



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: March 12, 2025

SUBJECT: The Next New Jersey Program – AI

Request:

The Members are asked to approve:

- 1) The attached special adoption of the new rules and concurrent proposed new rules for the new Next New Jersey Program – AI (“Next NJ Program – AI”) and to authorize staff to (a) submit the special adoption of the new rules and concurrent proposed new rules to the Office of Administrative Law for publication in the New Jersey Register; and (b) submit the rules as final adopted rules to the Office of Administrative Law for publication in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and
- 2) The creation of the Next NJ Program – AI, a tax credit incentive program signed into law as P.L. 2024, c. 49 on July 25, 2024 (codified at N.J.S.A. 34:1B-394, et. seq.), which is designed to attract and support the artificial intelligence (“AI”) industry and AI related businesses.
- 3) Delegation of authority to the Chief Executive Officer to approve administrative changes to approved Next NJ Program – AI as currently exists for New Jersey Economic Recovery Act of 2020 programs and for the newly approved CAFE program.

New Jersey Economic Recovery Act

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020, into law as P.L. 2020, c.156 (“ERA”). On July 7, 2021, Governor Murphy signed P.L. 2021 c.160 amending P.L. 2020, c.156 and further improving the programs established under the ERA.

The program being presented for the Members’ approval in this memorandum is the Next NJ Program - AI, which will leverage \$500 million of uncommitted funds from the Emerge/Aspire programs created under the ERA and will accept applications through March 1, 2029, on a rolling basis subject to available tax credits.

This memorandum provides a summary about the Next NJ Program – AI, including eligibility criteria and specific program requirements. The program rules, which will govern the program, are included in the attached rules for Board review and approval.

Program Purpose and General Description

The Next NJ Program – AI is a tax credit program aimed at drawing significant investment, creating high-paying jobs, and cementing New Jersey's position as a leader in the AI industry economy. The Next NJ Program – AI offers competitive incentives for companies ready to invest in New Jersey's AI sector and commit to the State's long-term growth. It awards tax credits to eligible businesses investing in large-scale AI data centers and AI-related development projects, including, but not limited to, visual perception, speech recognition, decision-making, translation between languages, and generative AI.

To be eligible for the Next NJ Program – AI, a project must meet various eligibility criteria at the time of application. In addition, a project must comply with certain standards during the eligibility period (that is, when tax credits can be used) and the compliance period (the additional amount of the commitment period after the eligibility period). Some of the key criteria and standards include:

- Create a minimum of 100 new full-time jobs in the State.
- Meet minimum capital investment requirement of \$100 million in the State.
- Each incented job must pay at least 120 percent of the median salary for the county in which the project is located. If the qualified business facility consists of a complex of buildings spread across multiple counties, the county with the highest median salary among the counties where the buildings are located shall be used.
- The business or its division is primarily engaged in the AI industry or the large-scale AI data center industry. More than 50 percent of the businesses or division’s employees are engaged in AI-related activities, or more than 50 percent of the business’s or division’s revenue is generated from AI-related activities, or both.
- The business will enter into a collaborative relationship with one of three types of entities.
- The business will ensure that at least 80 percent of incented employees’ work time is spent in New Jersey.
- The business will commit to stay in the State and maintain the incented jobs for a total of ten (10) years.

Tax credits awarded through the Next NJ Program – AI: 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 that 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 the Next NJ Program – AI statutes and any other terms and conditions that the Director may prescribe.

In addition to meeting the program eligibility, the business must be in substantial good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury. If a compliance issue exists, the eligible business may enter into an agreement with the respective Department that includes a practical corrective action plan. Furthermore, the business will be required to provide, prior to execution of an agreement, a valid tax clearance certificate from the New Jersey Division of Taxation. The business must also comply with environmental laws (including flood hazard requirements). Projects also need to meet minimum environmental and sustainability standards established by the Authority in accordance with the green building manual prepared by the Commissioner of the Department 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.

Construction contracts and building services contracts must adhere to New Jersey's prevailing wage and labor compliance requirements. Construction contracts must comply with the Authority's affirmative action requirements. The payment of prevailing wages shall apply to all construction work performed at the qualified business facility that is undertaken in connection with financial assistance received under the Program. Additionally, the payment of prevailing wages shall apply to building services work, such as maintenance and custodial services, if applicable, for the duration of the commitment period as outlined in the draft rules.

Eligibility Criteria

The following highlights certain key eligibility requirements for the Next NJ Program - AI. Full eligibility details are contained in the draft rules. To be eligible, a project must meet various eligibility criteria at application:

Job Creation

A business must create a minimum of 100 new full-time jobs to be eligible for the Next NJ Program - AI. To qualify as an eligible job, the business must demonstrate to the Authority's satisfaction that the employee spends at least 80 percent of the individual's work time in this State, 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. Additionally, a position is not counted as an incented 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.

Capital Investment

The Next NJ Program – AI, requires a business to meet a minimum capital investment of \$100 million to the qualified business facility (QBF). For specific details to eligible capital investment costs, please refer to Rules in appendix C.

Affiliates

An affiliate of an eligible business may contribute towards the capital investment and eligible position 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.

Artificial Intelligence (AI)

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.

Collaboration

The Next NJ Program - AI requires that the business enter into a collaborative relationship, which is a contract between the business and:

1. New Jersey-based public or private research university; or
2. New Jersey-based technology startup company; or
3. New Jersey-based incubator(s), accelerator(s), studio(s), or other similar entity or entities wherein a majority of the members of such entity or entities are technology startup companies which 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 and be in effect for the duration of the ten (10) year commitment period.

Qualified Business Facility (QBF)

Means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located therein, used in connection with the operation of an eligible business in the State supporting artificial intelligence (AI) or activities related to AI development, implementation, or innovation.

Tax Credits Award Calculations

The Next NJ Program - AI tax credit awards are calculated by the lesser of:

Method #1: 0.1 percent of the eligible business's total capital investment multiplied by the number of new full-time jobs or

Method #2: 25 percent of the eligible business's total capital investment; or

Method #3: \$250 million. Based on the above criteria, the calculation of the tax credit award is illustration as below:

EXAMPLE OF AWARD	
<i>AI company proposing to create and maintain 165 jobs with a capital investment of \$500 million.</i>	
NEW JOBS	165
CAPITAL INVESTMENT	\$500,000,000
Method 1 Calculation: $(0.1\% \times \$500 \text{ million} = \$500,000) \times 165 \text{ new jobs} = \$82,500,000$	
# 2 Max Percentage: $25\% \times \$500 \text{ million} = \$125,000,000$	
#3 Max Award: Fixed cap = \$250 million	
ESTIMATED AWARD AMOUNT	\$82,500,000

Hence, in the above illustration, method 1 is the lesser of the three calculations, and thus, the award of the tax credits in this scenario is \$82,500,000.

Post-Approval Process

After approval, the eligible business must sign an approval letter and subsequently a commitment agreement with the Authority as to the terms and conditions to receive the tax credit. Upon completion of the capital investment at the qualified business facility ("Project"), the eligible business must submit certifications regarding the capital investment, jobs, and other eligibility requirements and conditions. The award may be adjusted based on compliance with, among other things, the amount of capital investment, jobs and salaries. If there is a reduction in the amount of capital investment, the number of full-time jobs or salaries, it may result in reduction of the award. The eligible business must continue to comply with the Program eligibility criteria for the ten-year commitment period. For each year of the commitment period, the eligible business must submit annual reports stating, among other things, the number and salaries of the new full-time jobs, the number of jobs Statewide, and a certification that a collaborative relationship is in effect. Authority staff will review each report for compliance with the Program rules, approval letter, and commitment agreement. Changes in the amount of capital investment, the number of jobs and salaries during the eligibility and compliance periods may subject the awardee to forfeiture,

reduction, or a recapture of the tax credits. Examples of the changes which may impact tax credit awards as follows:

- During the eligibility period (in years 1-5), the eligible business must maintain at least 80 percent of the number of new full-time jobs and their salaries as certified at project completion and 80 percent of the number of full-time jobs in the Statewide workforce at the end of the business's tax period prior to approval. Falling below this threshold will result in a forfeiture of the tax credit award for that year and for each subsequent year until the eligible business restores the number of incented jobs above 80 percent.
- During the eligibility period, the eligible business must continue to satisfy the eligibility criteria. Failure to do so will result in a forfeiture of the tax credit award for that year. Noncompliance for two consecutive years or a single year of noncompliance during the compliance period (in years 6-10) will lead to a recapture of some or all the tax credits.
- If at any time, the Authority determines that the eligible business made a material misrepresentation on its application, all of the tax credits may be forfeited and recaptured.
- If the business fails to maintain the project for the required commitment period, the Authority may recapture all or part of the tax credits.

Rulemaking Process

The Next NJ Program – AI legislation authorized the Authority to promulgate special adoption rules for the Next NJ Program – AI, which will be effective immediately upon filing with the Office of Administrative Law. In addition, Staff proposes concurrently proposing the rules, which will include a formal 60-day public comment period pursuant to the Administrative Procedure Act's rulemaking procedures, so the rules can ultimately be adopted as final program rules.

Compliance with Executive Order 63

In accordance with Executive Order 63, the Authority conducted a public listening session to gather informal feedback on the Next NJ Program - AI. The listening session slide deck and Zoom session playback were made available on the Authority's web page. Written public feedback through the Authority's web page was also encouraged.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to N.J.S.A. 34:1B-365, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, "review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that

program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse”.

Lisa Almeida has been designated the CCO. In that capacity, Ms. Almeida has reviewed the proposed compliance portion of rules and regulations for the Next NJ Program - AI and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Fees

To establish the proposed fee structure outlined in the new rules for the Next NJ Program - AI, program staff conducted a comprehensive internal review and analysis in coordination with our CFO and his team. This review aimed to estimate the administrative costs likely to be incurred by the Authority in managing the Program. The analysis considered cross-organizational areas where Authority staff time may be required and estimated the percentage of staff time allocated to these areas.

Key Methodology Adjustments

Fees for small, medium, and large projects are based on employee job numbers.

This approach ensures a stable metric.

By tying fee calculations to new job creation, which is a factor in determining the award, the model offers a reliable and transparent basis for fee determination.

Fee Structure

Application Fee

Applicants will pay a one-time, non-refundable application fee based on the number of new full-time jobs.

Approval Fee

Before the Board Members approve a tax credit award, applicants must pay a one-time approval fee (refundable if the business is not approved for a tax credit award by the Board). This fee is also based on the number of new full-time jobs.

Issuance Fee

Before receiving a tax credit certificate at project completion, awardees will pay an issuance fee, tiered based on the number of new full-time jobs.

Annual Servicing and Modification Fees

Throughout the Program term, awardees will be responsible for:

- A servicing fee for ongoing Program administration.
- A modification fee if the business requires adjustments to the tax credit award.

Transfer Fee

A transfer fee will apply if an awardee opts to sell or transfer their tax credit. A transferred tax credit cannot be subsequently transferred.

Extension Fee

If an awardee requests an extension of time to submit the certification related to capital investment, employment, or other eligibility requirements, a non-refundable extension fee will be charged.

Termination Fee

Businesses seeking to terminate an existing incentive agreement to participate in the Next New Jersey – AI program must pay a termination fee.

Assignment Fee

If an eligible business seeking to assign a project agreement, the resulting transfer of the certificate shall not be considered a sale of the transfer certificate, and an assignment fee will be applicable.

For detailed information on specific fee amounts and tier structures, please refer to the chart below:

NEXT NJ - AI FEES			
Project Fee Inputs	Small projects	Medium projects	Large projects
	(100-149 Jobs)	(150-199 Jobs)	(200+ Jobs)
Application Fee	\$10,000	\$25,000	\$50,000
Approval Fee	\$75,000	\$150,000	\$330,000
Tax Credit Certificate Issuance Fee	\$10,000	\$100,000	\$200,000
Annual Servicing Fee	\$20,000	\$40,000	\$120,000
Tax Credit Transfer Fee (each request)	\$10,000	\$20,000	\$30,000
First Six-month Extension Fee	\$10,000	\$20,000	\$30,000
Subsequent Extension Fee	\$15,000	\$30,000	\$50,000
Minor Modification Fee (administrative change, additions, or modification to the tax credit)	\$5,000	\$7,500	\$10,000
Major Modification Fee (board approval)	\$15,000	\$25,000	\$35,000
Existing Incentive Agreement Termination Fee: minor	\$5,000	\$7,500	\$10,000
Existing Incentive Agreement Termination Fee: major (board approval)	\$15,000	\$25,000	\$35,000
Assignment Fee	\$37,500	\$75,000	\$165,000

Delegated Authority

On November 18, 2024, the Members approved a delegation to the CEO to approve routine administrative changes to ERA products, including applicant/awardee name changes, site identification updates, affiliate additions (program permitting), updates to reflect internal reorganizations and organizational changes, and the re-designation the recipient of an award as a result of an acquisition and/or merger. On January 23, 2025, the Members approved including the new CAFE program to this delegated authority.

Staff is seeking the Members' approval to delegate to the CEO, who pursuant to existing delegated authority policy may further sub-delegate authority to staff, authority to approve routine administrative changes for Next NJ Program – AI.

Recommendation

The Members are requested to approve:

- 1) The attached special adoption new rules and concurrent proposed new rules for the new Next NJ Program – AI and to authorize staff to (a) submit the special adoption new rules and concurrent proposed new rules to the Office of Administrative Law for publication in the New Jersey Register and (b) submit the rules as final adopted rules to the Office of Administrative Law for publication in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and
- 2) The creation of the Next NJ Program – AI, a tax incentive program signed into law as P.L. 2024, c. 49 on July 25, 2024 (codified at N.J.S.A. 34:1B-394, et. seq.), which is designed to attract and support the AI industry and AI related businesses; and
- 3) Delegation of authority to the Chief Executive Officer to approve administrative changes to approved Next NJ Program – AI as currently exists for New Jersey Economic Recovery Act of 2020 programs and for the newly approved CAFE program.

Tim Sullivan
Chief Executive Officer

Prepared by: Mercades White

Attachments:

Appendix A - New Rules – The Next NJ-AI Program
Appendix B - Green Building Standards
Appendix C- Adopted Rules: Capital Investment

Appendix C

Capital Investment

The Next NJ Program – AI, requires a business to meet a minimum capital investment of \$100 million. Capital investment includes 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.

Capital investment also includes 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. Associated soft costs and the acquisition and installation of software that is not bundled with hardware, which aggregate costs shall not exceed 20 percent of capital investment. Moreover, 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 are eligible.