

N.J. Stat. § 34:1B-336

Current through New Jersey 221st Second Annual Session, L. 2025, c. 235 and J.R. 13

LexisNexis® New Jersey Annotated Statutes > Title 34. Labor and Workers' Compensation (Chs. 1 — 21) > Chapter 1B. Business and Industry Promotion (§§ 34:1B-1 — 34:1B-412) > Part XVI. New Jersey Economic Recovery Act of 2020 (§§ 34:1B-269 — 34:1B-369)

§ 34:1B-336. Short title

Sections 68 through 81 of [P.L.2020, c. 156](#) ([C.34:1B-336](#) et al.) shall be known and may be cited as the "Emerge Program Act."

History

L. [2020, c. 156](#), § 68, effective January 7, 2021.

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§ 34:1B-337. Definitions

As used in sections 68 through 81 of [P.L.2020, c.156 \(C.34:1B-336\)](#) et al.):

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by the 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 Internal Revenue Code of 1986 \(26 U.S.C. § 1563\)](#), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of [section 414 of the Internal Revenue Code of 1986 \(26 U.S.C. § 414\)](#). A taxpayer may establish by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by [sections 1563 and 414 of the Internal Revenue Code of 1986 \(26 U.S.C. ss.1563 and 414\)](#).

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

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

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

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

“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 section 5 of P.L.1945, c.162 ([C.54:10A-5](#)), sections 2 and 3 of P.L.1945, c.132 ([C.54:18A-2](#) and [C.54:18A-3](#)), section 1 of P.L.1950, c.231 ([C.17:32-15](#)), or [N.J.S.17B:23-5](#), 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” means expenses that a business or an affiliate of the business incurs, or is incurred on behalf of the business or affiliate by its landlord, following its submission of an application to the authority pursuant to section 72 of [P.L.2020, c.156 \(C.34:1B-340\)](#), but prior to the project completion date, as shall

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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; b. obtaining and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods subject to bonus depreciation under [sections 168 and 179 of the federal Internal Revenue Code \(26 U.S.C. ss. 168 and 179\)](#), 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.

“College or university” means a county college, an independent institution of higher education, a public research university, or a State college.

“Commitment period” means a period that is 1.5 times the eligibility period specified in the project agreement entered into pursuant to section 73 of [P.L.2020, c.156 \(C.34:1B-341\)](#), rounded up, for each applicable phase agreement.

“County college” means an educational institution established by one or more counties, pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

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

“Distressed municipality” means a municipality that is qualified to receive assistance under P.L.1978, c.14 ([C.52:27D-178](#) et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the “Local Government Supervision Act (1947),” P.L.1947, c.151 ([C.52:27BB-1](#) et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, a SDA municipality, or a municipality in which a major rail station is located.

“Doctoral university” means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education’s Basic Classification methodology on the effective date of [P.L.2017, c.221](#).

“Eligibility period” means the period in which an eligible business may claim a tax credit under the program for a given project phase, 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 for the respective project phase, and extending thereafter for a term of not more than seven years, with the term to be determined at the discretion of the applicant, provided that the term of the eligibility period may consist of nonconsecutive tax years if the applicant elects at any time after the end of the first tax period of the eligibility period to defer the continuation of the eligibility period to a subsequent tax period. The authority may extend the eligibility period one additional tax period to accommodate a prorated payment pursuant to paragraph (2) of subsection a. of section 77 of [P.L.2020, c.156 \(C.34:1B-345\)](#).

“Eligible business” means any business that satisfies the criteria set forth in section 71 of [P.L.2020, c.156 \(C.34:1B-339\)](#) 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 the business has filled with a full-time employee. An eligible position shall not include an independent contractor or a consultant.

“Employment and Investment Corridor” means the portions of the qualified incentive area that are not located within a distressed municipality and which:

- a.** are designated pursuant to the “State Planning Act,” P.L.1985, c.398 ([C.52:18A-196](#) et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan or until the State Planning Commission revises and readopts New Jersey’s State Development and Redevelopment Plan and adopts regulations to revise this definition;
- b.** intersect with portions of: a port district, a qualified incentive tract, or federally-owned land approved for closure under a federal Commission on Base Realignment and Closure action;

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c. are the proposed site of a qualified incubator facility, a tourism destination project, or transit oriented development; or

d. contain: a vacant commercial building having over 400,000 square feet of office, laboratory, or industrial space, or any combination of office, laboratory, or industrial space, available for occupancy for a period of over one year; or a site that has been negatively impacted by the approval of a “qualified business facility,” as defined pursuant to section 2 of [P.L.2007, c.346 \(C.34:1B-208\)](#).

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

“Full-time employee” means a person:

a. who is employed by a business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” [N.J.S.54A:1-1](#) et seq.;

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 [P.L.2001, c.260 \(C.34:8-67](#) et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” [N.J.S.54A:1-1](#) et seq.; or

c. who is a resident of another State, but whose income is not subject to the “New Jersey Gross Income Tax Act,” [N.J.S.54A:1-1](#) et seq., due to a reciprocity agreement with the other state, or who is a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, 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.54A:1-1](#) et seq., due to a reciprocity agreement with the other state.

With respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal, the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement.

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. 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 whose income is subject to withholding as provided in the “New Jersey Gross Income Tax Act,” [N.J.S.54A:1-1](#) et seq., except that any person working as an independent contractor or contract worker whose income is subject to withholding as provided in the “New Jersey Gross Income Tax Act,” [N.J.S.54A:1-1](#) et seq., for the business shall be deemed a full-time employee if the business demonstrates to the authority that: (a) the person working as an independent contractor for the business works at least 35 hours per week or renders any other standard service generally accepted by custom or practice as full-time employment, and the person is provided with employee health benefits under a health benefits plan authorized pursuant to State or federal law; and (b) the business provides documentation to the authority to permit the authority to verify the compensation paid to, and the time worked by, the person working as an independent contractor. The business shall provide to the authority an annual report that identifies the number of persons working as independent contractors for the business and their contractual or partnering relationship with the business.

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“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, was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or federal law.

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

“Incentive area” means:

- a. an aviation district;
- b. a port district;
- c. a distressed municipality or enhanced area;
- d. an area designated pursuant to the “State Planning Act,” P.L.1985, c.398 ([C.52:18A-196](#) et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning Area); or a Designated Center under the State Development and Redevelopment Plan;
- e. an area located within a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L.1968, c.404 ([C.13:17-6](#)) or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L.1968, c.404 ([C.13:17-21](#));
- f. an area located within any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L.1971, c.137 ([C.5:10-1](#) et seq.), within the boundaries of the Hackensack Meadowlands District as delineated in section 4 of P.L.1968, c.404 ([C.13:17-4](#));
- g. an area located within a regional growth area, rural development area zoned for industrial use as of the effective date of [P.L.2016, c.75](#), or town, village, or a military and federal installation area designated in the comprehensive management plan prepared and adopted by the Pinelands Commission pursuant to the “Pinelands Protection Act,” P.L.1979, c.111 ([C.13:18A-1](#) et seq.);
- h. an area located within a government-restricted municipality;
- i. an area located within land approved for closure under any federal Commission on Base Realignment and Closure action;
- j. an area located within an area designated pursuant to the “State Planning Act,” P.L.1985, c.398 ([C.52:18A-196](#) et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive), so long as that area designated as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within: (1) a designated center under the State Development and Redevelopment Plan; (2) a designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey’s State Development and Redevelopment Plan and adopts regulations to revise this definition as it pertains to Statewide planning areas; (3) any area determined to be in need of redevelopment pursuant to sections 5 and 6 of [P.L.1992, c.79](#) ([C.40A:12A-5](#) and [C.40A:12A-6](#)) or in need of rehabilitation pursuant to section 14 of [P.L.1992, c.79](#) ([C.40A:12A-14](#)); (4) any area on which a structure exists or previously existed including any desired expansion of the footprint of the existing or previously existing structure provided the

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expansion otherwise complies with all applicable federal, State, county, and local permits and approvals; or (5) any area on which an existing tourism destination project is located; or

k. an area located in a qualified opportunity zone.

“Independent institution of higher education” means a college or university incorporated and located in New Jersey, which by virtue of law, character, or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education that is equivalent to the education provided by the State’s public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

“Industrial premises” or “industrial space” means premises or space in which at least 51 percent of the square footage will be or has been used for the assembling, processing, manufacturing, or any combination thereof, of finished or partially finished products from materials or fabricated parts, including, but not limited to, factories or as a warehouse if the business uses the warehouse as part of the chain of distribution for products assembled, processed, manufactured, or any combination thereof, by the business at the qualified business facility; for the breaking or demolishing of finished or partially finished products; or for the production of oil or gas or the generation or transformation of electricity.

“Industrial use” means assembling, processing, manufacturing, or any combination thereof, of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity. “Industrial use” includes farming purposes as that term is defined under [26 U.S.C. § 6420\(c\)\(3\)\(A\)](#), undertaken in an industrial space.

“Infrastructure Fund” means the Recovery Infrastructure Fund established pursuant to section 79 of [P.L.2020, c.156 \(C.52:27D-520\)](#) to fund local infrastructure improvements.

“Labor harmony agreement” means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations which have requested to be on the list and which the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

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

“Mega project” means a project of special economic importance, as determined pursuant to regulations adopted by the board, as measured by the level of new jobs, new capital investment, and opportunities to leverage leadership in a high-priority targeted industry, as determined by the authority pursuant to rules and regulations promulgated to implement sections 68 through 81 of [P.L.2020, c.156 \(C.34:1B-336 et al.\)](#).

“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

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to section 1 of [P.L.2007, c.132](#) ([C.52:27D-130.6](#)), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction.

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

“New full-time job” means an eligible position created by a business that did not previously exist in this State. 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.

“Other eligible area” means the portions of the incentive area that are not located within a distressed municipality, or the employment and investment corridor.

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

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

“Professional employer organization” means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to [P.L.2001, c.260](#) ([C.34:8-67](#) et seq.).

“Program” means the Emerge Program established by section 70 of [P.L.2020, c.156](#) ([C.34:1B-338](#)).

“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 section 73 of [P.L.2020, c.156](#) ([C.34:1B-341](#)), which sets forth the terms and conditions under which the eligible business may receive the incentives authorized pursuant to the program.

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

“Project phase agreement” means a sub-agreement of the project agreement that governs the timing, capital investment, employment levels, and other applicable details of the respective phase.

“Public research university” means a public research university as defined in section 3 of [P.L.1994, c.48](#) ([C.18A:3B-3](#)).

“Qualified business facility” 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 a business that is not engaged in final point of sale retail business at that location, unless the building, complex of buildings or structural components of buildings, and all machinery and equipment therein, are used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District as established pursuant to section 5 of [P.L.2011, c.18](#) ([C.5:12-219](#)).

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

“Qualified incubator facility” means a commercial building located within an incentive area: that contains 5,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with, a research institution, teaching hospital, college, or university; and

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within which at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

“Qualified opportunity zone” means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1.

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

“Retained full-time job” means an eligible position that currently exists in New Jersey and is filled by a full-time employee, but which, because of a potential relocation by the business or is at risk of being lost to another state or country. For the purposes of determining the number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

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

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

“Small business” means a business engaged primarily in a targeted industry with fewer than 100 employees, as determined at the time of application.

“State college” means a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes.

“Targeted industry” means any industry identified from time to time by the authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models.

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

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

“Transit oriented development” means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a Government-restricted municipality, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations.

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

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

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dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

“Transit Village” means a municipality that has been designated as a transit village by the Commissioner of Transportation and the Transit Village Task Force.

History

L. [2020, c. 156](#), § 69, effective January 7, 2021; amended by [2021, c. 160](#), § 30, effective July 2, 2021.

Annotations

Notes

Publisher's Notes

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

Effective Dates

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

Amendment Notes

2021 amendment, by Chapter 160, rewrote the section.

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§ 34:1B-338. Emerge Program

a. The Emerge Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority. The authority shall administer the program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State. The board may approve the award of tax credits to an eligible business upon application of the chief executive officer of the eligible business and following the execution of a letter of intent and the payment of fees, subject to the limitations set forth in subsection b. of this section:

b. value of all tax credits approved by the authority for businesses eligible pursuant to section 71 of [P.L.2020, c.156 \(C.34:1B-339\)](#) shall be subject to the limitations set forth in section 98 of [P.L.2020, c.156 \(C.34:1B-362\)](#).

History

L. [2020, c. 156](#), § 70, effective January 7, 2021.

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§ 34:1B-339. Application, tax credits

a. Beginning on the effective date [Jan. 7, 2021] of [P.L.2020, c.156 \(C.34:1B-269](#) et al.), but prior to March 1, 2029, to be eligible for tax credits under the program, a business's chief executive officer, or 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 the applicable amount set forth in subsection b. of this section;
- (2) the business will create or retain new and retained full-time jobs in the State in an amount equal to or greater than the applicable number set forth in subsection c. of this section;
- (3) the qualified business facility is located in a qualified incentive area;
- (4) the award of tax credits will be a material factor in the business's decision to create or retain the number of new and retained full-time jobs set forth in its application;
- (5) the award of tax credits, the capital investment resultant from the award of tax credits, and the resultant creation and retention of new and retained full-time jobs will yield a net positive benefit to the State equaling at least 400 percent of the requested tax credit allocation amount, or for a phased project the requested tax credit allocation amount for the initial phase, and on a cumulative basis each phase thereafter, which determination shall be calculated prior to considering the value of the requested tax credit under the program and shall be based on the benefits generated during the period of time from approval through the end of the commitment period, or through the end of the longer period of extended commitment that the business may elect for purposes of receiving credit for benefits projected to occur after the expiration of the commitment period, except that:
 - (a) an award of tax credits to a business for a qualified business facility located in a distressed municipality or an enhanced area shall yield a net positive benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 300 percent of the requested tax credit amount;
 - (b) an award of tax credits to a business for a qualified business facility located in a government-restricted municipality, or for a mega project, shall yield a net positive benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 200 percent of the requested tax credit amount;
 - (c) the net economic benefits shall be evaluated on a present value basis with the requested tax credit allocation amount discounted to present value at the same discount rate as the benefits from capital investment resultant from the award of tax credits and the resultant retention and creation of full-time jobs as provided in subparagraph (d) of this paragraph; and
 - (d) a business may elect a period of extended commitment beyond the commitment period for which time the economic benefits shall be creditable to the determination of the net economic benefit of the project, and a business electing a period of extended commitment and failing to maintain the project through the expiration of that extended commitment period shall be obligated to repay a proportion of the incremental benefits received on account of having extended the

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commitment period, taking into consideration the number of years of extended commitment during which the business maintained the project;

(e) in making the determination required pursuant to this paragraph, the authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the “Five-Year Exemption and Abatement Law,” [P.L.1991, c.441 \(C.40A:21-1](#) et seq.), the “Long Term Tax Exemption Law,” [P.L.1991, c.431 \(C.40A:20-1](#) et al.), the “New Jersey Urban Enterprise Zones Act,” P.L.1983, c.303 ([C.52:27H-60](#) et seq.), or any other law that has the effect of lowering or eliminating the business’s State or local tax liability, and the business’s chief executive officer or equivalent officer shall certify, under the penalty of perjury, that all documents submitted, and factual assertions made, to the authority to demonstrate that the award of tax credits will yield a net positive benefit to the State in accordance with this paragraph are true and accurate at the time of submission;

(f) If, during the term of the program, the methodology used by the authority in projecting benefits of a project in making the determination required pursuant to this paragraph is modified, the respective percentages by which the benefits must exceed the requested tax credit allocation amount set forth pursuant to this paragraph (5) may be adjusted to ensure consistent application of the respective thresholds in this paragraph (5) applied to each application;

(6) the qualified business facility shall be in compliance with minimum environmental and sustainability standards;

(7) the project shall comply with the authority’s affirmative action requirements, adopted pursuant to section 4 of P.L.1979, c.303 ([C.34:1B-5.4](#)); and

(8)

(a) each worker employed to perform construction work or 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 P.L.1963, c.150 ([C.34:11-56.25](#) et seq.) and [P.L.2005, c.379 \(C.34:11-56.58](#) et seq.), unless:

(i) the work performed under the contract is performed at a qualified business facility owned by a landlord that is not a business receiving authority assistance;

(ii) the landlord is a party to the construction contract, building services contract, or both; and

(iii) the qualified business facility constitutes a lease of less than 35 percent of the entire facility at the time of contract and under any agreement to subsequently lease the qualified business facility.

(b) In accordance with section 1 of P.L.1979, c.303 ([C.34:1B-5.1](#)), nothing in this paragraph shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the authority has issued the first certificate of compliance pursuant to paragraph (2) of subsection a. of section 77 of [P.L.2020, c.156 \(C.34:1B-345\)](#).

b.

(1) The minimum capital investment required to be eligible under the program shall be as follows:

(a) for the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development portion of the premises for continued similar use by the business, a minimum investment of \$20 per square foot of gross leasable area;

(b) for the new construction of an industrial, warehousing, logistics, or research and development portion of the premises for use by the business, a minimum investment of \$60 per square foot of gross leasable area;

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- (c) for the rehabilitation, improvement, fit-out, or retrofit of existing portion of the premises that does not qualify pursuant to subparagraph (a) or (b) of this paragraph, a minimum investment of \$40 per square foot of gross leasable area;
- (d) for the new construction of a portion of the premises that does not qualify pursuant to subparagraph (a) or (b) of this paragraph, a minimum investment of \$120 per square foot of gross leasable area; and
- (e) for a small business, no new minimum capital investment shall be required, provided the applicant has demonstrated evidence satisfactory to the authority of its intent to remain in the State for the commitment period.

(2) In the event the business invests less than that amount set forth in paragraph (1) of this subsection in the qualified business facility, the business shall donate the uninvested balance to the infrastructure fund established pursuant to section 79 of [P.L.2020, c.156 \(C.52:27D-520\)](#).

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, the authority may adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 ([C.52:14B-1](#) et seq.), rules and regulations adjusting the minimum capital investment amounts required under the program when necessary to respond to the prevailing economic conditions in the State.

c.

(1) The minimum number of new or retained full-time jobs required to be eligible under the program shall be as follows:

- (a) for a small business, 25 percent growth of its workforce with new full-time jobs within the eligibility period in accordance with subsection e. of section 76 of [P.L.2020, c.156 \(C.34:1B-344\)](#);
- (b) for a business engaged primarily in a targeted industry which does not qualify as a small business, 25 new full-time jobs;
- (c) for any other business, a minimum of 35 new full-time jobs;
- (d) for a business eligible for new full-time jobs under subparagraphs (b) or (c) of this paragraph, the business shall also be eligible for retained full-time jobs in addition to the new full-time jobs if the business will retain 150 retained full-time jobs when locating in a government-restricted municipality, 250 retained full-time jobs when locating in a qualified incentive tract or enhanced area municipality, or 500 retained full-time jobs when locating anywhere else in the State;
- (e) for a business not eligible under subparagraphs (b), (c), or (d) of this paragraph and locating in a qualified incentive tract, enhanced area, or government-restricted municipality that will retain 500 or more retained full-time jobs, a minimum of the business's retained full-time jobs at the time of application;
- (f) for a business not eligible under subparagraphs (b), (c), (d), or (e) of this paragraph and located in the State that will retain 1,000 or more retained full-time jobs, a minimum of the business's retained full-time jobs at the time of application.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the authority may adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 ([C.52:14B-1](#) et seq.), rules and regulations adjusting the minimum number of new or retained full-time jobs required under the program when necessary to respond to the prevailing economic conditions in the State.

d. A business that provides and adheres to a plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business's new and retained full-time employees as approved and that certifies, under the penalty of perjury, that not less than 80 percent of the withholdings of new and retained full-time jobs are subject to the "New Jersey Gross Income Tax Act," [N.J.S.54A:1-1](#) et seq. shall be eligible. The requirements set forth in this subsection may be modified by the authority to respond to an emergency, disaster, or other factors that result in employees of an eligible business having to work from a location other than the qualified business facility.

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e. 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 subsection a. of this section are true under the penalty of perjury.

f. A business eligible pursuant to this section may submit an application to the authority in accordance with the provisions of section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)) on or after the effective date [Jan. 7, 2021] of [P.L.2020, c.156](#) ([C.34:1B-269](#) et al.) but prior to March 1, 2029.

History

L. [2020, c. 156](#), § 71, effective January 7, 2021; amended by [2021, c. 160](#), § 31, effective July 2, 2021; [2023, c. 98](#), § 12, effective July 6, 2023.

Annotations

Notes

Publisher's Notes

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

Effective Dates

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

Amendment Notes

2021 amendment, by Chapter 160, substituted "in the State" for "at the qualified business facility" in a.(2); substituted "an enhanced area" for "transit hub municipality" in a.(5)(a); in a.(5)(d), deleted "the net economic benefits shall be discounted to reflect the uncertainty of the business's location after the commitment period expires, provided that" at the beginning and inserted "beyond the commitment period"; inserted "building services contract, or both" in a.(a)(8)(ii); substituted "entire facility" for "qualified business facility" in a.(a)(8)(iii); rewrote a.(8)(b); added c.(1)(d); redesignated and rewrote former c.(1)(d) and c.(1)(e) as c.(1)(e) and c.(1)(f); rewrote the first sentence of d.; and in e., substituted "chief executive officer" for "owner" and "equivalent officer" for "authorized agent of the owner."

2023 amendment, by Chapter 98, substituted "March 1, 2029" for "March 1, 2027" in the introductory language of a. and f.

[N.J. Stat. § 34:1B-340](#)

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§ 34:1B-340. Application for approval of project

a. A business that meets the eligibility criteria in section 71 of [P.L.2020, c.156 \(C.34:1B-339\)](#) and is seeking a grant of tax credits for a project under the program shall submit an application for approval of the project to the authority in a form and manner prescribed in regulations adopted by the authority pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 ([C.52:14B-1](#) et seq.).

b.

(1) Before the board may consider an eligible business's application for tax credits, the authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury whether the eligible business is in substantial good standing with the respective department, or, if necessary, has entered into an agreement with the respective department that includes a practical corrective action plan for the eligible business. The business entity shall certify that contractors or subcontractors that will perform work at the qualified business facility: (a) are registered as required by "The Public Works Contractor Registration Act," [P.L.1999, c.238 \(C.34:11-56.48](#) et seq.); (b) have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and (c) possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The authority may also contract with an independent third party to perform a background check on the eligible business. Provided that the eligible business is in substantial good standing, or has entered into such an agreement, and each contractor and subcontractor is in compliance with this paragraph, before the board may approve an eligible business's application for tax credits, the eligible business shall execute a non-binding letter of intent with the chief executive officer of the authority, specifying the amount and terms and conditions of tax credits that the authority is prepared to propose for board approval and that are intended to be a material factor in the decision by the eligible business to create or retain the proposed number of new and retained full-time jobs, and in which the eligible business certifies such tax credits are a material factor in its decision.

(2) To assist the authority in determining whether the award of tax credits is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program, the chief executive officer of the authority shall require the eligible business to submit, as part of its application, a full economic analysis of all locations under consideration by the eligible business; all lease agreements, ownership documents, or substantially similar documentation for the eligible business's proposed in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for potential out-of-State location alternatives, to the extent they exist. The chief executive officer of the authority may further consider the costs associated with opening and maintaining a business in New Jersey, competitive proposals that the eligible business has received from other states, the prevailing economic conditions, and any other factors that the chief executive officer of the authority deems relevant to assist the authority in determining whether an award of tax credits is a material factor in the eligible business's decision. Based on this information, the authority shall independently verify and confirm the eligible business's assertion that the award of tax credits under the program is a material factor in the eligible business's

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decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program and, in the case of retained full-time jobs, the jobs are actually at risk of leaving the State, before the authority may award the eligible business any tax credits under the “Emerge Program Act,” sections 70 through 81 of [P.L.2020, c.156](#) ([C.34:1B-338](#) et al.). The chief executive officer of the eligible business, or an equivalent officer, shall certify that all factual representations made by the business to the authority pursuant to this paragraph are true under the penalty of perjury.

- c. An eligible business shall pay to the authority the full amount of the direct costs of an analysis concerning the eligible business’s application for a tax credit, which a third party retained by the authority performs, if the authority deems such retention to be necessary. The authority shall have the discretion to waive all or a portion of the costs of application for a small business.
- d. If at any time during the eligibility period the authority determines that the eligible business made a material misrepresentation on the eligible business’s application, the eligible business shall forfeit all tax credits awarded under the program, which shall be in addition to any other criminal or civil penalties to which the business and the officer may be subject.
- e. If circumstances require an eligible business to amend its application to the authority, then the chief executive officer of the eligible business, or an equivalent officer, shall certify to the authority that the information provided in its amended application is true under the penalty of perjury.
- f. Nothing shall preclude a business from applying for tax credits under the program for more than one project pursuant to one or more applications.

History

L. [2020, c. 156](#), § 72, effective January 7, 2021; amended by [2021, c. 160](#), § 32, effective July 2, 2021.

Annotations

Notes

Effective Dates

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

Amendment Notes

2021 amendment, by Chapter 160, in b.(1), in the first sentence, inserted “authority shall confirm with the,” deleted “shall each report to the chief executive officer of the authority” following “Treasury,” and substituted “substantial good standing” for “compliance,” added the second sentence, and inserted “and each contractor and subcontractor is in compliance with this paragraph” in the second sentence; in b.(2), substituted “proposed” for “current” in the first sentence and in the last sentence, substituted “] chief executive officer” for “owner” and “equivalent officer” for “authorized agent of the owner”; and in e., substituted “chief executive officer” for “owner” and “equivalent officer” for “authorized agent of the owner.”

§ 34:1B-340. Application for approval of project

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End of Document

[N.J. Stat. § 34:1B-341](#)

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§ 34:1B-341. Project agreement

a. Following approval by the board, but before the issuance of tax credits, the authority shall require an eligible business to enter into a project agreement. The terms of the project agreement shall be consistent with the eligibility requirements of section 71 of [P.L.2020, c.156](#) ([C.34:1B-339](#)), as applicable, and shall include, but shall not be limited to, the following:

(1)

(a) a detailed description of the proposed project which will result in job creation or retention, and the number of new and retained full-time jobs that are approved for tax credits;

(b) for a phased project, a project phase agreement for which each phase identifies a description of the phase, the expected capital investment and number of new full-time jobs, and the time following acceptance of the project agreement when each phase is to begin and be completed, with the awarding of tax credits under the project agreement to be predicated on the number of full-time jobs created through the fulfillment of each project phase agreement;

(2) the eligibility period of the tax credits or, for a phased project, the eligibility period of the tax credits for each phase;

(3) personnel information that will enable the authority to administer the program;

(4) a requirement that the eligible business maintain the project at a location in New Jersey for the commitment period, with at least the minimum number of full-time jobs as required by this program, 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 remain in compliance with this provision for the required term or significantly reduces the number of full-time employees, 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 set forth in subsections b. and c. of section 71 of [P.L.2020, c.156](#) ([C.34:1B-339](#)) and to report annually to the authority the number of new and retained full-time employees, 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, and the project complies with all applicable laws, and specifically, that the project does not violate any environmental law;

(7) a provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary;

(8) a provision that the chief executive officer of the authority receives annual reports from the eligible business and that allows the authority to confirm that the eligible business is in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce

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Development, and the Department of the Treasury, or has entered into an agreement with the respective department that includes a practical corrective action plan. As part of the annual reports required by this paragraph, the eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility: (a) is registered as required by “The Public Works Contractor Registration Act,” [P.L. 1999, c.238 \(C.34:11-56.48 et seq.\)](#); (b) 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 (c) possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. If the eligible business does not submit the report required under this paragraph, if the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury advises that the eligible business is neither in substantial good standing nor has entered into a practical corrective action plan, or if the eligible business fails to confirm that each contractor or subcontractor is in compliance with this paragraph, then the eligible business may forfeit the issuance of tax credits, pending resolution of the underlying violations or other issues;

(9) a requirement for the eligible business to engage in on-site consultations with the Division of Workplace Safety and Health in the Department of Health;

(10) a provision permitting the authority to amend the agreement; and

(11) a provision establishing the conditions under which the authority, the eligible business, or both, may terminate the agreement.

b.

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

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

(3) At the time the eligible business submits the annual report required pursuant to section 77 of [P.L.2020, c.156 \(C.34:1B-345\)](#) to the authority, the eligible business shall certify, under the penalty of perjury, that it is in compliance with the terms of the community benefits agreement. If the eligible business fails to provide the certification required pursuant to this paragraph or the authority determines that the eligible business is not in compliance with the terms of the community benefits agreement based on the reports submitted by the community advisory committee pursuant to paragraph (2) of this subsection, then the authority may rescind the award or recapture all or part of any tax credits awarded.

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

History

L. [2020, c. 156](#), § 73, effective January 7, 2021; amended by [2021, c. 160](#), § 33, effective July 2, 2021.

Annotations

Notes

Effective Dates

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

Amendment Notes

2021 amendment, by Chapter 160, in a.(1)(b), substituted “a project” for “an incentive” and “project” for “incentive” three times; substituted “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, and” for “meets the agreement requirements described in paragraph (1) of subsection b. of section 71 of P.L.2020, c.156 (C.34:1B-339)” in a.(6); rewrote a.(8); and in b.(4), inserted “either,” substituted “approval letter from the authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement” for “project agreement that,” and added “and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the chief executive officer pursuant to rules adopted by the authority.”

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[N.J. Stat. § 34:1B-342](#)

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§ 34:1B-342. Site plan approval, financing, site control for qualified business facility

a. Following board approval within a time established by the authority and prior to the authority and an eligible business executing a project agreement, the eligible business shall demonstrate that it has obtained site plan approval and has committed financing for, and site control of, the qualified business facility. If the eligible business obtained site control of the qualified business facility prior to the execution of the letter of intent pursuant to section 72 of [P.L.2020, c.156 \(C.34:1B-340\)](#), then the authority may rescind approval of the award of tax credits, unless the eligible business disclosed the fact that the eligible business had obtained the site prior to executing the letter of intent and the authority determines that the award of tax credits was still a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program. The eligible business shall provide an estimated date of completion and shall submit periodic progress reports. The authority may rescind an award of tax credits if an eligible business fails to provide the information required under this section within the period indicated in the approval of the tax credits by the board. The authority may rescind an award of tax credits under the program if a project fails to advance in accordance with the project agreement.

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 and employment requirements of the project agreement with supporting evidence satisfactory to the authority. Absent extenuating circumstances and the written approval of the authority, the eligible business shall submit the certification within three years following the date of approval of the application. The authority may grant two six-month extensions of the deadline; provided that the date of certification shall not occur later than four years following the date of approval of the application by the authority; provided further that the authority may grant one additional extension not to exceed one year upon a finding by the authority that: (1) the project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence; (2) 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 (3) the eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay. To qualify for the one-year extension, the eligible business shall provide 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.

c. 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, may grant two additional six-month extensions; provided, however, that: (i) the extensions are due to the economic disruption caused by the emergency; (ii) the project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence; (iii) 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 (iv) the eligible

§ 34:1B-342. Site plan approval, financing, site control for qualified business facility

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

d. The chief executive officer of the eligible business, or an equivalent officer, shall certify that the information provided pursuant to this section is true under the penalty of perjury.

History

L. [2020, c. 156](#), § 74, effective January 7, 2021; amended by [2021, c. 160](#), § 34, effective July 2, 2021.

Annotations

Notes

Effective Dates

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

Amendment Notes

2021 amendment, by Chapter 160, in the first sentence of a., substituted “Following board approval within a time established by the authority and prior to” for “Commencing with the date six months following the date” and “executing’ for “execute”; substituted “certification” for “completion” in the third sentence of b.; and in d., substituted “chief executive officer” for “owner” and “equivalent officer” for “authorized agent of the owner.”

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[N.J. Stat. § 34:1B-343](#)

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§ 34:1B-343. Total amount of tax credit

- a. The total amount of the tax credit for an eligible business for each new or retained full-time job shall be as set forth in subsections b. through g. of this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period, notwithstanding any other provisions of [P.L.2020, c.156 \(C.34:1B-269](#) et al.) to the contrary.
- b. The base amount of the tax credit for each new or retained full-time job for an eligible business shall be as follows:
- (1) for a qualified business facility located within a government-restricted municipality, or which is a mega project, \$4,000 per year;
 - (2) for a qualified business facility located within an enhanced area, \$3,500 per year;
 - (3) for a qualified business facility located within a distressed municipality, \$3,000 per year;
 - (4) for a project in a qualified opportunity zone or an employment and investment corridor, \$2,500 per year; and
 - (5) for a project in other eligible areas, \$500 per year.
- c.
- (1) In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased with the following bonuses:
 - (a) for an eligible business with a qualified business facility located in a municipality with a Municipal Revitalization Index distress score greater than 50, an increase of \$1,000 per year;
 - (b) for an eligible business with a qualified business facility at which the capital investment in industrial or research and development premises for industrial or research and development use by the business is in excess of the minimum capital investment required for eligibility pursuant to subsection b. of section 71 of [P.L.2020, c.156 \(C.34:1B-339\)](#), an increase of \$500 per year for each additional amount of investment that exceeds the minimum amount required for eligibility by 40 percent, with a maximum increase of \$1,500 per year, unless the project qualifies as a mega project or the qualified business facility is located in a government-restricted municipality, in which case the maximum increase is \$5,000 per year;
 - (c) for an eligible business with large numbers of new full-time jobs during the eligibility period, the increases shall be in accordance with the following schedule:
 - (i) if the number of new full-time jobs is between 251 and 400, \$500 per year;
 - (ii) if the number of new full-time jobs is between 401 and 600, \$750 per year;
 - (iii) if the number of new full-time jobs is between 601 and 800, \$1,000 per year;
 - (iv) if the number of new full-time jobs is between 801 and 1,000, \$1,250 per year;

§ 34:1B-343. Total amount of tax credit

- (v) if the number of new full-time jobs is in excess of 1,000, \$1,500 per year;
- (d) for an eligible business that annually funds an industry-specific training program, which has the capacity to enroll 10 percent or more of the eligible business's full-time workforce, or pays a State educational institution to provide to the public an industry-specific training program, an increase of \$500 per year; provided, however, that if the training program is provided by a State educational institution that is within 10 miles of the qualified business facility, then the increase shall be \$1,000 per year;
- (e) for an eligible business that qualifies as a small business, an increase of \$500 per year;
- (f) for an eligible business with new full-time jobs and retained full-time jobs at the qualified business facility with a median salary in excess of the existing median salary for the county in which the project is located, or, in the case of a project in a government-restricted municipality, a business with employees in full-time positions at the project with a median salary in excess of the median salary for the government-restricted municipality, an increase of \$200 per year during the eligibility period for each 35 percent by which the project's median salary levels exceeds the county or government-restricted municipality median salary, with a maximum increase of \$1,000 per year;
- (g) (Deleted by amendment, [P.L.2021, c.160](#));
- (h) for an eligible business engaged primarily in a targeted industry, an increase of \$500 per year;
- (i) for an eligible business with a qualified business facility located in a qualified incubator facility, an increase of \$500 per year;
- (j) for an eligible business that enters into a labor harmony agreement in accordance with section 69 of [P.L.2020, c.156 \(C.34:1B-337\)](#), an increase of \$2,000 per year for the portion of the project subject to that labor harmony agreement; provided further that an eligible business receiving a bonus under this subparagraph may exceed the limitation applicable to the eligible business pursuant to subsection d. of this section by an amount not to exceed \$1,000;
- (k) for an eligible business that provides its employees access to child care either through an on-site quality child care facility free of charge to its employees or through reimbursements paid by the eligible business to its employees for the cost of child care in accordance with standards adopted by the authority, an increase of \$1,000 per year;
- (l) for an eligible business that enters, or has previously entered, into an active partnership with a re-entry program for the purpose of identifying and promoting employment opportunities at the eligible business for former inmates and current inmates leaving the corrections system, and that hires at least one active participant in the re-entry program as a full-time employee, an increase of \$500 per year;
- (m) for an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Silver" rating standards but does not exceed "Gold" rating standards or completes substantial environmental remediation, an additional increase of \$250 per year, or for an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Gold" rating standards, an additional increase of \$500 per year;
- (n) for an eligible business in a targeted industry with a qualified business facility that is used by the eligible business to conduct a full time collaborative relationship with a college or university, including, but not limited to, a doctoral university, an increase of \$1,000 per year;
- (o) for an eligible business with a project that generates solar, geo-thermal, wind, or any other renewable or distributed energy on site for use within the qualified business facility of an amount that equals at least 50 percent of the qualified business facility electric supply service needs, an increase of \$500 per year;

§ 34:1B-343. Total amount of tax credit

(p) for an eligible business with a marine terminal project in a municipality located outside a government-restricted municipality, but within the geographical boundaries of the South Jersey Port District, an increase of \$1,500 per year;

(q) for an eligible business with a qualified business facility located in a qualified opportunity zone, an increase of \$1,000 per year; and

(r) for an eligible business if one-third or more of the members of the eligible business's governing board or other governing body self-identify as members of an underrepresented community, which may include Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native or gay, lesbian, bisexual or transgender, an increase of \$2,000 per year for each new or retained full-time job. The authority shall work with the Chief Diversity Officer or other State entities to ensure that the bonus provided under this subparagraph is implemented faithfully and in compliance with law.

(2) The authority shall not award a bonus to an eligible business with full-time jobs at the qualified business facility that pay less than \$15 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L.1966, c.113 ([C.34:11-56a4](#)), whichever is higher.

(3) The authority may adopt, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 ([C.52:14B-1](#) et seq.), criteria in addition to, or in place of, the criteria set forth in paragraph (1) of this subsection in response to the prevailing economic conditions in the State.

d. The gross amount of the tax credit available to an eligible business for each new or retained full-time job shall be the sum of the base amount set forth in subsection b. of this section and the various additional bonus amounts for which the business is eligible pursuant to subsection c. of this section, subject to the following limitations:

(1) for a mega project or a project in a government-restricted municipality, the gross amount for each new or retained full-time job shall not exceed \$8,000 per year;

(2) for a qualified business facility located within an enhanced area, the gross amount for each new or retained full-time job shall not exceed \$6,000 per year;

(3) for a qualified business facility within a distressed municipality, the gross amount for each new or retained full-time job shall not exceed \$5,000 per year;

(4) for a qualified business facility in a qualified opportunity zone or an employment and investment corridor, the gross amount for each new or retained full-time job shall not exceed \$4,000 per year; and

(5) for a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$3,000 per year.

e. The authority shall reduce the gross amount of tax credits per full-time job: (1) if the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is less than the existing median salary for the county in which the qualified business facility is located; or (2) for a project located in a government-restricted municipality, if the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is less than the existing median salary for the municipality in which the qualified business facility is located. The authority shall reduce the gross amount of tax credits per full-time job by an amount, in percentage points, equal to the percentage the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is below the existing median salary for the county or government-restricted municipality in which the qualified business facility is located. The authority shall not award a tax credit to an eligible business if the median salary of new full-time jobs and retained full-time jobs that would otherwise be subject to the project agreement is 30 percent or more below the relevant existing median salary for the county or government-restricted municipality in which the qualified business facility is located.

f. After the determination by the authority of the gross amount of tax credits for which an eligible business is eligible pursuant to subsection d. of this section, the final total tax credit amount shall be calculated as

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follows: (1) for each new full-time job, the eligible business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and (2) for each retained full-time job, the eligible business shall be allowed tax credits equaling 50 percent of the gross amount of tax credits for each retained full-time job.

g. Notwithstanding the provisions of subsections a. through f. of this section to the contrary, for each application approved by the board, the amount of tax credits available to be applied by the business annually shall not exceed an amount determined by the authority to be necessary to induce the project to be sited in New Jersey as determined by the board. The authority shall determine the amount necessary to complete the project through staff analysis of all locations under consideration by the eligible business and all lease agreements, ownership documents, or substantially similar documentation for the eligible business's proposed in-State locations and potential out-of-State location alternatives, competitive proposals from other states, the prevailing economic conditions, and any other information that the authority deems relevant.

History

L. [2020, c. 156](#), § 75, effective January 7, 2021; amended by [2021, c. 160](#), § 35, effective July 2, 2021.

Annotations

Notes

Effective Dates

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

Amendment Notes

2021 amendment, by Chapter 160, substituted "a qualified" for "an eligible" in b.(1); inserted "distress" in c.(1)(a); in c.(1)(b), substituted "\$500" for "\$1,000" and "\$1,500" for "\$3,000"; substituted "eligibility" for "commitment" in the introductory language of c.(1)(c); substituted "\$1,000" for "\$1000" in c.(1)(c)(iii); in c.(1)(f), substituted "with employees in" for "that employs," "\$200 per" for "\$250 per," and "\$1,000 per" for "\$1,500 per"; rewrote c.(1)(g), which formerly read: "for an eligible business with a qualified business facility located in a qualified incentive tract, an increase of \$500 per year"; in c.(1)(l), substituted "or has previously entered, into an active partnership with a" for "into a partnership with a prisoner" and inserted "as a full-time employee"; inserted "geo-thermal, wind, or any other renewable or distributed" in c.(1)(o); added "for each new or retained full-time job" in the first sentence of c.(1)(r); rewrote e.; and substituted "proposed" for "current" in the second sentence of g.

[N.J. Stat. § 34:1B-344](#)

Current through New Jersey 221st Second Annual Session, L. 2025, c. 235 and J.R. 13

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§ 34:1B-344. Forfeit of credit

a.

(1) 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.

(2) If the annual report filed by an eligible business pursuant to section 77 of [P.L.2020, c.156 \(C.34:1B-345\)](#) provides that the number of new full-time employees employed by the eligible business subject to the project agreement, or the salaries thereof, was reduced by more than 10 percent of the number of new full-time employees, or salaries thereof, in the annual report of the prior year, or the project agreement if the annual report is the first such report filed, then the authority may reevaluate the net positive economic benefit of the project and reduce the size of the award accordingly. This reduction shall not affect any recapture under subsection f. of this section.

b. If, in any tax period, the number of full-time employees employed by the eligible business subject to the project agreement, or the salaries thereof, drops below 80 percent of the number of new and retained full-time jobs, and the salaries thereof, specified in the project agreement or the project phase agreement, 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 full-time employees employed by the eligible business subject to the project agreement to 80 percent of the number of jobs specified in the project agreement or project phase agreement or the restoration of 80 percent of the salaries specified in the project agreement is reviewed and approved by the authority.

c. Except for an eligible business that is a small business engaged primarily in a targeted industry:

(1) 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. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that an eligible business may change the location of the qualified business facility if the new facility:

(a) meets all applicable location qualifying criteria and has gross leasable area not less than the gross leasable area of the qualified business facility initially approved by the authority and the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program; or

(b) does not meet all applicable location qualifying criteria or has less gross leasable area than the gross leasable area of the qualified business facility initially approved by the authority, if the alternate qualified business facility meets the minimum capital investment and sustainability

§ 34:1B-344. Forfeit of credit

requirements of the program, provided that the authority shall require a cost comparison of the originally approved location and the alternate qualified business facility illustrating the respective economics of the project which reflect occupancy at the alternate proposed qualified business facility location for the remaining duration of the commitment period and shall re-calculate the net economic benefit of the project to reflect the economics of occupancy at the alternate proposed location for the remaining duration of the net benefit test period in lieu of the economics of continuing occupancy at the qualified business facility proposed to be vacated, and provided further that the award of tax credits shall be reduced consistent with the variations in qualifying criteria for the alternate qualified business facility location as well as in a manner consistent with the revised net economic benefit calculation.

In the event that the modified project economics materially deviate from the economics of the initial approval in a manner that undermines the recommendation of approval made by the staff of the authority at the time of the initial approval, then the business requesting to re-locate a qualified business facility shall be required to obtain the approval of the members of the authority.

(2) If a tenant subleases its tenancy in whole or in part during the eligibility period, the new tenant shall not acquire the tax credits of the sublessor, and the sublessor shall forfeit all tax credits for any tax period of its sublease in which the sublessor, in continued occupation of a portion of the qualified business facility, fails to maintain the number of jobs required for the sublessor 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 in section 71 of [P.L.2020, c.156 \(C.34:1B-339\)](#). Provided, however, if the capital investment of the sublessor in the occupied portion of the qualified business facility is below the project minimum capital investment as set forth in section 71 of [P.L.2020, c.156 \(C.34:1B-339\)](#), the sublessor may include capital investment made by or on behalf of the new tenant in the 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.

d. A small business may move its qualified business facility provided that the business remains in New Jersey during the commitment period.

e. The authority may require a small business to submit a growth plan, which specifies the number of new full-time employees in the State that the eligible business will hire each year of the eligibility period; provided that by the end of the eligibility period, the eligible business shall have a minimum of 25 percent growth of its workforce with new full-time jobs. If the eligible business meets the number of new full-time employees specified in the growth plan each year of the eligibility period, then the eligible business shall be entitled to an increased credit amount for that tax period, and each subsequent tax period, for each additional full-time employee added above the number of full-time employees certified, until the full-time employees number the maximum number projected for the final year of the eligibility period. Failure to meet the projections in any year shall not constitute a default but shall cause the authority to reduce the award in accordance with a schedule attached to the project agreement.

f.

(1) The authority may recapture all or part of a tax credit awarded if an eligible business does not remain in compliance with the requirements of a project agreement for the duration of the commitment period. A recapture pursuant to this subsection may include interest on the recapture amount, at a rate equal to the statutory rate for corporate business or insurance premiums 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. 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.

(2) If all or part of a tax credit sold or assigned pursuant to section 78 of [P.L.2020, c.156 \(C.34:1B-346\)](#) 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. The purchaser or assignee of a tax credit

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transfer certificate shall be subject to any limitations and conditions that apply to the use of the tax credits by the eligible business.

(3) Any funds, net of costs incurred by the authority, recaptured pursuant to this subsection, including penalties and interest, shall be deposited into the General Fund of the State.

g. A business may include an affiliate for any period, provided that the 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, as determined by the authority. A formal modification of the authority's approval of the project agreement shall not be necessary to add or remove an affiliate after approval or execution of the project agreement.

h. A 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 business and a valid tax clearance certificate with the business's new name. A formal modification of the authority's approval shall not be necessary to change a business's name after approval or execution of the project agreement.

History

L. [2020, c. 156](#), § 76, effective January 7, 2021; amended by [2021, c. 160](#), § 36, effective July 2, 2021.

Annotations

Notes

Effective Dates

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

Amendment Notes

2021 amendment, by Chapter 160, substituted "subject to the project agreement" for "at the qualified business facility" in the second sentence of a.(2); in b., substituted "subject to the project agreement" for "at the qualified business facility" twice and "project" for "incentive" twice; in the introductory language of c., inserted "that is a small business" and deleted "with less than 50 employees at application" at the end; redesignated the former introductory language of c.(1), c.(1)(a), c.(1)(a)(i), c.(1)(a)(ii), and c.(1)(b) as c.(1), c.(1)(a), c.(1)(b), and the second paragraph of c.(1)(b); substituted "cost comparison of the originally approved location and the alternate qualified business facility illustrating the respective" for "new cost benefit analysis illustrating the" in c.(1)(b); substituted "in the State" for "at the qualified business facility" in the first sentence of e.; inserted "net of costs incurred by the authority" in f.(3); substituted "project" for "incentive" twice in the second sentence of g. and in the second sentence of h.; and made a stylistic change.

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[N.J. Stat. § 34:1B-345](#)

Current through New Jersey 221st Second Annual Session, L. 2025, c. 235 and J.R. 13

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§ 34:1B-345. Annual report

a.

(1) An eligible business which is awarded tax credits under the program shall submit annually, no later than the date indicated in the project agreement, 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 and retained full-time jobs, and the salaries thereof, specified in the project agreement. As part of the annual report required pursuant to this subsection, an eligible business shall provide to the authority a copy of its applicable New Jersey tax return showing business income and withholdings as a condition of its continuation in the program, and the quarterly wage report required under [R.S.43:21-14](#) submitted to the Department of Labor and Workforce Development together with an annual payroll report showing: (a) the new full-time jobs which were created in accordance with the project agreement, and (b) the new full-time jobs created during each subsequent year of the commitment period. 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 subsection during the eligibility period shall result in the forfeiture of the award for that year. An eligible business shall explain, in the reports required by this subsection, the reason for any discrepancies between the annual payroll report submitted by the eligible business and the quarterly wage report. The chief executive officer of the eligible business, or an equivalent officer, shall certify that the information provided pursuant to this paragraph 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.

(2) Upon receipt and review of each report 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.

b.

(1) In conducting its annual review, the authority may require a business to submit any information determined by the authority to be necessary and relevant to its review.

(2) 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.

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

d.

§ 34:1B-345. Annual report

(1) 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 seven successive tax periods, which credit shall expire thereafter.

(2)

(a) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 ([C.54:10A-5](#)), sections 2 and 3 of P.L.1945, c.132 ([C.54:18A-2](#) and [C.54:18A-3](#)), section 1 of P.L.1950, c.231 ([C.17:32-15](#)), or [N.J.S.17B:23-5](#).

(b) Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the director accompanied by any additional information as the director may prescribe. With respect to credits passed through to a person subject to tax liability due pursuant to section 2 or 3 of P.L.1945, c.132 ([C.54:18A-2](#) and [C.54:18A-3](#)), the person shall be allowed to apply credits against the person's tax liability without the provision of a tax credit certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying the person's tax return and the person shall be considered the tax certificate holder and be subject to subparagraph (c) of this paragraph. The authority may recapture all or part of any tax credits claimed by a person pursuant to subparagraph (b) of this paragraph with penalties and interest from the person or the business in the event the Division of Taxation in the Department of the Treasury does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period.

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

(4) In lieu of applying any credit certificate or credit transfer certificate against tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 ([C.54:10A-5](#)), sections 2 and 3 of P.L.1945, c.132 ([C.54:18A-2](#) and [C.54:18A-3](#)), section 1 of P.L.1950, c.231 ([C.17:32-15](#)), or [N.J.S.17B:23-5](#), the credit certificate or credit transfer certificate may be surrendered to the Division of Taxation in the Department of the Treasury for a cash payment equal to 90 percent of the amount of tax credits evidenced by the certificate, provided that the issuance date of the credit certificate or credit transfer certificate to the taxpayer surrendering such certificate occurred at least two years prior to the date of surrender and the credit certificate or credit transfer certificate has not been sold or assigned previously.

History

L. [2020, c. 156](#), § 77, effective January 7, 2021; amended by [2021, c. 160](#), § 37, effective July 2, 2021.

Annotations

Notes

Effective Dates

§ 34:1B-345. Annual report

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

Amendment Notes

2021 amendment, by Chapter 160, in the second to the last sentence of a.(1), substituted “chief executive officer” for “owner” and “equivalent officer” for “authorized agent of the owner”; and added “and the credit certificate or credit transfer certificate has not been sold or assigned previously” in d.(4).

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§ 34:1B-346. 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 5 of P.L.1945, c.162 ([C.54:10A-5](#)), sections 2 and 3 of P.L.1945, c.132 ([C.54:18A-2](#) and [54:18A-3](#)), section 1 of P.L.1950, c.231 ([C.17:32-15](#)), or [N.J.S.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.

(1) The eligible business shall not sell or assign a tax credit transfer certificate allowed under 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 sections 70 through 81 of [P.L.2020, c.156](#) ([C.34:1B-338](#) et al.) and any other terms and conditions that the director may prescribe.

(2) With respect to credits to be sold or assigned, in full or in part, pursuant to an application to the authority for a tax credit transfer certificate by a business to a person subject to tax liability due pursuant to section 2 or 3 of P.L.1945, c.132 ([C.54:18A-2](#) or [C.54:18A-3](#)), the person shall be allowed to apply the credits against the person's tax liability without the provision of a tax credit certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying its tax return, and the person be considered a tax credit transferee and be subject to paragraph (3) of this subsection.

(3) The authority may recapture all or part of any tax credits claimed by a person pursuant to paragraph (2) of this subsection with penalties and interest from the person or the business in the event the authority does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period.

c. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.

d. The authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the authority and the director pursuant to this section:

(1) the name of the transferrer;

§ 34:1B-346. Application for tax credit transfer certificate

- (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.

History

L. [2020, c. 156](#), § 78, effective January 7, 2021.

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§ 34:1B-347. Report by State college, university

Beginning the year next following the year in which [P.L.2020, c.156](#) ([C.34:1B-269](#) et al.) takes effect and every two years thereafter, a State college or university shall, pursuant to an agreement executed between the State college or university and the authority, prepare a report on the implementation of the program, and submit the report to the authority, the Governor, and, pursuant to section 2 of [P.L.1991, c.164](#) ([C.52:14-19.1](#)), to the Legislature. Each biennial report required under this section shall include a description of each eligible business receiving a tax credit under the program, a detailed analysis of the consideration given to each applicant, an analysis of whether the incentives awarded influenced the eligible business's decisions to locate a qualified business facility in the State, the return on investment for incentives awarded, the eligible business's impact on the State's economy, and any other metrics the State college determines are relevant based upon national best practices. The authority shall prepare a written response to the report, which the authority shall submit to the Governor and, pursuant to section 2 of [P.L.1991, c.164](#) ([C.52:14-19.1](#)), to the Legislature.

History

L. [2020, c. 156](#), § 80, effective January 7, 2021.

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§ 34:1B-348. Regulations

Notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 ([C.52:14B-1](#) et seq.), to the contrary, the chief executive officer of the authority may adopt, immediately, upon filing with the Office of Administrative Law, regulations that the chief executive officer deems necessary to implement the provisions of sections 70 through 81 of [P.L.2020, c.156](#) ([C.34:1B-338](#) et al.), including but not limited to examples of and the determination of capital investment and the determination of the limits, if any, on the expense or type of furnishings that may constitute capital improvements, which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The chief executive officer shall thereafter amend, adopt, or readopt the regulations in accordance with the requirements of P.L.1968, c.410 ([C.52:14B-1](#) et seq.).

History

L. [2020, c. 156](#), § 81, effective January 7, 2021.

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