, and a description of how these proposed new full-time jobs

support artificial intelligence (AI) or activities related to AI development, implementation, or innovation;

ii. The WR 30 of the business for the privilege period prior to application, if applicable; and

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

(b) The business applying to the program shall submit an application fee as set forth at N.J.A.C. 19:31CC-1.6.

(c) The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project.

(d) If circumstances require a business to amend its application to the Authority, then the business, or chief executive officer or equivalent officer of the business, shall certify to the Authority that the information provided in its amended application is true pursuant to the penalty of perjury.

#### 19:31CC-1.6 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For each project with 100 to 149 new full-time jobs, the fee to be charged at application shall be \$ 10,000;
2. For each project with 150 to 199 new full-time jobs, the fee to be charged at application shall be \$ 25,000;
3. For each project with 200 or more new full-time jobs, the fee to be charged at application shall be \$ 50,000; and

(b) A business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee shall be charged prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For each project with 100 to 149 new full-time jobs, the fee shall be \$ 75,000;
2. For each project with 150 to 199 new full-time jobs, the fee shall be \$ 150,000;
3. For each project with 200 or more new full-time jobs, the fee shall be \$ 330,000.

(d) A business shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate, as follows:

1. For each project with 100 to 149 new full-time jobs, the fee shall be \$ 10,000;
2. For each project with 150 to 199 new full-time jobs, the fee shall be \$ 100,000;
3. For each project with 200 or more new full-time jobs, the fee shall be \$ 200,000.

(e) A business shall pay to the Authority an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment, employment, and other eligibility requirements of the program for the respective project pursuant to N.J.A.C. 19:31CC-1.11, and for the duration of the commitment period. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, as follows:

1. For each project with 100 to 149 new full-time jobs, the annual servicing fee shall be \$ 20,000;
2. For each project with 150 to 199 new full-time jobs, the annual servicing fee shall be \$ 40,000;
3. For each project with 200 or more new full-time jobs, the annual servicing fee shall be \$ 120,000; and

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31CC-1.14 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For each project with 100 to 149 new full-time jobs, the fee shall be \$ 10,000, and \$ 10,000 for each additional request made annually;
2. For each project with 150 to 199 new full-time jobs, the fee shall be \$ 20,000, and \$ 20,000 for each additional request made annually;
3. For each project with 200 or more new full-time jobs, the fee shall be \$ 30,000, and \$ 30,000 for each additional request made annually.

(g) A business seeking to assign any or all of its right, title, and interest in and to a project agreement and the incentive award payable thereunder, shall pay to the Authority a fee, as follows:

1. For each project with 100 to 149 new full-time jobs, the fee shall be \$37,500;
2. For each project with 150 to 199 new full-time jobs, the fee shall be \$75,000;
3. For each project with 200 or more new full-time jobs, the fee shall be \$165,000.

(h) A business shall pay, to the Authority, a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and, a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For each project with 100 to 149 full-time jobs, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$ 15,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;
  2. For each project with 150 to 199 new full-time jobs, a non-refundable fee of \$ 7,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval;
- and

3. For each project with 200 or more new full-time jobs, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 35,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(i) A non-refundable fee shall be paid for the first six-month 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 for the respective project pursuant to N.J.A.C.

19:31CC-1.11; and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For each project with 100 to 149 new full-time jobs, the fee for the first six-month extension shall be \$ 10,000, and \$ 15,000 for each subsequent extension;
2. For each project with 150 to 199 new full-time jobs, the fee shall be \$ 20,000 for the first six-month extension, and \$ 30,000 for each subsequent extension;
3. For each project with 200 or more new full-time jobs, the fee shall be \$ 30,000 for the first six-month extension, and \$ 50,000 for each subsequent extension; and

(j) A business seeking to terminate an existing project agreement in order to participate in a project agreement authorized pursuant to the Next New Jersey (AI) Program shall pay, to the Authority, a non-refundable fee as follows:

1. For each project with 100 to 149 new full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 5,000, and \$ 15,000 for each termination that requires extensive staff time and Board approval;
2. For each project with 150 to 199 new full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 7,500, and \$ 25,000 for each termination that requires extensive staff time and Board approval;
3. For each project with 200 or more new full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$ 10,000, and \$ 35,000 for each termination that requires extensive staff time and Board approval.



#### 19:31CC-1.7 Review of completed application

(a) A business seeking an approval of tax credits for a project shall submit a completed application for tax credits prior to March 1, 2029.

(b) The Authority shall conduct a review of each completed application commencing with the completed application bearing the earliest submission date and contingent on funding availability, which review shall determine whether the applicant:

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

(c) Before the Board may consider a completed application:

1. 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 eligible business is in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

- i. Substantial good standing shall be determined by each department and mean, at a minimum, that the eligible business:

- (1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

- (A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the eligible business; and

- (B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

- (2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether a business is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the eligible business.

(d) Upon completion of the review of an application and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the amount of tax credits to be awarded. The Authority shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent pursuant to N.J.A.C. 19:31CC-1.9(b).

#### 19:31CC-1.8 Determination of award amount

(a) The amount of the tax credit allowed under the program to an eligible business shall be the lesser of: (1) the product of 0.1 percent of the eligible business's total capital investment multiplied by the number of new full-time jobs; (2) 25 percent of the eligible business's total capital investment; or (3) \$250,000,000.

(b) No more than the amount of tax credits equal to the total credit amount awarded under the program divided by the duration of the eligibility period in years may be taken in any tax period.

(c) The amount of the tax credit allowed annually be determined by recalculating the amount set forth in (a) upon receipt and acceptance of the annual report pursuant to N.J.A.C. 19:31CC-1.12(a).

#### 19:31CC-1.9 Approval letter

(a) Following Board approval and prior to the Authority and an eligible business executing a project agreement, the Authority shall require an eligible business to execute and return an approval letter to the Authority.

(b) The approval letter shall contain conditions subsequent that shall include but not be limited to:

1. The requirement that the eligible business has entered into a collaborative relationship;

2. That the project complies with the Authority's prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:31CC-1.18(b) and (c), and affirmative action requirements at N.J.A.C. 19:31CC-1.18(a);
  3. That the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and the requirement that the minimum environmental and sustainability standards are incorporated into the proposed project;
  4. The requirements necessary for the Authority to execute the project agreement; and
  5. Documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the eligible business, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals.
- (c) Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the eligible business does not submit the documentation required in subsection (b) above within a year after approval of the application.
- (d) The approval letter shall provide an estimated date of completion and include a requirement for periodic progress reports.
- (e) The chief executive officer of the eligible business, or an equivalent officer, shall sign the approval letter. The approval letter shall contain language that all factual representations made by the eligible business to the authority pursuant to this subsection are true under penalty of perjury.

#### 19:31:CC-1.10 Project agreement and certifications

- (a) Upon satisfaction of the conditions in the approval letter, the Authority shall enter into a project agreement with the eligible business. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the project agreement on behalf of the State. The awarding of tax credits shall be conditioned on the eligible business's compliance with the requirements of the agreement. The project agreement shall specify and include:
1. A detailed description of the proposed project that will result in job creation, and the number of new full-time jobs that are approved for tax credits;

2. Any personnel information that will enable the Authority to administer the program;
3. A requirement that the eligible business maintain the project at a location in New Jersey for the commitment period, and a provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the eligible business does not maintain the project at a location in New Jersey for the commitment period;
4. A requirement that the eligible business maintain the number of new full-time jobs, or the salaries thereof, to which the eligible business certified at the commencement of the eligibility period pursuant to N.J.A.C. 19:31CC-1.11, and a provision to permit the Authority to proportionally reduce the tax credit award by recalculating the amount as set forth in N.J.A.C. 19:31CC-1.8(a) in any tax period in which the number of new full-time jobs, or the salaries thereof, is reduced below the new full-time jobs, or the salaries thereof, to which the eligible business certified at the commencement of the eligibility period;
5. A method for the eligible business to certify that it has met the capital investment and employment requirements of the program as set forth in N.J.S.A. 34:1B-397(b) and (c), and N.J.A.C. 19:31CC-1.3, and to report annually to the Authority the number of new full-time jobs, and the salaries thereof, for which the tax credits are to be allowed;
6. Representations that the eligible business is in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, or has entered into an agreement with the departments that includes a practical corrective action plan, as set forth in N.J.A.C. 19:31CC-1.7(c)1, and that the project complies with all applicable laws, and specifically, that the project does not violate any environmental law, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
7. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the eligible business is in substantial good standing, as defined at N.J.A.C. 19:31CC-1.7, or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable, as set forth in N.J.A.C. 19:31CC-1.7(c)1.

8. A provision providing that if the eligible business is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and/or the Department of the Treasury and has not entered into an agreement with the respective department(s), as set forth in N.J.A.C. 19:31CC-1.7(c)1, and has been given written notice thereof, including opportunity to be heard or to contest the determination, by the respective department, then the eligible business may forfeit the issuance of tax credits pending the resolution of the underlying violation(s) or other issues.
9. A provision acknowledging each contractor or subcontractor performing work at the qualified business facility is registered as required pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., 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 possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.
10. A provision providing that if the eligible business fails to confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56-48, et seq., has not been debarred by the Department of Labor and Workforce Development from engaging or bidding on Public Works Contracts in the State, and/or possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury, then the eligible business may forfeit the issuance of tax credits pending the resolution of the underlying violation(s) or other issues.
11. A provision permitting an audit of the payroll records of the eligible business and any other evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31CC-1.11, the annual reports pursuant to N.J.A.C. 19:31CC-1.12, and the addition of affiliates pursuant to N.J.A.C. 19:31CC-1.12(i) from time-to-time, as the Authority deems necessary;
12. A requirement for the eligible business to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;
13. A provision permitting the Authority to amend the agreement;

14. A provision establishing the conditions under which the Authority, the eligible business, or both, may terminate the agreement;

15. An agreement by the eligible business that the statute of limitations for the collection and assessment of corporation business tax set forth at N.J.S.A. 54:10A-1, et seq and insurance premiums tax set forth at N.J.S.A. 54:18A-2 and A-3; N.J.S.A. 17:32-15; or N.J.S.A. 17B:23-5 will be extended to the period of the commitment period;

16. Indemnification and insurance requirements; and

17. Default and remedies, including, but not limited, to a default if an eligible business made a material misrepresentation on its application.

(b) Upon completion of the capital investment and employment requirements of the program, an eligible business shall submit to the Authority certifications evidencing that the eligible business has satisfied the conditions relating to the capital investment, employment requirements, and other eligibility requirements of the Act, this subchapter, and the project agreement with supporting evidence satisfactory to the Authority.

(c) Absent extenuating circumstances and the written approval of the Authority, the eligible business shall submit the certifications as described at N.J.A.C. 19:31CC-1.11 within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline. However, the date of certification shall not occur later than four years following the date of approval of the application. The Authority may grant one additional extension of no more than one year, taking the date of completion to five years past the date of approval of the application, but only if:

1. The Authority finds that:

i. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;

ii. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and

iii. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay; and

2. The eligible business provides timely notice to the Authority of the delay within 30 days after the eligible business has actual or constructive knowledge of the delay, and shall provide periodic reports, not less than every 30 days, of the status of the delay and the steps the eligible business is taking to mitigate or overcome the delay.

(d) In addition to the extensions in (c) above, if the Governor declares an emergency, then the Chief Executive Officer of the Authority shall have the discretion to grant an extension for the duration of the emergency and the Board of the Authority, upon recommendation of the Chief Executive Officer of the Authority, may grant two additional six-month extensions; provided, however, that:

1. The extensions are due to the economic disruption caused by the emergency;
2. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;
3. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and
4. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

#### 19:31:CC-1.11 Project completion certification

(a) The certifications required at N.J.A.C. 19:31CC-1.10(c) shall be in the following form:

1. The eligible business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to the capital investment. If the certified capital investment is less than the minimum eligibility requirement set forth at N.J.S.A. 34:1B-397(b) and N.J.A.C.

19:31CC-1.3(b)1, the business shall no longer be eligible for tax credits.

2. The eligible business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to employment and the salaries thereof. The number of new full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits. The number of

new full-time jobs utilized by the Authority in the calculation of tax credits shall not be increased regardless of additional jobs in the State. In no event will the number of jobs exceed the number of jobs previously approved by the Board. If the certification indicates that the employment is less than the minimum eligibility requirement set forth at N.J.S.A. 34:1B-397(c) and N.J.A.C. 19:31CC-1.3, the business shall no longer be eligible for tax credits.

3. The Authority shall qualify certified public accountants and provide to the eligible business the list of qualified certified public accountants; provided, however, the eligible business may select a certified public accountant that is independent to the eligible business and not on the Authority's list of qualified certified public accountants for purposes of the capital investment certification, or the eligible business's chief financial officer may certify for purposes of the employment certification upon the Authority's prior approval, if the eligible business demonstrates an extenuating circumstance prohibiting the eligible business from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the eligible business.
4. The eligible business shall submit a certification from a licensed engineer that the project has adhered in all material respects to the plan submitted by the business describing how the eligible business would satisfy the minimum environmental and sustainability standards.
5. The eligible business shall submit evidence of a collaborative relationship.
6. The eligible business shall submit a floor plan or site plan which identifies the uses and square feet and gross leasable area for each use and a description of how each use meets the requirements in the definition of qualified business facility.
7. The Authority may request additional information or certifications from the eligible business to determine eligibility and may seek information from the Department of Labor and Workforce Development to support the certifications.



(b) The chief executive officer of the business, or an equivalent officer, shall certify that all factual representations made by the business to the authority pursuant to this subsection are true under penalty of perjury.

(c) At, or before, the date of certifications, any modification to the project as approved by the Board, including, but not limited to, a reduction in the amount of the capital investment, new full-time jobs, or square foot of gross leasable area for each use meeting the requirements in the definition of qualified business facility, shall require review and approval by the Authority to determine that the project as modified does not undermine the basis for the tax credit award approved.

(e) The Authority may recalculate the tax credit award if the certifications demonstrate different assumptions or facts upon which the Authority relied to calculate the tax credit award at approval.

(f) In accordance with the project agreement, beginning upon the Authority's acceptance of the certification pursuant to (a) above, including, but not limited to, the receipt of temporary certificates of occupancy for any portion of the project sufficient to evidence project completion or upon any other event evidencing project completion as set forth in the project agreement, and determination that other required conditions have been met, within 90 days of the Authority's acceptance of the certifications and evidence satisfactory to the Authority, the Authority shall notify the eligible business and notify the Director. The business shall receive its tax credit certificate and shall be allowed a tax credit in an amount determined pursuant to N.J.A.C.

19:31CC-1.8, which will be based on the information submitted in the certifications pursuant to (a) above. The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

#### 19:31:CC-1.12 Annual reports

(a) An eligible business that is awarded tax credits under the program shall submit, annually, no later than 120 days after the end of each tax period during the commitment period, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment period, a report that indicates that the eligible business continues to maintain the number of new

full-time jobs and the salaries thereof specified in the project agreement, including, but not limited to:

1. A certification, made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31CC-1.11(a)3, containing the following:

- i. The number of full-time employees and new full-time jobs in the State;
- ii. The list of affiliates that contributed to the full-time employees in the State;
- iii. The number of full-time employees in the eligible business's Statewide workforce;
- iv. The number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application;
- v. Upon request by the Authority, a copy of the eligible business's applicable New Jersey tax return showing business income and withholdings as a condition of its continuation in the program; and
- vi. The quarterly wage report required pursuant to N.J.S.A. 43:21-14 as submitted to the Department of Labor and Workforce Development together with an annual payroll report showing:

- (1) The new full-time jobs that were created in accordance with the project agreement;

- (2) The new full-time jobs created during each subsequent year of the commitment period; and

- (3) The salaries, as measured by the median salary, of the new full-time jobs created;

2. If applicable, information on any change or anticipated change in the membership of the cooperative membership comprising the eligible business that elect to claim all or a portion of the credit;

3. The eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., 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 possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

4. A certification from the eligible business and its counterparties that the collaborative relationship remains in effect and is not in default and that the eligible business is making the contribution(s) required pursuant to the collaborative relationship;

5. A floor plan or site plan which identifies the uses and square feet and gross leasable area for each use and a description of how each use meets the requirements in the definition of qualified business facility;

6. Evidence that the eligible business remains in compliance with the Authority's prevailing wage and affirmative action requirements pursuant to N.J.A.C. 19:31CC-1.18(a); and

7. A certification indicating whether or not the eligible business is aware of any condition, event, or act that would cause the eligible business not to be in compliance with the approval, the Act, the project agreement, and this subchapter.

(b) An eligible business shall explain, in the certified report required pursuant to (a) above, the reason for any discrepancies between the annual payroll report submitted by the eligible business to the Authority and the quarterly wage report submitted to the Department of Labor and Workforce Development.

(c) The chief executive officer of the eligible business, or an equivalent officer, shall certify that the information provided pursuant to (a) above is true under the penalty of perjury. Claims, records, or statements submitted by an eligible business to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

(d) In conducting its annual review, the Authority may require an eligible business to submit any information determined by the Authority to be necessary and relevant to its review.

(e) Upon receipt and review to the Authority's satisfaction of each certified report required pursuant to (a) above submitted during the eligibility period, the Authority shall provide to the eligible business and the Director a certificate of compliance indicating the amount of tax credits

that the eligible business may apply against its tax liability. The Authority shall pro rate the tax credit for the first and last years of the eligibility period based on the number of full months the project was certified in the year the eligible business first certifies. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period.

(f) An eligible business shall forfeit the credit amount for any tax period for which the eligible business's documentation remains uncertified as of the date for certification indicated in the project agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the eligible business.

(g) The failure of an eligible business to submit to the authority a copy of its annual payroll report or submit the quarterly wage report in accordance with the provisions of this section during the eligibility period absent extenuating circumstances and the written approval of the Authority shall result in the forfeiture of the award for that year.

(h) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(i) An eligible business may include an affiliate for any period, provided that the eligible business provides a valid tax clearance certificate for the affiliate and a verification of the nature of the affiliate relationship during the relevant period, and provided further that the affiliate provides acceptable responses to the Authority's legal disclosures inquiries in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2, as determined by the Authority. A formal modification of the Authority's approval of the project agreement or approval letter shall not be necessary to add or remove an affiliate after approval or execution of the project agreement or approval letter. Verification of the nature of the affiliate relationship pursuant to section 1563 of the federal Internal Revenue Code (26 U.S.C. §1563) or subsection (b) or (c) of section 414 of the federal Internal Revenue Code (26 U.S.C. §414) shall be demonstrated through a certification by an independent certified public accountant or an opinion of counsel.

(g) An eligible business may change its name filed with the Authority by providing a copy of the filed amendment to the certificate of incorporation or formation, as the case may be, of the eligible business and a valid tax clearance certificate with the eligible business's new name. A

formal modification of the Authority's approval shall not be necessary to change an eligible business's name after approval or execution of the project agreement, provided that the eligible business's name change does not change its tax identification number. If the eligible business changes its tax identification number, a formal modification of the Authority's approval shall be necessary.

#### 19:31:CC-1.13 Tax credit amount; application and allocation of the tax credit

- (a) Upon receipt by the Director of the certificate of compliance, the Director shall allow the eligible business a tax credit. The eligible business may apply the credit allowed by the Director against the eligible business's tax liability for the tax period in which the Director allowed the tax credit or may carry forward the credit for use by the eligible business in any of the next ten successive tax periods, which credit shall expire thereafter.
- (b) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to N.J.S.A. 54:10A-5; N.J.S.A. 54:18A-2 and A-3; N.J.S.A. 17:32-15; or N.J.S.A. 17B:23-5.
- (c) Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate 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 consistent with any rule, guidance, or other publication issued by the Division of Taxation.
- (d) 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 pursuant to N.J.S.A. 54:10A-5. The amount of a credit applied pursuant to this section against the tax imposed pursuant to N.J.S.A. 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 at N.J.S.A. 54:10A-5.

#### 19:31:CC-1.14 Application for tax credit transfer certificate

- (a) An eligible business may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, within three years of the tax period in which the Director allows the eligible business a tax credit, in lieu of any amount of the tax credit against

the eligible business's State tax liability. The tax credit transfer certificate, upon receipt thereof by the eligible business from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in an amount not less than \$ 25,000, within three years of the tax period in which the eligible business receives the tax credit transfer certificate from the Director, to another person that may have a tax liability pursuant to section N.J.S.A. 54:10A-5; N.J.S.A. 54:18A-2 and A-3; N.J.S.A. 17:32-15; or N.J.S.A. 17B:23-5. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall apply the transferred credit against the same tax for which the eligible business was approved a tax credit under the program. The tax credit transfer certificate provided to the eligible business shall include a statement waiving the eligible business's right to claim the credit that the eligible business has elected to sell or assign.

(b) The eligible business shall not sell or assign a tax credit transfer certificate allowed pursuant to this section for consideration received by the eligible business of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The tax credit transfer certificate issued to the eligible business by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to N.J.S.A. 34:1B-394, et seq, and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(c) The purchaser or assignee of a tax credit transfer certificate shall be subject to any limitations and conditions that apply to the use of the tax credits by the eligible business. 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. If an otherwise eligible business is assigned a project agreement pursuant to N.J.A.C. 19:31CC-1.17(b), the resulting transfer of the certificate shall not be considered a sale of the 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;
4. The State tax against which the transferee may apply the tax credit; and
5. The consideration received by the transferrer.

#### 19:31:CC-1.15 Cap on total credits

The combined value of all credits approved by the Authority pursuant to this program shall be subject to limitations set forth at N.J.S.A. 34:1B-362. The amount of available tax credit shall be posted at the beginning of each calendar year on the website of the Authority.

#### 19:31:CC-1.16 Reduction, forfeiture, recapture of tax credits

(a) If the eligible business does not remain in compliance with any of the eligibility requirements set forth at N.J.S.A. 34:1B-397(a)(2), (3), (4), and (5) and N.J.A.C. 19:31CC-1.3(b)2, 3, 4, and 5, then:

1. If the noncompliance occurs during the eligibility period, the eligible business shall forfeit its credit amount for that tax period, and if in the next tax period the eligible business does not provide documentation satisfactory to the Authority demonstrating compliance, the eligible business shall forfeit the tax credit for each subsequent tax period.

2. For any forfeiture of more than one tax period during the eligibility period or any noncompliance during the compliance period, the Authority may recapture all, or part of, a tax credit awarded. A partial recapture may be calculated to recognize the period of time that the business was in compliance.

(b) If in any tax period during the commitment period an eligible business fails to timely submit its annual report as required by N.J.A.C. 19:31CC-1.12, the business shall forfeit the credit amount for that tax period, absent extenuating circumstances and the written approval of the Authority. Failure to timely submit the annual report for two consecutive years shall be an event of default of the project agreement.

(c) If, in any tax period, the number of new employees in eligible positions, or the salaries thereof, drops below 80 percent of the number of new employees in eligible positions specified in the project agreement or required as a condition of program eligibility pursuant to N.J.S.A.

34:1B-397(c) and N.J.A.C. 19:31CC-1.3(b)2, whichever is greater, then the eligible business shall forfeit its tax credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the number of new employees in eligible positions, or the salaries thereof, to 80 percent of the number specified in the project agreement or required as a condition of program eligibility pursuant to section N.J.S.A. 34:1B-397(c) and N.J.A.C. 19:31CC-1.3(b)2, whichever is greater, is reviewed and approved by the authority.

(d) If in any tax period an eligible business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under the program, then the eligible business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the eligible business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(e) As of the date the annual report required pursuant to N.J.A.C. 19:31CC-1.12:

1. If any worker employed to perform construction work or building services work at the project is paid less than the prevailing wage rate pursuant to N.J.S.A. 34:11-56.25, et seq, N.J.S.A. 34:11-56.58, et seq, and N.J.A.C. 19:31CC-1.18(b) or (c) during the relevant tax period, then the eligible business shall forfeit all credit for the tax period in which the prevailing wage is not paid and each subsequent tax period until the first period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.
2. If the eligible business is not in compliance with the requirements set forth in N.J.A.C. 19:31CC-1.10(a)10, the Authority may suspend the tax credits for the relevant tax period, and if the suspension continues for two years, then, at the Authority's sole option, the eligible business may forfeit the tax credits for those years.



(f) The Authority may recapture all, or part of, a tax credit awarded if an eligible business does not remain in compliance with any other the requirements of the program in the Act, this subchapter, and the project agreement for the duration of the commitment period. Failure of the eligible business to meet any program criteria shall constitute a default and shall result in the recapture of all or part of the tax credit awarded.

(g) If, at any time, the Authority determines that the eligible business made a material misrepresentation on the eligible business's application, project completion certification, annual report, or any related submissions, the eligible business shall forfeit, and the Authority may recapture any or all of the incentive award and all tax credits awarded under the program, which shall be in addition to any other remedies in the project agreement and any criminal or civil penalties to which the eligible business and the respective officer may be subject.

(h) If, based on new information, the Authority determines that a forfeiture or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits for the relevant tax period(s).

(i) Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

(j) If all or part of a tax credit sold or assigned pursuant to N.J.S.A. 34:1B-401 and N.J.A.C. 19:31CC-1.14 is subject to recapture, then the Authority shall pursue recapture from the eligible business, and not from the purchaser or assignee of the tax credit transfer certificate.

(k) Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31:CC-1.17 Effect of sale or lease of qualified facilities and relocation of qualified business facility

(a) Except for (b) below, if the qualified business facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller, provided,

however, that any tax credits of tenants shall remain unaffected. If the business merges or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods.

(b) A business entity who has entered into a project agreement may, upon notice to and written consent of the Authority, assign, transfer, or sell all of its right, title, and interest in, and to, the project agreement and in the tax credits pursuant to the project agreement, and the right to receive the tax credits, along with the rights and remedies provided to the eligible business pursuant to the project agreement, provided that any sale, assignment, or transfer of the project agreement shall be to the purchaser, assignee, or transferee of the qualified business facility. To decide whether to consent, the Authority will consider the purchase price and terms of the assignment, transfer, or sale; the allocation of the purchase price to the tax credit in relation to the minimum required pursuant to N.J.A.C. 19:31CC-1.14(b); and the impact of the transaction to the eligibility criteria. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code.

(c) The Authority shall publish, on its internet website, the following information concerning each assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the assignment, transfer, or sale of a right, title, or interest in a project agreement;
2. The name of the person or entity receiving the assignment, transfer, or sale of a right, title, or interest in the project agreement;
3. The value of the right, title, or interest in the project agreement; and
4. The consideration received by the person or entity offering the assignment, transfer, or sale of the right, title, or interest in the project agreement.

(d) If an eligible business leases, or subleases, or otherwise reduces its real estate tenancy in whole or in part during the eligibility period, the new real estate tenant shall not acquire the tax credits of the eligible business, and the eligible business shall forfeit all tax credits for any tax period of its lease or sublease in which the eligible business, in continued occupation of a portion

of the qualified business facility, fails to maintain the number of jobs required for the eligible business to earn tax credits for the tax period or fails to independently satisfy the minimum capital investment or sustainability requirements for the program as set forth at N.J.S.A. 34:1B-397. Provided, however, if the capital investment of the eligible business in the occupied portion of the qualified business facility is below the project minimum capital investment as set forth at N.J.S.A. 34:1B-397(b), the eligible business may include capital investment made by, or on behalf of, the new real estate tenant in the leased or subleased portion of the qualified business facility, so long as that capital investment is not the subject of an independent application under an incentive program with the Authority. Notwithstanding the foregoing, an eligible business may lease or sublease a portion of its qualified business facility to a new real estate tenant that is a quality child care facility and up to five percent for any other new real estate tenant without forfeiting any of the eligible business's credits, provided that the new real estate tenant's full-time employees and capital investment shall not be included in the eligible business's eligible full-time employees or capital investment.

#### 19:31:CC-1.18 Affirmative action and prevailing wage requirements

(a) The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 shall apply to construction contracts valued in excess of \$2,000 at the qualified business facility undertaken in connection with financial assistance received under the program. The affirmative action requirements shall apply for two years after the Authority has issued the first certificate of compliance.

(b) The Authority's prevailing wage requirements at N.J.S.A. 34:1B-5.1, N.J.A.C. 19:30-4, and 19:31CC-1.3(b)7 shall apply to construction work performed at the qualified business facility undertaken in connection with financial assistance received under the program during the commitment period.

(c) The Authority's prevailing wage requirements at N.J.A.C. 19:30-4, and 19:31CC-1.3(b)8 shall apply to building services work for the duration of the commitment period.

#### 19:31:CC-1.19 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) A business may appeal the Authority's action by submitting in writing to the Authority, within 20 calendar days from the effective date of such action, an explanation of the grounds for such appeal. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

1. The Chief Executive Officer of the Authority, or delegee, shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record, which includes but is not limited to the written appeal, any documentation provided in support of the appeal, and any written staff response to the appeal. The hearing officer may require an in-person hearing and has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information.
2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing the hearing officer's finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The business shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer of the Authority, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report. Any such comments will be incorporated into the final report presented to the Board.
3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer of the Authority, if any, and any written comments and exceptions timely submitted by the business. Based on that review, the Board shall issue a final decision on the appeal.
4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

#### 19:31:CC-1.20 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.