

## CHAPTER 156

AN ACT concerning State economic development policy, and amending and supplementing various parts of the statutory law, and making an appropriation.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.34:1B-269 Short title.

1. P.L.2020, c.156 (C.34:1B-269 et al.) shall be known and may be cited as the "New Jersey Economic Recovery Act of 2020."

C.34:1B-270 Short title.

2. Sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276) shall be known and may be cited as the "Historic Property Reinvestment Act."

C.34:1B-271 Definitions.

3. As used in sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276):

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Board" means the Board of the New Jersey Economic Development Authority, established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Cost of rehabilitation" means the consideration given, valued in money, whether given in money or otherwise, for the materials and services which constitute the rehabilitation.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Income producing property" means a structure or site that is used in a trade or business or to produce rental income.

"New Jersey S corporation" means the same as the term is defined in section 12 of P.L.1993, c.173 (C.54A:5-10).

"Officer" means the State Historic Preservation Officer or the official within the State designated by the Governor or by statute in accordance with the provisions of chapter 3023 of Title 54, United States Code (54 U.S.C. s.302301 et seq.), to act as liaison for the purpose of administering historic preservation programs in the State.

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

"Project financing gap" means the part of the total cost of rehabilitation, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total cost of rehabilitation, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources.

"Property" means a structure, including its site improvements and landscape features, assessed as real property, and used for: a commercial purpose; a residential rental purpose, provided the structure contains at least four dwelling units; or any combination thereof.

"Qualified property" means a property located in the State of New Jersey that is an income producing property, and that is:

(a) (i) individually listed, or located in a district listed on the National Register of Historic Places in accordance with the provisions of chapter 3021 of Title 54, United States Code (54 U.S.C. s.302101 et seq.), or on the New Jersey Register of Historic Places pursuant to

P.L.1970, c.268 (C.13:1B-15.128 et seq.), or individually designated, or located in a district designated, by the Pinelands Commission as a historic resource of significance to the Pinelands in accordance with the Pinelands comprehensive management plan adopted pursuant to the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), and

(ii) if located within a district, certified by either the officer or the Pinelands Commission, as appropriate, as contributing to the historic significance of the district; or

(b) (i) individually identified or registered, or located in a district composed of properties identified or registered, for protection as significant historic resources in accordance with criteria established by a municipality in which the property or district is located if the criteria for identification or registration has been approved by the officer as suitable for substantially achieving the purpose of preserving and rehabilitating buildings of historic significance within the jurisdiction of the municipality, and

(ii) if located within a district, certified by the officer as contributing to the historic significance of the district.

"Rehabilitation" means the repair or reconstruction of the exterior or interior of a qualified property or transformative project to make an efficient contemporary use possible while preserving the portions or features of the property that have significant historical, architectural, and cultural values.

"Rehabilitation of the interior of the qualified property or transformative project" means the repair or reconstruction of the structural or substrate components and electrical, plumbing, and heating components within the interior of a qualified property or transformative project.

"Selected rehabilitation period" means a period of 24 months if the beginning of such period is chosen by the business entity during which, or parts of which, a rehabilitation is occurring, or a period of 60 months if a rehabilitation is reasonably expected to be completed in distinct phases set forth in written architectural plans and specifications completed before or during the physical work on the rehabilitation.

"Transformative project" means a property that is:

(a) an income producing property, not including a residential property, whose rehabilitation the authority determines will generate substantial increases in State revenues through the creation of increased business activity within the surrounding area;

(b) individually listed on the New Jersey Register of Historic Places pursuant to P.L.1970, c.268 (C.13:1B-15.128 et seq.) and which, before the enactment of P.L.2020, c.156 (C.34:1B-269 et al.), received a Determination of Eligibility from the Keeper of the National Register of Historic Places in accordance with the provisions of Part 60 of Title 36 of the Code of Federal Regulations;

(c) located within a one-half mile radius of the center point of a transit village, as designated by the New Jersey Department of Transportation; and

(d) located within a city of the first class, as classified under N.J.S.40A:6-4.

#### C.34:1B-272 Tax credit.

4. a.(1)A business entity, upon successful application to the New Jersey Economic Development Authority, and commitment to the authority to pay each worker employed to perform construction work at the qualified property or transformative project a wage 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.), shall be allowed a credit against the tax otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the tax imposed on insurers generally pursuant to P.L.1945,

c.132 (C.54:18A-1 et seq.), or the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et. seq., for 40 percent of the cost of rehabilitation paid by the business entity for the rehabilitation of a qualified property or transformative project, if the cost of rehabilitation during a business entity's selected rehabilitation period is not less than the greater of (1) the adjusted basis of the structure of the qualified property or transformative project used for federal income tax purposes as of the beginning of the business entity's selected rehabilitation period, or (2) \$5,000. The amount of the credit claimed in any accounting or privilege period shall not reduce the amount of the tax liability to less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

(2) The prevailing wage requirements shall apply at a qualified property or transformative project during the selected rehabilitation period. In the event a qualified property or transformative project, or the aggregate of all qualified properties and transformative projects approved for awards under the program, constitute a lease of more than 35 percent of a facility, the prevailing wage requirements shall apply to the entire facility.

(3) Prior to approval of an application by the authority, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the authority whether the business entity is in substantial good standing with the respective department in lieu of submitting certificates of good standing for the business entity, the business entity may demonstrate that it has entered into an agreement with the respective department that includes a practical corrective action plan for the business entity. The authority may also contract with an independent third party to perform a background check on the business entity. Following approval of an application by the authority, but prior to the start of any construction or rehabilitation at the qualified property or transformative project, the authority shall enter into a rehabilitation agreement with the business entity. The authority shall negotiate the terms and conditions of the rehabilitation agreement on behalf of the State.

(4) A rehabilitation project shall be eligible for a tax credit only if the business entity demonstrates to the authority at the time of application that:

- (a) without the tax credit, the rehabilitation project is not economically feasible; and
- (b) a project financing gap exists.

b. A business entity may claim a credit under this section during the accounting or privilege period: (1) in which it makes the final payment for the cost of the rehabilitation if the business entity has chosen a selected rehabilitation period of 24 months; or (2) in which a distinct project phase of the rehabilitation is completed if the business entity has chosen a selected rehabilitation period of 60 months. The credit may be claimed against any State tax, listed in paragraph (1) of subsection a. of this section, liability otherwise due after any other credits permitted pursuant to law have been applied. The amount of credit claimed in an accounting or privilege period that cannot be applied for that accounting or privilege period due to limitations in this section may be transferred pursuant to section 5 of P.L.2020, c.156 (C.34:1B-273) or carried over, if necessary, to the nine accounting or privilege periods following the accounting or privilege period for which the credit was allowed.

c. A business entity shall submit to the authority satisfactory evidence of the actual cost of rehabilitation, as certified by a certified public accountant, evidence of completion of the rehabilitation or phase, and a certification that all information provided by the business entity to the authority is true, including information contained in the application, the rehabilitation agreement, any amendment to the rehabilitation agreement, and any other information submitted by the business entity to the authority pursuant to sections 2 through 8 of

P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276). The business entity, or an authorized agent of the business entity, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

C.34:1B-273 Corporation business tax credit transfer certificate program, insurance premiums tax credit transfer certificate program.

5. a. The authority shall, in cooperation with the director, establish and administer a corporation business tax credit transfer certificate program and an insurance premiums tax credit transfer certificate program to enable business entities with unused, otherwise allowable amounts of tax credits issued pursuant to sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276) to exchange these credits, in whole or in part, for private financial assistance prior to the expiration of the tax credit.

A certificate issued by the director and the authority shall include a statement waiving the rights of the business entity to which the tax credit has been granted to claim any amount of remaining credit against any tax liability.

b. A business entity holding an unused, otherwise allowable tax credit issued pursuant to sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276) may apply to the director and the authority for a tax credit transfer certificate pursuant to subsection a. of this section. Upon receipt thereof, the business entity may sell or assign, in full or in part, the tax credit transfer certificate to another taxpayer in exchange for private financial assistance to be provided by the purchaser or assignee of the tax credit transfer certificate to the seller thereof. The developer shall not sell a tax credit transfer certificate allowed under this section for consideration received by the developer of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted, except a developer of a residential project consisting of newly-constructed residential units that has received federal low income housing tax credits under 26 U.S.C. s.42(b)(2)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 75 percent subject to the submission of a plan to the authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project. The purchaser or assignee of the tax credit transfer certificate may apply the face value of the tax credit transfer certificate acquired against the purchaser's or assignee's applicable tax liability by claiming the tax credit on the purchaser's or assignee's corporation business tax or insurance premiums tax return with the corresponding tax credit transfer certificate accompanying the tax return. 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.

c. 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 transferor;
- (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 transferor.

C.34:1B-274 Rules, regulations.

6. a. The authority shall, in consultation with the officer and the director, promulgate rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968,

c.410 (C.52:14B-1 et seq.), as the officer deems necessary to administer the provisions of sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276), including but not limited to rules establishing administrative fees to implement the provisions of sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276), setting of an annual application submission date, requiring annual reporting by each business entity that receive a tax credit pursuant to sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276), and requiring those reports to include certifications by the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the business entity, and any contractors or subcontractors performing work at the qualified property or transformative project, are in substantial good standing with the respective department has entered into an agreement with the respective department that includes a practical corrective action plan for the business entity. The rules and regulations adopted pursuant to this section shall also include a provision to require that business entities forfeit all tax credits awarded in any year in which any such report is not received, and to allow the authority to extend, in individual cases, the deadline for any annual reporting or certification requirement established pursuant to this section.

b. For every tax credit allowed pursuant to section 4 of P.L.2020, c.156 (C.34:1B-272), the authority, in consultation with the officer, shall certify to the director: the total cost of rehabilitation; that the property meets the definition of qualified property or transformative project, as applicable; and that the rehabilitation has been completed in substantial compliance with the requirements of the Secretary of the Interior's Standards for Rehabilitation pursuant to section 67.7 of Title 36, Code of Federal Regulations. The business entity shall attach the certification to the tax return on which the business entity claims the credit.

c. (1) The total amount of credits approved by the authority pursuant to sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276) shall not exceed the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362). If the authority approves less than the total amount of tax credits authorized pursuant to this subsection in a fiscal year, the remaining amount, plus any amounts remaining from previous fiscal years, shall be added to the limit of subsequent fiscal years until that amount of tax credits are claimed or allowed. Any unapproved, uncertified, or recaptured portion of tax credits during any fiscal year may be carried over and reallocated in succeeding years.

(2) Notwithstanding the provisions of paragraph (1) of this subsection and section 98 of P.L.2020, c.156 (C.34:1B-362) to the contrary, the authority may approve tax credits, pursuant to sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276), for the rehabilitation of a transformative project in an amount that causes the total amount of credits approved during the fiscal year to exceed the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362), provided that the amount of the excess shall be subtracted from the total amount of credits that may be approved by the authority in the subsequent fiscal year, and the amount of the excess shall not exceed 50 percent of the total tax credits otherwise authorized for the fiscal year.

The authority, in consultation with the officer, shall devise criteria for allocating tax credit amounts if the approved amounts combined exceed the total amount in each fiscal year, including rules that allocate over multiple fiscal years a single credit amount granted in excess of \$2,000,000. The criteria shall include a project's historic importance, positive impact on the surrounding neighborhood, economic sustainability, geographic diversity, and consistency with Statewide growth and development policies and plans.

**C.34:1B-275 Rules for recapture of tax credit amount.**

7. a. The authority, in collaboration with the director, shall adopt rules for the recapture of an entire or partial tax credit amount allowed under sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276). The rules shall require the authority to notify the director of the recapture of an entire or partial tax credit amount. Recaptured funds shall be deposited in the General Fund of the State.

b. If, before the end of five full years after the completion of the rehabilitation of the qualified property or transformative project, a developer that has received a tax credit pursuant to section 4 of P.L.2020, c.156 (C.34:1B-272) modifies the qualified property or transformative project so that it ceases to meet the requirements for the rehabilitation of a qualified property or transformative project as defined under the program or ceases to meet the requirement of the rehabilitation agreement then the tax credit allowed under the program shall be recaptured in accordance with the rules adopted pursuant to subsection a. of this section.

c. In the case of a business entity that has chosen a selected rehabilitation period of 60 months, if the architectural plans change in the course of the phased rehabilitation project so that the rehabilitation of the qualified property or transformative project would, upon the rehabilitation's completion, no longer qualify for a tax credit pursuant to the requirements of sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276), then the business entity's tax liability for that accounting or privilege period shall be increased by the full amount of the tax credit that the authority had previously granted upon the completion of a distinct prior project phase that the business entity has applied against its tax liability in a prior accounting or privilege period. Any portion of the tax credit that the business entity has not yet used at the time of the disallowance by the officer shall be deemed void.

**C.34:1B-276 Written report.**

8. On or before December 31 of the fourth year following the effective date of sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276), the authority, in consultation with the officer and the director, shall prepare and submit a written report regarding the number and total monetary amount of tax credits granted for the rehabilitation of qualified properties or transformative projects pursuant to section 4 of P.L.2020, c.156 (C.34:1B-272), the geographical distribution of the credits granted, a summary of the tax credit transfer program established pursuant to section 5 of P.L.2020, c.156 (C.34:1B-273), an evaluation of the effectiveness of the tax credits provided pursuant to sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through C.34:1B-276) in promoting the rehabilitation of historic properties, recommendations for administrative or legislative changes to increase the effectiveness of the program, and any other information that the authority, the officer, or the director may deem useful or appropriate. This report shall be submitted to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

**C.34:1B-277 Short title.**

9. Sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287) shall be known and may be cited as the "Brownfields Redevelopment Incentive Program Act."

**C.34:1B-278 Definitions.**

10. As used in sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287):

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

"Board" means the Board of the New Jersey Economic Development Authority, established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Brownfield site" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant or on which there is contaminated building material.

"Contaminated building material" means components of a structure where abatement or removal of asbestos, or remediation of materials containing hazardous substances defined pursuant to section 3 of P.L.1976, c.141 (C.58:10-23.11b), is required by applicable federal, state, or local rules or regulations.

"Contamination" or "contaminant" means any discharged hazardous substance as defined pursuant to section 3 of P.L.1976, c.141 (C.58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L.1976, c.99 (C.13:1E-38), pollutant as defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3), or contaminated building material.

"Department" means the Department of Environmental Protection.

"Developer" means any person that enters or proposes to enter into a redevelopment agreement with the authority pursuant to the provisions of section 13 of P.L.2020, c.156 (C.34:1B-281).

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Licensed site remediation professional" means an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to section 7 of P.L.2009, c.60 (C.58:10C-7) or the department pursuant to section 12 of P.L.2009, c.60 (C.58:10C-12).

"Program" means the Brownfields Redevelopment Incentive Program established by section 11 of P.L.2020, c.156 (C.34:1B-279).

"Project financing gap" means the part of the total remediation cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer contributed capital, which shall not be less than 20 percent of the total remediation cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources.

"Redevelopment agreement" means an agreement between the authority and a developer under which the developer agrees to perform any work or undertaking necessary for the remediation of a contaminated site located at the site of the redevelopment project, and for the clearance, development or redevelopment, construction, reconstruction, or rehabilitation of any structure or improvement of commercial, industrial, or public structures or improvements within an area of land whereon a brownfield site is located.

"Redevelopment project" means a specific construction project or improvement undertaken, pursuant to the terms of a redevelopment agreement, by a developer within an area of land whereon a brownfield site is located. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

"Remediation" or "remediate" means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and

remedial action, or any portion thereof, as those terms are defined in section 23 of P.L.1993, c.139 (C.58:10B-1); and hazardous materials abatement; hazardous materials or waste disposal; building and structural remedial activities, including, but not limited to, demolition, asbestos abatement, polychlorinated biphenyl removal, contaminated wood or paint removal, or other infrastructure remedial activities; provided, however, "remediation" or "remediate" shall not include the payment of compensation for damage to, or loss of, natural resources.

"Remediation costs" means all reasonable costs associated with the remediation of a contaminated site, except any costs incurred in financing the remediation.

**C.34:1B-279 Brownfields Redevelopment Incentive Program.**

11. The Brownfields Redevelopment Incentive Program is established as a program under the jurisdiction of the New Jersey Economic Development Authority. The purpose of the program is to compensate developers of redevelopment projects located on brownfield sites for remediation costs. To implement this purpose, the authority shall issue tax credits. The total value of tax credits approved by the authority shall not exceed the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362). For the purpose of determining the aggregate value of tax credits approved in a fiscal year, a tax credit shall be deemed to have been approved at the time the authority approves an application for an award of a tax credit. If the authority approves less than the total amount of tax credits authorized pursuant to this section in a fiscal year, the remaining amount, plus any amounts remaining from previous fiscal years, shall be added to the limit of subsequent fiscal years until that amount of tax credits are claimed or allowed. Any unapproved, uncertified, or recaptured portion of tax credits during any fiscal year may be carried over and reallocated in succeeding years.

**C.34:1B-280 Application for tax credit.**

12. a. A developer seeking a tax credit for a redevelopment project shall submit an application to the authority and the department in a form and manner prescribed in regulations adopted by the authority, in consultation with the department, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

b. A redevelopment project shall be eligible for a tax credit only if the developer demonstrates to the authority and the department at the time of application that:

(1) except as provided in subsection j. of this section, the developer has not commenced any remediation or clean up at the site of the redevelopment project, except for preliminary assessments and investigations, prior to applying for a tax credit pursuant to this section, but intends to remediate and redevelop the site immediately upon approval of the tax credit;

(2) the redevelopment project is located on a brownfield site;

(3) without the tax credit, the redevelopment project is not economically feasible;

(4) a project financing gap exists;

(5) the developer has obtained and submitted to the authority a letter evidencing support for the redevelopment project from the governing body of the municipality in which the redevelopment project is located; and

(6) each worker employed to perform remediation, or construction at the redevelopment project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.). The prevailing wage requirements shall apply for construction work through the completion of the redevelopment project. In the event a redevelopment project, or the aggregate of all redevelopment projects approved for an award



under the program, constitute a lease of more than 35 percent of a facility, the prevailing wage requirements shall apply to the entire facility.

c. A redevelopment project that received a reimbursement pursuant to sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through 58:10B-31) shall not be eligible to apply for a tax credit under the program. If the authority receives an application and supporting documentation for approval of a reimbursement pursuant to sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through 58:10B-31) prior to the effective date of sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287), then the authority may consider the application and award a tax credit to a developer, provided that the authority shall take final action on all applications for approval of a reimbursement pursuant to sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through 58:10B-31) no later than July 1, 2019. No applications shall be submitted pursuant to sections 34 through 39 of P.L.1997, c.278 (C.58:10B-26 through 58:10B-31) after the effective date of sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287).

d. (1) Prior to approval of an application, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the developer is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the developer. The authority may also contract with an independent third party to perform a background check on the developer. Provided that the developer is in substantial good standing, or has entered into such an agreement, and following approval of an application by the board, the authority shall enter into a redevelopment agreement with the developer, as provided for in section 13 of P.L.2020, c.156 (C.34:1B-281).

(2) The authority, in consultation with the department, may impose additional requirements upon an applicant through rule or regulation adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), if the authority or the department determines the additional requirements to be necessary and appropriate to effectuate the purposes of sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287).

e. The authority, in consultation with the department, shall conduct a review of the applications through a competitive application process whereby the authority and the department shall evaluate all applications submitted by a date certain, as if all received applications were submitted on that date. In addition to the eligibility criteria set forth in subsection b. of this section, the authority, in consultation with the department, may consider additional factors that may include, but shall not be limited to: the economic feasibility of the redevelopment project; the benefit of the redevelopment project to the community in which the remediation project is located; the degree to which the redevelopment project enhances and promotes job creation and economic development and reduces environmental or public health stressors in an overburdened community as those terms are defined by section 2 of P.L.2020, c.92 (C.13:1D-157) and attendant department regulations; and, if the developer has a board of directors, the extent to which that board of directors is diverse and representative of the community in which the redevelopment project is located. The authority, in consultation with the department, shall submit applications that comply with the eligibility criteria set forth in this section, fulfill the additional factors considered by the authority pursuant to this subsection, satisfy the submission requirements, and provide adequate information for the subject application, to the board for final approval.

f. The authority shall award tax credits to redevelopment projects until either the available tax credits are exhausted or all redevelopment projects that are eligible for a tax credit pursuant to the provisions of sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287) receive a tax credit, whichever occurs first. If insufficient funding exists to allow a tax credit to a developer in accordance with the provisions of subsection a. of section 16 of P.L.2020, c.156 (C.34:1B-284), the authority may offer the developer a value of the tax credit below the amount provided for in subsection a. of section 16 of P.L.2020, c.156 (C.34:1B-284).

g. A developer shall pay to the authority or to the department, as appropriate, the full amount of the direct costs of an analysis concerning the developer's application for a tax credit, which a third party retained by the authority or department performs, if the authority or department deems such retention to be necessary.

h. If the authority determines that a developer made a material misrepresentation on the developer's application, the developer shall forfeit all tax credits awarded under the program.

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

j. A developer that has commenced remediation or clean up at the site have known the extent of the site contamination when the developer of a redevelopment project prior to application may still apply for a tax credit under the program, if the developer certifies to the authority, under the penalty of perjury, that the developer could not reasonably have commenced the redevelopment project.

#### C.34:1B-281 Redevelopment agreement.

13. a. Following approval of an application by the board, but prior to the start of any remediation or clean up at the site of the redevelopment project, the authority shall enter into a redevelopment agreement with the developer. The chief executive officer of the authority shall negotiate the terms and conditions of the redevelopment agreement on behalf of the State.

b. The redevelopment agreement shall specify the amount of the tax credit to be awarded to the developer, the date on which the developer shall complete the remediation, and the projected project remediation cost. The redevelopment agreement shall require the developer to submit progress reports to the authority and to the department every six months pursuant to section 15 of P.L.2020, c.156 (C.34:1B-283).

(1) the redevelopment project complies with standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction;

(2) the redevelopment project complies with the authority's affirmative action requirements, adopted pursuant to section 4 of P.L.1979, c.303 (C.34:1B-5.4); and

(3) the developer pays each worker employed to perform remediation work or construction work at the redevelopment project not less than the prevailing wage rate in accordance with the requirements of paragraph (6) of subsection b. of section 12 of P.L.2020, c.156 (C.34:1B-280) 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.).

c. The authority shall not enter into a redevelopment agreement with a developer unless:

(1) the redevelopment project complies with standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction;

d. The authority shall not enter into a redevelopment agreement unless the developer demonstrates, to the satisfaction of the Department of Environmental Protection, that the developer did not discharge a hazardous substance at the brownfield site proposed to be in the redevelopment agreement, is not in any way responsible for the hazardous substance, and is not a corporate successor to the discharger or to any person in any way responsible for the hazardous substance or to anyone liable for cleanup and removal costs pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g).

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

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

(3) As used in this subsection, "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 that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

f. The redevelopment agreement shall provide that issuance of a tax credit under the program shall be conditioned upon the subrogation to the department of all rights of the

developer to recover remediation costs from any other person who discharges a hazardous substance or is in any way responsible, pursuant to section 8 of P.L.1976, c.141 (C.58:10-23.11g), for a hazardous substance that was discharged at the brownfield site.

g. A developer may seek a revision to the redevelopment agreement if the developer cannot complete the remediation on or before the date set forth in the redevelopment agreement. A developer's ability to change the date on which the developer shall complete the remediation shall be subject to the availability of tax credits in the year of the revised date of completion.

h. A developer shall submit to the authority satisfactory evidence of the actual remediation costs, as certified by a certified public accountant, evidence of completion of the remediation, and a certification that all information provided by the developer to the authority is true, including information contained in the application, the redevelopment agreement, any amendment to the redevelopment agreement, and any other information submitted by the developer to the authority pursuant to sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C34:1B-287). The developer, or an authorized agent of the developer, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

i. The redevelopment agreement shall include a requirement that the chief executive officer of the authority receive annual reports from the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that demonstrate the developer, and each contractors and subcontractor performing work on the redevelopment project, is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the developer. The redevelopment agreement shall also include a provision allowing authority to recapture the tax credits for any year in which any such report is not received. The redevelopment agreement shall also require a developer to engage in on-site consultations with the Division of Workplace Safety and Health in the Department of Health.

#### C.34:1B-282 Qualification for tax credit.

14. To qualify for a tax credit under the program, a developer shall:

a. enter into a memorandum of agreement or other oversight document with the Commissioner of Environmental Protection in accordance with the provisions of section 37 of P.L.1997, c.278 (C.58:10B-29); or

b. comply with the requirements set forth in subsection b. of section 30 of P.L.2009, c.60 (C.58:10B-1.3) for the remediation of the site of the redevelopment project.

#### C.34:1B-283 Update of status of redevelopment project.

15. Commencing with the date six months following the date the authority and a developer execute a redevelopment agreement and every six months thereafter until completion of the project, the developer shall submit an update of the status of the redevelopment project to the authority and to the department, including the remediation costs incurred by the developer for the remediation of the contaminated property located at the site of the redevelopment project. Unless the authority determines that extenuating circumstances exist, the authority's approval of a tax credit shall expire if the authority, the department, or both, do not timely receive the status update required under this section. The authority may rescind an award of tax credits under the program if a redevelopment project fails to advance in accordance with the redevelopment agreement.

**C.34:1B-284 Certification upon completion of redevelopment project.**

16. a. Upon completion of the redevelopment project, the developer shall seek certification from the department that:

- (1) the redevelopment project is complete;
- (2) the developer complied with the requirements of section 15 of P.L.2020, c.156 (C.34:1B-283), including the requirements of any memorandum of agreement or other oversight document that the developer may have executed with the Commissioner of Environmental Protection pursuant to that section; and
- (3) the remediation costs were actually and reasonably incurred.

Upon receipt of certification, and confirmation by the authority that the developer's obligations under the redevelopment agreement have been met, a developer shall be awarded a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount not to exceed 40 percent of the actual remediation costs, or 40 percent of the projected remediation costs as set forth in the redevelopment agreement, or \$4,000,000, whichever is least. The developer, or an authorized agent of the developer, shall certify that the information provided to the department and the authority pursuant to this subsection is true under the penalty of perjury.

b. When filing an application for certification pursuant to subsection a. of this section, the developer shall submit to the department the total remediation costs incurred by the developer for the remediation of the subject property located at the site of the redevelopment project as provided in the redevelopment agreement and certified by a certified public accountant, information concerning the occupancy rate of the buildings or other work areas located on the property subject to the redevelopment agreement, and such other information as the department deems necessary in order to make the certifications and findings pursuant to this section.

c. A developer shall apply the credit awarded against the developer's liability for the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period during which the department awards the developer a tax credit pursuant to subsection a. of this section. A developer shall not carry forward any unused credit.

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

**C.34:1B-285 Application for tax credit transfer certificate.**

17. a. A developer may apply to the director and the chief executive officer of the authority for a tax credit transfer certificate, during the privilege period in which the director awards the developer a tax credit pursuant to section 16 of P.L.2020, c.156 (C.34:1B-284), in lieu of the developer being allowed to apply any amount of the tax credit against the developer's State tax liability. The tax credit transfer certificate, upon receipt thereof by the developer from the director and the chief executive officer of the authority, may be sold or assigned, in the privilege period during which the developer receives the tax credit transfer certificate from the director, to another person, who may apply the credit against a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or

N.J.S.17B:23-5. The tax credit transfer certificate provided to the developer shall include a statement waiving the developer's right to claim the credit that the developer has elected to sell or assign.

b. The developer shall not sell or assign a tax credit transfer certificate allowed under this section for consideration received by the developer of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted, except a developer of a residential project consisting of newly-constructed residential units that has received federal low income housing tax credits under 26 U.S.C. s.42(b)(2)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 75 percent subject to the submission of a plan to the authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project. The tax credit transfer certificate issued to a developer by the director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to section 16 of P.L.2020, c.156 (C.34:1B-284) and any other terms and conditions that the director may prescribe.

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

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

- (1) the name of the transferor;
- (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 transferor.

#### C.34:1B-286 Report by State colleges, universities.

18. Beginning the year next following the year in which sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287) take effect and every two years thereafter, a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the authority, prepare a report on the implementation of the program, and submit the report to the authority, the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. Each biennial report required under this section shall include a description of each redevelopment project receiving a tax credit under the program, a detailed analysis of the consideration given in each project to the factors set forth in sections 12 and 13 of P.L.2020, c.156 (C.34:1B-280 and C.34:1B-281), the return on investment for incentives awarded, the redevelopment project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The authority shall prepare a written response to the report, which the authority shall submit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

#### C.34:1B-287 Regulations.

19. 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, in consultation with the Commissioner of Environmental Protection, may adopt, immediately

upon filing with the Office of Administrative Law, regulations that the chief executive officer and commissioner deem necessary to implement the provisions of sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The chief executive officer, in consultation with the Commissioner of Environmental Protection, 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.). The rules shall require annual reporting by developers that receive tax credits pursuant to the program, in addition to the regular progress updates. Developers shall obtain certifications by the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury stating that the developer is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan. The rules and regulations adopted pursuant to this section shall also include a provision to require that developers forfeit all tax credits awarded in any year in which any such report is not received, and to allow the authority to extend, in individual cases, the deadline for any annual reporting or certification requirement established pursuant to this section.

C.34:1B-288 Short title.

20. Sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302) shall be known and may be cited as the "New Jersey Innovation Evergreen Act."

C.34:1B-289 Definitions.

21. As used in sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302):

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

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Follow-on investment" means a subsequent investment made by an investor who has a previous investment in a New Jersey high-growth business.

"Fund" means the "New Jersey Innovation Evergreen Fund" established by section 23 of P.L.2020, c.156 (C.34:1B-291).

"High-growth business" means a business that is growing significantly faster than the average growth rate of the economy or is a start-up company that is investing in developing a product or new business model that will allow it to grow significantly faster than the average growth rate of the economy within the next three to five years.

"Incentive area" means an area in this State: (1) designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan); or (2) that has been designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

"Innovation ecosystem" means funding, programs, and events that support the establishment and expansion of high-growth companies in targeted sectors. Examples of such funding, programs, and events include: mentoring programs for start-ups, meet-up or networking events, funding for locating a business in a collaborative workspace, programs that provide business services, and entrepreneurial education to companies.

"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. s.1400Z-1 as may be amended.

"Principal business operations" means at least 50 percent of the business's employees, who are not primarily engaged in retail sales, reside in the State, or at least 50 percent of the business's payroll for employees not primarily engaged in retail sales is paid to individuals living in this State.

"Program" means the New Jersey Innovation Evergreen Program established by section 22 of P.L.2020, c.156 (C.34:1B-290).

"Purchaser" means an entity registered to do business in this State with the Director of the Division of Revenue and Enterprise Services in the Department of the Treasury that purchases an allocation of tax credits under the program.

"Qualified business" means a business that, at the time of the first qualified investment in the business and throughout the period of the qualified investment under the program, is registered to do business in this State with the Director of the Division of Revenue and Enterprise Services in the Department of the Treasury; has its principal business operations located in the State and intends to maintain its principal business operations in the State after receiving a qualified investment under the program; is engaged in a targeted industry; and employs fewer than 250 persons at the time of the qualified investment.

"Qualified investment" means the direct investment of money by the fund in a qualified business for the purchase of shares of stock, with an option to make an additional investment in an option or warrant or a follow-on investment, in the discretion of the authority, all of which is matched by an investment by a qualified venture firm.

"Qualified venture firm" means a venture firm that is approved by the authority as a qualified venture firm pursuant to section 29 of P.L.2020, c.156 (C.34:1B-297).

"Special purpose vehicle" means an entity controlled by or under common control with a venture firm that is formed solely for the purpose of investing in a New Jersey high-growth business alongside the venture firm.

"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.

"Venture firm" means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.

#### C.34:1B-290 New Jersey Innovation Evergreen Program.

22. The New Jersey Innovation Evergreen Program is established as a program under the jurisdiction of the New Jersey Economic Development Authority. The purpose of the program is to invest in innovation as a catalyst for economic growth and to advance the competitiveness of the State's businesses in the global economy. Beginning on the effective date of sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302), the authority shall auction up to \$300,000,000 in tax credits in annual amounts not to exceed the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362). The authority shall not undertake an auction if, exclusive of reserves, including the reserve set aside for follow-on investments pursuant to subsection d. of section 23 of P.L.2020, c.156 (C.34:1B-291), more



than \$15,000,000 is available to the authority, from moneys received from any prior auction of tax credits pursuant to the program, to allocate to qualified venture firms.

C.34:1B-291 "New Jersey Innovation Evergreen Fund."

23. a. The authority shall establish and maintain a dedicated fund to be known as the "New Jersey Innovation Evergreen Fund." The authority shall use the money in the fund to carry out the purposes enumerated in subsections b. and c. of this section. The authority shall credit the fund with money paid by purchasers; distributions from payments or repayments made to the authority in accordance with subsection c. of section 31 of P.L.2020, c.156 (C.34:1B-299); earnings received, if any, from the investment or reinvestment of money credited to the fund; and any money which, from time to time, may otherwise become available for the purposes of the fund.

b. The authority shall allocate the money in the fund to qualified venture firms to make qualified investments of capital in qualified businesses through a special purpose vehicle in accordance with section 30 of P.L.2020, c.156 (C.34:1B-298) and to pay the administrative, legal, and auditing expenses of the authority incurred in the administration of the program. In addition, the authority shall use 75 basis points of the total amounts deposited in the fund, calculated on an annual basis, for programs administered by the authority that create an innovation ecosystem that supports and promotes high-growth businesses in the State.

c. The authority shall deposit into the fund dividends and returns on investments paid to the authority by or on behalf of a qualified business. Upon the fund holding total deposits of \$500,000,000 and thereafter upon a qualified investment in a qualified business achieving a return on investment of twice the original and follow-on investment, 50 percent of any return on investment in excess of twice the original and follow-on investment shall be paid to the General Fund of the State.

d. The authority shall account for and calculate reserves for follow-on investments, programs that support the State's innovation ecosystem, and administrative, legal, and auditing expenses of the authority in administering the program. The authority shall not include these reserves when calculating the amount in the fund available for new qualified investments.

C.34:2B-292 Sale of tax credits.

24. a. The authority shall sell the tax credits authorized pursuant to section 22 of P.L.2020, c.156 (C.34:1B-290) to purchasers through a competitive auction process.

b. The authority shall determine the form and manner in which potential purchasers may bid for tax credits available under the program. To be awarded a tax credit under the program, a potential purchaser shall:

- (1) specify the requested amount of tax credits, which shall not be less than \$1,000,000;
- (2) specify the amount the potential purchaser will pay in exchange for the requested amount of tax credits, which shall not be less than 85 percent of the requested dollar amount of tax credits;
- (3) commit to serve on the New Jersey Innovation Evergreen Advisory Board, established pursuant to section 32 of P.L.2020, c.156 (C.34:1B-300), and to otherwise provide mentorship, networking, and collaboration opportunities to qualified businesses that receive funding under the program; and
- (4) provide any other information that the chief executive officer of the authority determines is necessary.

c. Prior to an auction, the authority shall establish and disclose to bidders the weighted criteria the authority will utilize, which the authority shall base on the price offered to purchase the tax credits and the quality of the mentorship and networking opportunities and other support of the State's innovation ecosystem offered by a purchaser in its bid. The authority may pro rate the amount of tax credits allocated to each purchaser. A potential purchaser that submits a bid for tax credits under this section shall receive a written notice from the authority indicating whether the authority has approved it as a purchaser of tax credits and, if so, the amount of tax credits approved.

d. Except as provided in section 22 of P.L.2020, c.156 (C.34:1B-290), the authority shall hold one competitive auction per calendar year.

e. The authority may contract with an independent third party to conduct the competitive bidding process through which State tax credits issued by the authority may be sold.

#### C.34:1B-293 Contract between purchaser and authority.

25. a. A purchaser that submits a successful bid for the purchase of tax credits pursuant to section 24 of P.L.2020, c.156 (C.34:1B-292) shall enter into a contract with the authority that includes payment information and the commitments made by the purchaser in its auction bid. A purchaser that submits a successful bid for the purchase of tax credits pursuant to section 24 of P.L.2020, c.156 (C.34:1B-292) shall pay by wire transfer the amount specified in its auction bid to the authority for deposit into the fund. Upon receipt thereof, the chief executive officer shall notify the director to issue tax credits in the amount approved. Failure by the purchaser to pay the amount agreed upon on time may disqualify the purchaser from purchasing the tax credits and the authority may reassign the right to purchase the credits to another bidder. Failure by the purchaser to adhere to the commitments made in its auction bid may disqualify the purchaser from participating in future auctions and may result in the recapture of a portion of the tax credits.

b. The authority shall credit to the fund any money paid to the authority by a purchaser for an allocation of tax credits under the program.

c. The authority shall ensure that no undue financial advantage shall inure to a purchaser that also is: managing a qualified venture firm; beneficially owning, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests of a qualified venture firm; or controlling the direction of investments for a qualified venture firm. The chief executive officer of the authority shall certify that the authority is monitoring the activities of such purchasers and has taken appropriate steps to ensure no undue financial advantage inures to the purchasers.

#### C.34:1B-294 Application of credit to State tax liability.

26. a. A purchaser shall apply a credit awarded pursuant to sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302) against the State tax liability due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) of the purchaser for the current privilege period as of the date of the credit's approval. A purchaser may carry forward an unused credit resulting from the limitations of subsection b. of this section, if necessary, for use in the seven privilege periods next following the privilege period for which the credit is awarded.

b. The director shall prescribe the order of priority of the application of the credits awarded under sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302) and any other credits allowed by law. The amount of a credit applied under sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302) 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 of the purchaser 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).

C.34:1B-295 Application for tax credit transfer certificate.

27. a. A purchaser may apply to the authority and the director for a tax credit transfer certificate, in the privilege period during which the director allows the purchaser a tax credit pursuant to sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302), in lieu of the purchaser being allowed to apply any amount of the tax credit against the purchaser's State tax liability. A tax credit may be sold or assigned, in full or in part, to another person that may have a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). The tax credit transfer certificate provided to the purchaser shall include a statement waiving the purchaser's right to claim the credit that the purchaser has elected to sell or assign.

b. The purchaser shall not sell or assign a tax credit transfer certificate allowed under this section for consideration received by the purchaser 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 a purchaser by the director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to section 26 of P.L.2020, c.156 (C.34:1B-294) and any other terms and conditions that the director may prescribe.

c. A buyer 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. Ten percent of the consideration received by a purchaser from the sale or assignment of a tax credit transfer certificate pursuant to this section shall be remitted to the director and deposited in the General Fund of the State.

e. 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 transferor;
- (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 transferor.

C.34:1B-296 Application process.

28. a. The authority shall establish an application process and determine the form and manner through which a venture firm may make and file an application for certification as a qualified venture firm. The authority may accept applications on a rolling basis or on a date set by the authority.

b. In evaluating applicants for certification as a qualified venture firm, the authority shall establish weighted criteria by which the authority will evaluate all venture firms applying in the same calendar year and shall establish a minimum acceptable score. The criteria shall include, but not be limited to:

- (1) the management structure of the applicant, including:
  - (a) quality of the leadership, including willingness to work with the authority to support targeted industries and the innovation ecosystem in the State, and to locate in the State;

- (b) the investment experience of the principals with qualified businesses;
- (c) the knowledge, experience, and capabilities of the applicant in subject areas relevant to high-growth businesses in the State;
- (d) the tenure and turnover history of principals and senior investment professionals of the applicant;
- (e) whether the State's investment with the applicant under this program would exceed 15 percent of the total invested in the applicant by all investors, including investments in any special purpose vehicles;
- (f) the applicant's stage of fundraising; and
- (g) whether fees, expenses, and the remuneration of the general partner or manager are similar to those of peer investors;
- (2) the applicant's investment strategy, including:
  - (a) the applicant's track record of investing in high-growth businesses;
  - (b) whether the investment strategy of the applicant is focused on high-growth businesses, including the percentage of the investment identified to be invested in New Jersey or surrounding geographic areas; and
  - (c) the performance history of the general partner or fund manager based on a review of investment returns on individual funds on an absolute basis and relative to peers; and
- (3) The location of the applicant's venture firm and the proposed structure of the applicant venture firm's investments in qualified businesses, with preference given to applicant venture firms that are located in incentive areas and to applicant venture firms that agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas.

C.34:1B-297 Criteria for qualified venture firm.

29. a. The authority shall certify or refuse to certify a venture firm as a qualified venture firm based on the criteria for certification set forth in section 28 of P.L.2020, c.156 (C.34:1B-296), and subsections b. and c. of this section.

b. The authority shall not certify a venture firm as a qualified venture firm if the venture firm has: (1) an equity capitalization, net assets, or written commitments of less than \$10,000,000 in the form of cash or cash equivalents on the date the determination for certification is made; or (2) fewer than two principals or persons employed to direct the qualified investment of capital with at least five years of money management experience in the venture capital or private equity sectors on the date the determination for certification is made. 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 setting forth additional disqualifying criteria and adjusting the minimum equity capitalization, net assets, or written commitments of a qualified venture firm.

c. Prior to certifying a venture firm as a qualified venture firm, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the venture firm is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the venture firm. The authority may also contract with an independent third party to perform a background check on the venture firm.

d. The authority shall provide written notification to each venture firm that is certified as a qualified venture firm by the authority and shall provide written notification to each venture firm that the authority refuses to certify as a qualified venture firm, communicating

in detail the grounds for the authority's refusal. The authority shall review each qualified venture firm annually for the disqualifying criteria set forth in subsection b. of this section or other reasonable industry-accepted standards as determined by the authority. The authority may decertify a qualified venture firm at any time pursuant to the disqualifying criteria set forth in subsection b. of this section. Decertification shall not affect any previously made qualified investment or the fund's commitment to make a follow-on investment in a qualified business.

C.34:1B-298 Allocation of money to venture firms.

30. a. (1) The authority is authorized to allocate money credited to the fund to one or more qualified venture firms for qualified investments at the times, in the amounts, and subject to the terms and conditions that the authority shall determine to be necessary and appropriate to effectuate the purposes of sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302); provided that no more than two qualified investments shall be made with each qualified venture firm in a calendar year.

(2) Each qualified investment shall not exceed \$5,000,000 in initial investment, exclusive of follow-on investments; provided, however, if a qualified investment is in a business: (a) which utilizes intellectual property that is core to the its business model and was developed at a New Jersey-based college or university; (b) is considered a university spin-off business as determined by the authority; or (c) is certified by the State as a "minority business" or a "women's business" pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.), then the qualified investment shall not exceed \$6,250,000 in initial investment, exclusive of follow-on investments.

(3) The fund shall not invest in a qualified venture firm if the authority determines that an undue financial advantage would inure to a purchaser if the investment occurs or if the investment would be inconsistent with the investment policies and goals of the State.

(4) The authority shall have a goal for 25 percent of the fund money that is allocated to qualified venture firms to be reserved for investment in businesses located in opportunity zones.

(5) Within one year of the effective date of P.L.2020, c.156 (C.34:1B-269 et al.), the authority shall undertake a disparity study of investment by venture firms in women- and minority-owned business enterprises in this State. Based on the finding of the disparity study, the authority, following board approval, may institute a set-aside plan to ensure that fund money allocated to qualified venture firms is reserved for investment in women- and minority-owned business enterprises in this State.

b. The authority shall make and enter into an agreement with each qualified venture firm to which the authority allocates money under the program. The agreement shall include provisions that require the qualified venture firm to:

(1) make investments in qualified businesses that equal or exceed the amount of capital received by the qualified venture firm from the fund under the program;

(2) cause an audit of the qualified venture firm's books and accounts, which a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L.1997, c.259 (C.45:2B-42 et seq.), or licensed in accordance with the laws of another state, shall conduct at least once in each year in which the qualified venture firm is in receipt of fund money or in which the qualified venture firm is responsible for the management of fund money allocated to the qualified venture firm by the authority;

(3) enter into an agreement with each qualified business that receives a qualified investment, which agreement shall, at a minimum, require the qualified business to use the

qualified investment of capital to support its business operations in this State and to provide the information required under section 31 of P.L.2020, c.156 (C.34:1B-299);

(4) upon the identification of a qualified investment, create a special purpose vehicle for the qualified investment of the fund;

(5) upon the identification of a qualified investment, indicate the amount of follow-on investment the authority should reserve, and periodically provide updates concerning this amount;

(6) agree that the qualified venture firm will publicize its participation in the "New Jersey Innovation Evergreen Fund;"

(7) consent to the authority publicly disclosing the qualified venture firm on the list of qualified investment firms participating in the program; and

(8) consent to the disclosure of tax expenditure information as described in paragraph (8) of subsection b. of section 1 of P.L.2009, c.189 (C.52:27B-20a).

c. A qualified venture firm that has made and entered into an agreement with the authority in accordance with subsection b. of this section is authorized to make qualified investments of capital in one or more qualified businesses from fund money allocated to the qualified venture firm by the authority at the times, in the amounts, and subject to the terms and conditions that the qualified venture firm determines to be necessary and appropriate. The authority may limit the amount of allocated fund money that a qualified venture firm invests in a qualified business based upon the size of investments the qualified business has received, the source of the investments, and the industry in which the qualified business is engaged.

#### C.34:1B-299 Report by venture firm.

31. a. A qualified venture firm shall annually report to the authority:

(1) the amount of the qualified investment, if any, uninvested at the end of the preceding calendar year;

(2) all qualified investments made during the preceding calendar year, including the number and wages of employees of each qualified business at the time the venture firm made the qualified investment and as of December 31 of that year;

(3) for any qualified investment in which the qualified venture firm no longer has a position as of the end of the calendar year, the number of employees of the business as of the date the investment was terminated;

(4) financials, audited by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L.1997, c.259 (C.45:2B-42 et seq.), or licensed in accordance with the laws of another state, of the qualified venture firm and the special purpose vehicle that include a consolidated summary of the performance of the qualified venture firm. Any information about the performance of an individual business, including the qualified business, shall be considered confidential and not subject to the requirements of P.L.1963, c.73 (C.47:1A-1 et seq.); and

(5) any other information the authority requires to ascertain the impact of the program on the economy of the State.

b. With respect to the information required under paragraphs (1) through (4) of subsection a. of this section, the report shall include a statement prepared by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L.1997, c.259 (C.45:2B-42 et seq.), or licensed in accordance with the laws of another state, certifying that the accountant has reviewed the report and that the information and representations contained in the report are accurate.

c. Not later than 60 days after the sale or other disposition of a qualified investment, the qualified venture firm shall provide to the authority a report on the amount of the stock sold or disposed of and the consideration received for the sale or disposition. The report shall detail the cumulative effect of sequentially introduced positive or negative values and include the gross income and details of any offsetting fees that reduce the net distribution. Any dividend or proceeds received by the authority for the sale or other disposition of a qualified investment shall be deposited into the fund and used in accordance with section 23 of P.L.2020, c.156 (C.34:1B-291).

d. A qualified venture firm shall, as required at the discretion of the authority, submit to the authority satisfactory evidence supporting the information detailed in the annual report and certifying that all information provided by the qualified venture firm to the authority is true, including information contained in the application for certification, the agreement between the qualified venture firm and authority, any amendment to that agreement, and any other information submitted by the qualified venture firm to the authority pursuant to sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302). The qualified venture firm, or an authorized agent of the qualified venture firm, shall certify under the penalty of perjury that the information provided pursuant to this section is true.

#### C.34:1B-300 New Jersey Innovation Evergreen Advisory Board.

32. The New Jersey Innovation Evergreen Advisory Board is established in but not of the authority for the purposes of providing guidance and networking opportunities to qualified businesses. The members of the board shall serve in a voluntary capacity, to be appointed through a process to be determined by the chief executive officer of the authority from among purchasers and other strategic partners identified by the chief executive officer, to support the State's innovation ecosystem. The terms of the voluntary members so appointed, after the initial appointments, shall be one year, and each member may be reappointed.

#### C.34:1B-301 Report on implementation of program.

33. Beginning the year next following the year in which sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302) take effect and every two years thereafter, the authority shall prepare a report on the implementation of the program, and submit the report to 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 the names and locations of qualified businesses receiving capital; the amount of each qualified investment; a report by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L.1997, c.259 (C.45:2B-42 et seq.), or licensed in accordance with the laws of another state, of the consolidated performance of the fund; the cumulative amount of capital committed by purchasers; the rate and amount of fees charged by each qualified venture firm, including performance-based earnings and carried interest; the classification of each qualified business, according to the industrial sector and the size of the qualified business; the State's return on investment; the total number of jobs created in the State by the qualified business after the qualified investment; the average wages paid for the jobs; and any other metrics the authority determines are relevant based upon national best practices.

#### C.34:1B-302 Regulations.

34. 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 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302), 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.).

C.34:1B-303 Short title.

35. Sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310) shall be known and may be cited as the "Food Desert Relief Act."

C.34:1B-304 Findings, declarations.

36. a. The Legislature finds and declares that: (1) there are certain areas of the State, known as "food desert" communities, in which residents are unable to obtain reasonable and adequate access to nutritious foods and, in particular, to fresh fruits and vegetables; (2) the inaccessibility of nutritious food in food desert communities has been attributed, in large part, to the absence of supermarkets and grocery stores in those communities; (3) low-income families are more likely than others to live in food desert communities and to lack the transportation or financial resources necessary to reach distant wholesome markets; and (4) the establishment of financial incentives to supermarkets, grocery stores, mid-sized food retailers, and small food retailers is a reasonable means by which to ensure that residents of food desert communities in the State are provided with reasonable access to nutritious, fresh, and delicious produce, and are afforded the opportunity thereby to make healthier eating choices for themselves and for their families.

b. The Legislature therefore determines that it is both reasonable and necessary to authorize the New Jersey Economic Development Authority to establish a program that provides financial assistance to supermarkets, grocery stores, mid-sized food retailers, and small food retailers to establish and retain locations in food desert communities in order to provide a consistent, and easily accessible, source of fresh produce to residents in those communities.

C.34:1B-305 Definitions.

37. As used in sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310):

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Department" means the Department of Agriculture.

"Eligible equipment costs" means expenditures for the procurement of such equipment as is needed to allow a supermarket, grocery store, mid-sized food retailer, or small food retailer to store, refrigerate, transport, or otherwise maintain nutritious foods, including fresh fruits and vegetables, for retail purposes, but within a standard range based upon industry standards, as determined by the authority.

"Eligible technology costs" means expenditures for the procurement or upgrade of technology systems to support online ordering and e-commerce, including but not limited to computer hardware, software, internet connectivity, and database systems.

"Food desert community" means a physically contiguous area in the State in which residents have limited access to nutritious foods, such as fresh fruits and vegetables, through



supermarkets and grocery stores, and which has been designated as a food desert community pursuant to subsection b. of section 38 of P.L.2020, c.156 (C.34:1B-306).

"Initial operating costs" means expenditures for the operation of a supermarket or grocery store within the first three years after opening to the public, but within a standard range based upon industry standards, as determined by the authority.

"Mid-sized food retailer" means a medium-sized retail outlet with at least 2,500 but less than 16,000 square feet, of which at least 75 percent is occupied by food and related products.

"Program" means the Food Desert Relief Program established in section 38 of P.L.2020, c.156 (C.34:1B-306).

"Project cost" means the costs incurred in connection with the establishment of a supermarket or grocery store within a food desert community by the developer until the opening of the supermarket or grocery store to the public, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, any environmental remediation costs, plus costs not directly related to construction, of an amount not to exceed 20 percent of the total costs, capitalized interest paid to third parties, and the cost of infrastructure improvements, including ancillary infrastructure projects.

"Project financing gap" means the part of the total project cost, including return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer-contributed capital, which shall not be less than 20 percent of the total project cost, which may include the value of any existing land and improvements in the project area owned or controlled by the developer, and the cost of infrastructure improvements in the public right-of-way, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis.

"Small food retailer" means a small retail outlet, with less than 2,500 square feet, that sells a limited selection of foods and other products, such as a bodega, convenience store, corner store, neighborhood store, small grocery, or small-scale store.

"Supermarket or grocery store" means a retail outlet with at least 16,000 square feet, of which at least 90 percent is occupied by food and related products.

#### C.34:1B-306 Food Desert Relief Program.

38. a. (1) There is established the Food Desert Relief Program to be administered by the New Jersey Economic Development Authority. The program shall include tax credit components, as provided in sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307 and C.34:1B-308), in order to incentivize businesses to establish and retain new supermarkets and grocery stores in food desert communities.

(2) The total value of tax credits approved by the authority pursuant to sections 39 and 40 of P.L.2020, c.156 (C.34:1B-307 and C.34:1B-308) shall not exceed the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362).

b. The authority, in consultation with the Department of Agriculture and the Department of Community Affairs, shall initially designate not more than 50 separate geographic areas that are most in need of a supermarket or grocery store as food desert communities in this State. The Department of Agriculture and the Department of Community Affairs shall

develop criteria for the designation of food desert communities, but each separate food desert community shall consist of a distinct geographic area with a single defined border. The criteria shall, at a minimum, incorporate analysis of municipal or census tract poverty statistics, food desert information from the Economic Research Service of the United States Department of Agriculture, and healthier food retail tract information from the federal Centers for Disease Control and Prevention. The departments may also consider data related to municipal or census tract population size and population density in making food desert community designations pursuant to this subsection. The authority, in consultation with the departments, shall continuously evaluate areas previously designated as food desert communities and assess whether they still meet the criteria for designation as a food desert community and may designate additional food desert communities once every three years following the effective date of sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

c. To receive a tax credit under section 39 or 40 of P.L.2020, c.156 (C.34:1B-307 or C.34:1B-308), a taxpayer shall submit an application to the authority in the form and manner prescribed by the authority and in accordance with criteria established by the authority, which at minimum will include a commitment to accept benefits from federal nutrition assistance programs, such as the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Following the approval of an application, the authority may, pursuant to an award agreement, award tax credits to an eligible taxpayer that:

(1) develops and opens for business to the public the first or second supermarket or grocery store in a designated food desert community; or

(2) owns and operates the first or second supermarket or grocery store in a designated food desert community.

d. (1) The authority may sell all or a portion of the tax credits made available in a fiscal year pursuant to subsection a. of this section and dedicate the proceeds from such sale to provide grants and loans to qualifying supermarkets, grocery stores, mid-sized food retailers, and small food retailers. The amount of any grant or loan provided pursuant to this subsection shall be in accordance with the need of the supermarket, grocery store, mid-sized food retailer, or small food retailer, as determined by the authority. The authority shall sell tax credits pursuant to this section in the manner determined by the authority; provided, however, the authority shall not sell tax credits for less than 85 percent of the tax credit amount. Grants and loans made available pursuant to this subsection shall be awarded to entities that:

(a) are eligible for tax credits under subsection c. of this section in lieu of tax credits; or

(b) own and operate a mid-sized food retailer or small food retailer that commits to selling nutritious foods, including fresh fruits and vegetables, in a designated food desert community.

(2) A supermarket, grocery store, mid-sized food retailer, or small food retailer shall submit an application to the authority to receive a grant or loan pursuant to this subsection. The application shall be submitted in the form and manner prescribed by the authority and in accordance with criteria established by the authority. An entity eligible for a grant or loan under subparagraph (a) of paragraph (1) of this subsection shall not be required to submit a separate application to the authority for the grant or loan, provided that the entity has submitted an application to the authority pursuant to subsection c. of this section.

(3) Prior to awarding a grant or loan to an applicant supermarket, grocery store, mid-sized food retailer, or small food retailer pursuant to this subsection, the Department of

Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the applicant is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the applicant. The authority may also contract with an independent third party to perform a background check on the entity.

(4) An applicant supermarket, grocery store, mid-sized food retailer, or small food retailer shall, as required at the discretion of the authority, submit to the authority satisfactory information pertaining to the eligible equipment costs and eligible technology costs, as certified by a certified public accountant, certifications that all information provided by the applicant to the authority is true, including information contained in the application, any agreement pertaining to the award of grants or loans under the program, any amendment to such an agreement, and any other information submitted by the applicant to the authority pursuant to sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310), and evidence of the eligible equipment costs and eligible technology costs of the applicant. The applicant, or an authorized agent of the applicant, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

e. The authority may establish a technical assistance fund to assist any entity that is eligible for a tax credit, grant, or loan under this section. The technical assistance may make grants to entities to assist qualifying supermarkets, grocery stores, mid-sized food retailers, or small food retailers in implementation of best practices for increasing the accessibility of nutritious foods in food desert communities. Technical assistance shall be provided either directly by the authority or through a not-for-profit or for-profit entity and made available in English as well as the two most commonly spoken languages in New Jersey other than English. At the discretion of the authority, funds to support technical assistance may be provided in addition to, or in lieu of, any tax credit, grant, or loan awarded under sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

f. (1) The authority shall require that any tax credits, grants, or loans awarded by the authority under the program be utilized by the recipient for one or more of the following purposes, which shall be set forth in the award agreement:

- (a) to mitigate a project financing gap;
- (b) to mitigate the initial operating costs of the supermarket or grocery store; or
- (c) to mitigate the eligible equipment costs or eligible technology costs of the supermarket, grocery store, mid-sized food retailer, or small food retailer in order to make nutritious foods more accessible and affordable to residents within food deserts; or
- (d) to support initiatives to ensure food security of residents in food desert communities.

(2) The value of tax credits or grants awarded to individual entities under the program shall not exceed:

(a) in the case of an entity eligible under paragraph (1) of subsection c. of this section, 40 percent of the total project cost for the first supermarket or grocery store in a designated food desert community, and 20 percent of the total project cost for the second supermarket or grocery store in the food desert community; and

(b) in the case of an entity eligible under paragraph (2) of subsection c. of this section, the initial operating costs of the first supermarket or grocery store in a designated food desert community, and one-half of the initial operating costs of the second supermarket or grocery store in the food desert community; and

(c) in the case of an entity eligible for a grant or loan under subparagraph (b) of paragraph (1) of subsection d. of this section, the eligible equipment costs and eligible

technology costs of the supermarket, grocery store, mid-sized food retailer, or small food retailer.

g. An entity that develops and opens a new supermarket or grocery store in a designated food desert community shall be eligible for a tax credit only if the entity demonstrates to the authority at the time of application that each worker employed to perform construction at the project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

h. (1) Except as provided in paragraph (2) of this subsection, a labor harmony agreement shall be required if the State has a proprietary interest in a supermarket or grocery store and the agreement shall remain in effect for as long as the State acts as a market participant in the project. The provisions of this paragraph shall apply to a supermarket or grocery store that will have more than 10 employees.

(2) A labor harmony agreement under paragraph (1) of this subsection shall not be required if the authority determines that the supermarket or grocery store would not be feasible if a labor harmony agreement is required. The authority shall support the determination by a written finding, which provides the specific basis for the determination.

(3) As used in this subsection, "labor harmony agreement" means an agreement between a business that serves as the owner or operator of a supermarket or grocery store 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 a supermarket or grocery store, 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 at a supermarket or grocery store 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 that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of supermarket or grocery store employees in the State.

i. A recipient shall certify that all factual representations made by the recipient in the application or award agreement are true under the penalty of perjury. A material misrepresentation of fact in either the application or award agreement may result in recession and recapture of any grants or tax credits awarded, or acceleration of any loans made, under sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

#### C.34:1B-307 Award of credit against tax due.

39. a. For privilege periods beginning on or after January 1 next following the effective date of sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310), a taxpayer eligible under subsection c. of section 38 of P.L.2020, c.156 (C.34:1B-306) shall be awarded a credit against the tax due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). A taxpayer that qualifies for the award of a tax credit under this section may claim 25 percent of the total amount awarded in the privilege period in which the taxpayer establishes and opens the supermarket or grocery store for business, and an additional 25 percent of the total

amount awarded in each of the three privilege periods next following the initial opening, provided that the supermarket or grocery store remains in business and open to the public. For a taxpayer to be allowed a tax credit pursuant to this section, the taxpayer shall meet the requirements of this section, and the rules and regulations adopted pursuant to section 41 of P.L.2020, c.156 (C.34:1B-309).

b. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period shall be as prescribed by the Director of the Division of Taxation in the Department of the Treasury. The amount of the credit applied pursuant to this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), shall not reduce a taxpayer's tax liability for a privilege period 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). Any credit shall be valid in the privilege period in which the certification is approved and any unused portion thereof may be carried forward into the next 10 privilege periods or until exhausted, whichever is earlier.

c. The authority shall award tax credits to taxpayers until either the available tax credits are exhausted or all projects that are eligible for a tax credit pursuant to the provisions of sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310) receive a tax credit, whichever occurs first. If insufficient funding exists to allow a tax credit to a taxpayer in accordance with the provisions of subsection a. of section 38 of P.L.2020, c.156 (C.34:1B-306), the authority may offer the taxpayer a tax credit in an amount less than that provided in subsection a. of this section.

d. Prior to awarding a tax credit to a supermarket or grocery store, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether a qualifying supermarket or grocery store is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the supermarket or grocery store. The authority may also contract with an independent third party to perform a background check on the developer.

e. A supermarket or grocery store shall, as required at the discretion of the authority, submit to the authority satisfactory information pertaining to the project cost, project financing gap, and the initial operating costs, as certified by a certified public accountant, certifications that all information provided by the supermarket or grocery store to the authority is true, including information contained in the application, any agreement pertaining to the award of tax credits under the program, any amendment to such an agreement, and any other information submitted by the supermarket or grocery store to the authority pursuant to sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310), and evidence of the initial opening and continued operation of the supermarket or grocery store. The supermarket or grocery store, or an authorized agent of the supermarket or grocery store, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

#### C.34:1B-308 Credit against tax due.

40. a. For taxable years beginning on or after January 1 next following the effective date of sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310), a taxpayer eligible under subsection c. of section 38 of P.L.2020, c.156 (C.34:1B-306) shall be awarded a credit against the tax due pursuant to N.J.S.54A:1-1 et seq. A taxpayer that qualifies for

the award of a tax credit under this section may claim 25 percent of the total amount awarded in the taxable year in which the taxpayer establishes and opens the supermarket or grocery store for business, and may claim 25 percent of the total amount awarded in each of the three taxable years next following the initial opening, provided that the supermarket or grocery store remains in business and open to the public. For a taxpayer to be awarded a tax credit pursuant to this section, the taxpayer shall meet the requirements of this section, and the rules and regulations adopted pursuant to section 41 of P.L.2020, c.156 (C.34:1B-309).

b. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed against the tax imposed pursuant to N.J.S.54A:1-1 et seq. for a taxable year shall be as prescribed by the Director of the Division of Taxation in the Department of the Treasury, in consultation with the chief executive officer of the authority. The amount of the credit applied pursuant to this section against the tax imposed pursuant to N.J.S.54A:1-1 et seq. shall not reduce a taxpayer's tax liability for a taxable year to an amount less than zero. Any credit shall be valid in the taxable year in which the certification is approved and any unused portion thereof may be carried forward into the next 10 taxable years or until depleted, whichever is earlier.

c. A business entity that is classified as a partnership for federal income tax purposes shall not be allowed the credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of the taxpayer in respect of a distributive share of partnership income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year.

A taxpayer that is a New Jersey S corporation shall not be allowed the credit directly under N.J.S.54A:1-1 et seq., but the amount of credit of a taxpayer in respect of a pro rata share of S corporation income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the New Jersey S corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S corporation income of the New Jersey S corporation for its taxable year ending within or with the taxpayer's taxable year.

d. The authority shall award tax credits to taxpayers until either the available tax credits are exhausted or all projects that are eligible for a tax credit pursuant to the provisions of sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310) receive a tax credit, whichever occurs first. If insufficient funding exists to allow a tax credit to a taxpayer in accordance with the provisions of subsection a. of section 38 of P.L.2020, c.156 (C.34:1B-306), the authority may offer the taxpayer a tax credit in an amount less than that provided in subsection a. of this section 40.

e. Prior to awarding a tax credit to a supermarket or grocery store, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether a qualifying supermarket or grocery store, and each contractor and subcontractor performing construction work at the qualifying supermarket or grocery store, is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan. The authority may also contract with an independent third party to perform a background check on the developer.

f. A supermarket or grocery store shall, as required at the discretion of the authority, submit to the authority satisfactory information pertaining to the project cost, project financing gap, and the initial operating costs, as certified by a certified public accountant,

certifications that all information provided by the supermarket or grocery store to the authority is true, including information contained in the application, any agreement pertaining to the award of tax credits under the program, any amendment to such an agreement, and any other information submitted by the supermarket or grocery store to the authority pursuant to sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310), and evidence of the initial opening and continued operation of the supermarket or grocery store. The supermarket or grocery store, or an authorized agent of the supermarket or grocery store, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

C.34:1B-309 Rules, regulations.

41. The authority, in consultation with the department and the Director of the Division of Taxation in the Department of the Treasury, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to carry out the provisions of sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310).

C.34:1B-310 Annual report.

42. Within one year of the effective date of sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310), the authority shall annually submit a report to the Governor, the State Treasurer, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, on the effectiveness of the program in establishing supermarkets and grocery stores in food desert communities.

C.34:1B-311 Short title.

43. Sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321) shall be known and may be cited as the "New Jersey Community-Anchored Development Act."

C.34:1B-312 Purpose of New Jersey Community-Anchored Development Act.

44. The purpose of the New Jersey Community-Anchored Development Act is for the New Jersey Economic Development Authority to facilitate, in partnership with the State's key not-for-profit and governmental anchor institutions, large-scale development projects with desirable employment and geographical characteristics that are to impact a broader community. The Legislature finds that where a broad commonality of goals exists between anchor institutions and the State, the authority can effectively utilize anchor institutions as investors in, and additional overseers of, projects that the authority seeks to incentivize. Under the legislation, anchor institutions in the areas of education, health care, culture, community development, and economic development are provided with the opportunity to act as investors in targeted development, utilizing proceeds from the sale of State tax credits. This approach harnesses the deep experience of the numerous anchor institutions in the State, institutions that enjoy decades-long relationships with communities around the State, making them ideal partners for companies wanting to come to or expand in New Jersey.

This legislation seeks to overcome cost-of-occupancy differences between New Jersey and less expensive options in other jurisdictions for specific properties by reducing the cost of occupancy being offered to a targeted company. This legislation represents a shift in State economic development policy from a grant model to an investment model, differing significantly from past award models in that the legislation does not provide a certain dollar

amount to private employers based on the number and types of jobs being created or preserved in the State.

The legislation affords an opportunity for an anchor institution and the authority to become partners in a project, with the authority receiving a negotiated current or deferred economic return on the tax credit investment made by the anchor institution and ultimately the return of the amount initially invested. Through a competitive application process to the authority, a real estate partnership between an anchor institution and a partner business will make its case for an amount of tax credits necessary for that project to be able to establish occupancy costs at a competitive level.

By its inclusion of designated federal opportunity zones and areas eligible to be designated as federal opportunity zones as a separate basis for projects to receive tax credits, the legislation seeks to incentivize anchor institutions to look beyond the borders of their host communities, permitting them to invest in other locales that lack strong anchor institutions, thus expanding their influence and impact by doing so. Simultaneously, such investments will further the objectives of the State in attracting high-value employers and in providing economic stimulus to areas of the State that prior investment cycles have overlooked. The legislation is also expansive enough to permit the addition of other beneficial uses to a qualifying project; including housing, public amenities, parking, mixed uses, and facilities of an anchor institution itself.

The tax credits issued by the authority to an applicant anchor institution are to be issued pursuant to a tax credit agreement that sets forth negotiated terms on which the authority has agreed to issue the credits. The tax credit agreement is to include standards relating to the anticipated economic results of the community-anchored project and address accountability in the event that the community-anchored project fails to meet the requirements specified in the tax credit agreement.

The Legislature declares that two principal objectives underscore the policy approach of this legislation: first, an incentive program cannot succeed as a one-size-fits-all structure, and therefore an award of tax credits is to be thoroughly underwritten by the authority and specifically designed for scenarios in which the authority finds that the award will be effective; and second, the State is better served where the State's financial support is characterized and treated as an investment rather than an explicit grant.

#### C.34:1B-313 Definitions.

45. As used in sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321):

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by an anchor institution partner anchor institution, or a partner business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to section 1563 of the federal Internal Revenue Code (26 U.S.C. s.1563) or the entity is an organization in a group of organizations under common control that is subject to the regulations applicable to organizations pursuant to subsection (b) or (c) of section 414 of the federal Internal Revenue Code (26 U.S.C. s.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 the above referenced federal statutes.

"Anchor institution" means a governmental entity or nonprofit entity incorporated pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes having a



primary mission and specific policy goals that align with those of the authority under the program and that is a comprehensive health care system, a public research university, a private research university, a major cultural scientific, research, or philanthropic institution, or a public college which is separate from public research universities, or an experienced nonprofit or governmental economic or community development entity certified as an anchor institution by the board pursuant to subsection a. of section 46 of P.L.2020, c.156 (C.34:1B-314).

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

"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).

"Commitment period" means the period of time, which shall be not less than 10 years and no greater than twice the eligibility period that is granted to an anchor institution or, if applicable, a partner anchor institution, to distribute to the authority the agreed upon returns on investment for the award of tax credits pursuant to the program; provided, however, at the election of the authority or upon the request of an anchor institution or, if applicable, a partner anchor institution in order to benefit the community-anchored project, and as determined in the sole discretion of the authority, the authority may grant up to two consecutive five-year extensions of the commitment period.

"Community-anchored project" means a capital project that is located in an area that is designated as a New Jersey State opportunity zone, an area of the State designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan), or a municipality with a Municipal Revitalization Index distress score of at least 50 and for which an anchor institution and, if applicable, any partner anchor institution is to be awarded tax credits by the authority pursuant to a tax credit agreement which establishes the award of tax credits as an investment by the authority in the project, provided that the project will result in a capital investment of at least \$10,000,000 in a New Jersey State opportunity zone or in any other area of the State, but a project that is not located in a New Jersey State opportunity zone is to be primarily designed to result in the economic expansion of a targeted industry in this State.

"Comprehensive health care system" means an entity in this State with the primary purpose of offering comprehensive health care services.

"Comprehensive health care services" means the basic health care services provided under a health benefits plan, including medical and surgical services provided by licensed health care providers who may include, but are not limited to, family physicians, internists, cardiologists, psychiatrists, rheumatologists, dermatologists, orthopedists, obstetricians, gynecologists, neurologists, endocrinologists, radiologists, nephrologists, emergency services physicians, ophthalmologists, pediatricians, pathologists, general surgeons, osteopathic physicians, physical therapists and chiropractors. Basic benefits may also include inpatient or outpatient services rendered at a licensed hospital, covered services performed at an ambulatory surgical facility, and ambulance services. "Comprehensive health care services" shall include only services provided by licensed health care providers.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligibility period" means the period in which an anchor institution or, if applicable, a partner anchor institution may claim, sell, transfer, or otherwise use a tax credit under the New Jersey Community-Anchored Development Program, beginning with the tax period in

which the authority accepts certification of the business that it has met the capital investment requirements of the program and extending thereafter for a term of not more than 10 years.

"Eligible position" 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.

"Experienced nonprofit or governmental economic or community development entity" means a nonprofit entity incorporated pursuant to Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes with a substantial number of years of experience that has a core mission and a community track record of advancing economic or community development in at least one area of the State, that has undertaken multiple successful partnerships with government entities, educational institutions and the private sector in carrying out development projects, that has successfully developed multiple types of mixed-use projects, that owns or controls significant real estate assets, and that has appropriate prior experience in successfully developing mixed-use projects of comparable or greater size, value and complexity to that being proposed, structuring, securing, and utilizing complex financing in the development of projects of comparable or greater size, value, and complexity to that being proposed, as determined by the board. An experienced nonprofit or governmental economic or community development entity shall not be eligible to participate in the program in connection with a project that is primarily residential or retail.

"Major cultural institution" means a public or nonsectarian nonprofit institution within this State that engages in the cultural, intellectual, scientific, environmental, educational, or artistic enrichment of the people of this State, and which is designated by the board as a major cultural institution.

"New full-time job" means an eligible position created by an anchor institution, partner anchor institution or a partner business at the community-anchored project that did not previously exist in this State. For the purposes of determining a number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

"New Jersey State 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. s.1400Z-1.

"Partner anchor institution" means an anchor institution that partners with one or more anchor institutions to make an equity investment in or to provide a loan or other financial support for a community-anchored project.

"Partner business" means a corporation, partnership, firm, enterprise, franchise, association, trust, sole proprietorship, or other legal entity, but shall not include a public entity that enters into an agreement with an anchor institution or, if applicable, a partner anchor institution to rent and occupy commercial space within a community-anchored project. Under the program a partner business, subject to agreement with the anchor institution or, if applicable, a partner anchor institution, may lease one or more portions of the partner business's space in the community-anchored project to one or more other persons or entities.

"Private research university" means Princeton University and any other institution of higher education in this State designated by the board as a private research university, based on criteria and metrics established by the board.

"Program" means the New Jersey Community-Anchored Development Program established pursuant to section 46 of P.L.2020, c.156 (C.34:1B-314).

"Public research university" means Rutgers, The State University of New Jersey, Rowan University, the New Jersey Institute of Technology, and Montclair State University.

"Qualified business accelerator or incubator facility" means a commercial space that contains office, laboratory, or industrial space and which is located near, and presents opportunities for collaboration with, a public research university, a private research university, teaching hospital, college, or university, and within which at least 50 percent of the gross leasable area is restricted for use by one or more targeted industry start-up companies during the commitment period.

"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.

"Tax credit agreement" means a tax credit agreement entered into pursuant to section 50 of P.L.2020, c.156 (C.34:1B-318) between the authority and an anchor institution or, if applicable, a partner anchor institution.

"Work First New Jersey program" means the Work First New Jersey program established pursuant to P.L.1997, c. 38 (C.44:10-55 et seq.).

#### C.34:1B-314 New Jersey Community-Anchored Development Program.

46. a. The New Jersey Community-Anchored Development Program is established as a program under the jurisdiction of the New Jersey Economic Development Authority. The authority shall administer the program to invest in and incentivize the expansion of targeted industries in the State and the continued development of certain areas of the State through the provision of tax credits to an anchor institution and, if applicable, partner anchor institutions. The board shall certify a qualified anchor institution and, if applicable, qualified partner anchor institutions based on the requirements of sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321), and may approve the award of a tax credit to an anchor institution pursuant to section 49 of P.L.2020, c.156 (C.34:1B-317). The value of all tax credits approved by the authority to an anchor institution and, if applicable, partner anchor institutions under the program shall be subject to the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362).

b. (1) The authority shall administer the program to invest in, and incentivize the establishment of, community-anchored projects by an anchor institution and, if applicable, partner anchor institutions, independently or in collaboration with one or more partner businesses or governmental entities. The authority's investment in community-anchored projects shall be in the form of the award of tax credits to an anchor institution and, if applicable, partner anchor institutions.

(2) (a) The authority may award a tax credit to an anchor institution and, if applicable, one or more partner anchor institutions under the program, which the anchor institution and, if applicable, each partner anchor institution shall convert into an investment by the authority in a community-anchored project, subject to the condition that the anchor institution and, if applicable, each partner anchor institution either sell and transfer the tax credits, or adopt a plan to use the tax credits in order to finance the completion of the community-anchored project, which condition shall be included in the tax credit agreement entered into pursuant to section 50 of P.L.2020, c.156 (C.34:1B-318). An anchor institution and, if applicable, each

partner anchor institution receiving tax credits under the program shall use the proceeds derived from the sale or financing of the tax credits to make an equity investment in or to provide a loan or other financial support for the community-anchored project that will permit the anchor institution, and, if applicable, a partner business, a partner anchor institution, or both to develop the community-anchored project and to attract tenants, owners, investors, lenders, partners, collaborators, and other beneficial parties to the community-anchored project. A tax credit agreement, entered into pursuant to section 50 of P.L.2020, c.156 (C.34:1B-318) shall detail the terms by which an anchor institution and, if applicable, each partner anchor institution will convert the award of tax credits into an investment by the authority into the community-anchored project, subject to potential returns on investment to the authority based on an agreed-upon formula for the distribution of returns, including upon the sale of a community-anchored project or at the end of the commitment period. For community-anchored projects financed solely by governmental and nonprofit entity investments, the authority shall negotiate an agreed upon formula which shall include, but not be limited to, the potential recapture of the value of the tax credits awarded. For community-anchored projects that are not financed solely by governmental and nonprofit entity investments, the authority shall negotiate an agreed upon formula which shall include, but not be limited to, the potential recapture of the value of the tax credits awarded and additional returns on investment. The tax credit agreement shall, however, specify that the authority's interest in the community-anchored project shall be subordinate to the investments made by an anchor institution and, if applicable, each partner anchor institution and partner businesses. References to investments and returns in sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321) shall also include loans and other financial support and their corresponding returns.

(b) Consistent with an applicable tax credit agreement, a tax credit awarded to an anchor institution and, if applicable, each partner anchor institution for conversion into an authority investment, as provided pursuant to subparagraph (a) of this paragraph, may be applied against tax liability otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

(3) The authority shall develop protocols for assumptions testing relating to projected and actual returns on investment under the program and regularly analyze the returns on investment received by the authority under the program, and shall evaluate future applications and projections considering the results of the assumptions testing and analysis.

c. The authority shall engage in program evaluation and assumptions testing to ensure that the authority at least recaptures the value of the tax credits awarded to all anchor institutions and, if applicable, partner anchor institutions and realizes additional returns on investment under the program; provided, however, that for community-anchored projects financed solely by governmental and nonprofit entity investments, the authority may negotiate a potential return on investment, the calculation of which would include, but not be limited to, recapture of the value of the tax credits awarded for those community-anchored projects financed solely by governmental and nonprofit entities.

d. Any funds distributed to the authority as a return on investment pursuant to the program shall be deposited into the General Fund of the State.

#### C.34:1B-315 Eligibility to receive tax credit.

47. a. An anchor institution and, if applicable, each partner anchor institution shall be eligible to receive a tax credit under the program only if the anchor institution and, if

applicable, each partner anchor institution submits a program application to the authority that results in completion of a community-anchored project through a capital investment in a New Jersey State opportunity zone or, if the community-anchored project is primarily designed to result in the economic expansion of a targeted industry in this State, in an area of the State designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan) or in a municipality with a Municipal Revitalization Index distress score of at least 50.

b. At the time of application, an anchor institution and, if applicable, each partner anchor institution seeking tax credits pursuant to the program shall demonstrate to the authority:

(1) that the proposed community-anchored project will result in a capital investment in a New Jersey State opportunity zone or, if the project is primarily designed to result in the economic expansion of a targeted industry in this State, in an area of the State designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan) or in a municipality with a Municipal Revitalization Index distress score of at least 50;

(2) the structure and terms of the financial, corporate, and real estate instruments to be utilized to successfully complete and then operate the community-anchored project, including, but not limited to, the proposed economic and business relationship between the anchor institution and, if applicable, each partner anchor institution and any partner business;

(3) that the anchor institution and, if applicable, each partner anchor institution, along with any partner business and each partner institution participating in a community-anchored project, has not commenced any construction at the site of the community-anchored project prior to submitting an application, unless the authority determines that the community-anchored project would not be completed otherwise or, in the event the community-anchored project is to be undertaken in phases, the requested tax credit covers only phases for which construction has not yet commenced;

(4) the value of the tax credit that is necessary in each year of the eligibility period, in order for the anchor institution and, if applicable, each partner anchor institution to finance the establishment of the community-anchored project;

(5) the total aggregate value of the tax credit for the entire eligibility period that is necessary in order for the anchor institution and, if applicable, each partner anchor institution to finance the establishment of the community-anchored project;

(6) that the award of tax credits under the program will be converted into an investment by the authority into the community-anchored project, and demonstrate to the authority the anticipated current and deferred returns, as applicable, on that investment;

(7) that the community-anchored project shall comply with the standards established by the authority through regulation based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

(8) that the community-anchored 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);

(9) a description of the significant economic, social, planning, employment, environmental, fiscal, and other benefits that would accrue to the State, county, or municipality from the community-anchored project;

(10)that during the eligibility period, each worker employed to perform construction work and building services work at the community-anchored project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.). In the event the community-anchored project constitutes a lease of more than 55 percent of a single facility, these requirements shall apply to construction work and building services work at the entire facility. In the event the community-anchored project constitutes a lease of more than 35 percent of a single facility, these requirements shall apply to construction work at the entire facility;

(11)that during the eligibility period, the anchor institution and, if applicable, each partner anchor institution shall partner with one or more local community organizations that provide support and services to Work First New Jersey program recipients, in order to provide work activity opportunities and other appropriate services to Work First New Jersey program recipients, which activities and services may include, but shall not be limited to: work-study programs, internships, sector-based contextualized literacy training, skills-based training in growth industries in the State, and job retention and advancement services;

(12)the extent to which the community-anchored development will result in the expansion of a targeted industry in this State;

(13)that the timing of the award and investment of tax credits under the program shall allow for the successful completion and operation of the community-anchored project; and

(14)that the community-anchored project is viable and that the anchor institution and, if applicable, each partner anchor institution is a credible partner for completing the community-anchored project and providing the agreed-upon potential returns to the authority, as detailed in the tax credit agreement entered into pursuant to section 50 of P.L.2020, c.156 (C.34:1B-318).

c. Prior to the board considering an application submitted by an anchor institution and, if applicable, each partner anchor institution, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the anchor institution and, if applicable, each partner anchor institution and any partner business is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan. The authority may also contract with an independent third party to perform a background check on an anchor institution and, if applicable, each partner anchor institution and any partner business.

d. In order to facilitate the creation of new partnerships with anchor institutions and, if applicable, partner anchor institutions, the authority shall publish on the authority's website a list of names and contact information for each anchor institution that has submitted an application pursuant to this section.

#### C.34:1B-316 Submission of application by anchor institution.

48. a. Prior to March 1, 2027, an anchor institution and, if applicable, each partner anchor institution seeking a tax credit pursuant to the program shall submit an application 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.). The authority shall accept and certify applications for tax credits during the award rounds established pursuant to section 49 of P.L.2020, c.156 (C.34:1B-317).

b. The authority shall not consider an application for a community-anchored project unless the anchor institution and, if applicable, each partner anchor institution submits, with

the application, a letter evidencing support for the community-anchored project from the governing body of the municipality in which the community-anchored project is located.

c. The authority shall review the project costs for a proposed community-anchored project and evaluate and validate the underlying financial structure proposed by the anchor institution and, if applicable, each partner anchor institution. The authority shall conduct a State fiscal impact analysis to ensure that the overall value of tax credits provided to the community-anchored project is projected to result in net benefits to the State, taking into account the current and deferred returns to the authority. The authority shall assess the cost of these reviews to the applicant. An anchor institution and, if applicable, each partner anchor institution shall pay to the authority the full amount of the direct costs of an analysis concerning the anchor institution's and, if applicable, each partner anchor institution's application for tax credits that a third party retained by the authority performs, if the authority deems such retention to be necessary.

d. If at any time during the eligibility period the authority determines that an anchor institution or a partner anchor institution made a material misrepresentation on the program application, the anchor institution or partner anchor institution shall forfeit or repay to the authority the value of tax credits associated with that application.

#### C.34:1B-317 Awarding of tax credits.

49. a. The authority shall award tax credits under the program through a competitive application process consisting of up to two award rounds each year. The authority shall provide notice to the public of the opening and closing dates for submission of program applications on the authority's Internet website.

b. (1) The authority shall review applications for tax credits submitted to the authority by the deadline date of the award round and shall evaluate each application as if it were received on the deadline date, without providing any preference for early submissions. To determine priority for an award of a tax credit, all applications for community-anchored projects that satisfy the criteria set forth in sections 47 and 48 of P.L.2020, c.156 (C.34:1B-315 and C.34:1B-316) in a given award round shall be ranked on the basis of a scoring system developed by the authority through regulations adopted pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Prior to the commencement of an award round, the authority shall determine the minimum score for the award round that an anchor institution or, if applicable, each partner anchor institution is required to attain to be eligible for a tax credit.

(2) The authority may establish different criteria for community-anchored projects that are located in a New Jersey State opportunity zone and community-anchored projects that are primarily designed to result in the economic expansion of a targeted industry in this State.

c. The scoring system developed by the authority pursuant to subsection b. of this section shall assess applications for tax credits based on the following competitive criteria, which shall include, but shall not be limited to:

(1) the amount of tax credit requested by the anchor institution and, if applicable, each partner anchor institution compared to the overall investments required for the completion of the community-anchored project, along with the amount of the potential return on the authority's investment of tax credits to the State by the end of the commitment period, the amount of the tax credit, if any, that is unlikely to be realized as a return on investment to the State, and the proposed terms and structure for the authority's investment in the project, including applicable current and deferred returns;

(2) the financial benefit of the community-anchored project to the community in which the community-anchored project will be located;

(3) apprenticeships or workforce programs to be offered because of the community-anchored project;

(4) the ability of the community-anchored project to absorb and adapt to changing environmental conditions and deliver its objectives;

(5) how the community-anchored project will advance State, regional, and local development and planning strategies;

(6) the relationship of the community-anchored project to a comprehensive local development strategy, including its relation to other development and redevelopment projects in the municipality;

(7) the degree to which the community-anchored project enhances and promotes job creation and economic development;

(8) the extent of economic and related social distress in the municipality and the immediate area surrounding the community-anchored project;

(9) the extent to which the community-anchored project provides for the development of workforce housing and housing for individuals with special needs;

(10) the extent to which the community-anchored project constitutes the expansion of the anchor institution and, if applicable, each partner anchor institution to different areas of the State;

(11) the extent to which the community-anchored project provides for infrastructure, parking, retail, green space, or other public amenities creating a mixed-use community-anchored project;

(12) the inclusion of a qualified business accelerator or incubator facility as a part of the community-anchored project;

(13) the length of the commitment period for the community-anchored project;

(14) the quality and number of new full-time jobs that will be created by the anchor institution, partner anchor institution or a partner business at the community-anchored project;

(15) the quality and number of existing full-time jobs that will be retained by the anchor institution, partner anchor institution or a partner business in the State as a result of completing the community-anchored project, with the criteria specifying, in scoring the application, that the retention of an existing full-time job shall be given not more than one-third the weight of a new full-time job of a similar quality; and

(16) if the anchor institution has a board of directors, the extent to which that board of directors is diverse and representative of the community in which the community-anchored project is located.

d. Notwithstanding the provisions of subsection c. of this section, 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 competitive criteria required under the program when necessary to respond to the prevailing economic conditions in the State.

e. Prior to the award of a tax credit to an anchor institution or, if applicable, each partner anchor institution, to be converted into an authority investment in a community-anchored project, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority as to whether the anchor institution and, if applicable, each partner anchor institution, along with any partner business identified in a program application, and each contractor and subcontractor performing work at the community-



anchored project, is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan. Provided that all parties are in substantial good standing, or have entered into such an agreement, the authority shall allocate tax credits to community-anchored projects according to the community-anchored project's score and until either the available tax credits are exhausted or all community-anchored projects obtaining the minimum score receive a tax credit, whichever occurs first. If insufficient funding exists to fully fund all eligible community-anchored projects, a community-anchored project may be offered partial funding.

f. Applications that do not receive the minimum score established by the authority for that award round shall not receive further consideration for a tax credit by the authority in that award round; however, an anchor institution or partner anchor institution may revise or complete a new application to be submitted in a subsequent award round.

g. If an anchor institution or partner anchor institution declines a tax credit offered by the authority, the authority shall offer the tax credit to the applicant with the application having the next highest score, and having obtained at least the minimum score in that award round.

#### C.34:1B-318 Tax credit agreement with anchor institution.

50. a. Following approval and selection of an application pursuant to sections 48 and 49 of P.L.2020, c.156 (C.34:1B-316 and C.34:1B-317), the authority shall enter into a tax credit agreement with the anchor institution and, if applicable, each partner anchor institution. The chief executive officer of the authority shall negotiate the terms and conditions of the tax credit agreement on behalf of the State.

b. (1) A tax credit agreement shall specify the amount of the tax credit that the authority shall award to the anchor institution and, if applicable, each partner anchor institution for conversion into an authority investment and specify the duration of the eligibility period, which shall not exceed 10 years. The tax credit agreement shall provide an estimated date of completion for the community-anchored project and include a requirement for periodic progress reports through completion, including the submittal of executed financing commitments and documents or agreements that evidence site control.

(2) If, as a result of a default under the tax credit agreement, the authority rescinds a tax credit in the same calendar year in which the authority approved the tax credit, then the authority may assign the tax credit to another applicant that attained the minimum score determined pursuant to section 49 of P.L.2020, c.156 (C.34:1B-317).

c. The terms of the tax credit agreement shall:

(1) provide for a verification of project financing at the time the anchor institution, each partner anchor institution, and any partner business provides executed financing commitments to the authority and a verification of the anchor institution's projected cash flow and each partner anchor institution's cash flow at the time of certification that the project is completed;

(2) specify the length of the commitment period for the community-anchored project and the terms by which the anchor institution and, if applicable, each partner anchor institution shall provide to the authority current or deferred returns on investment generated by the community-anchored project and commit to a structure for returns on investment;

(3) allow the anchor institution and, if applicable, each partner anchor institution to distribute returns on investment to the authority for the tax credits in the amount specified in the tax credit agreement at any time within the commitment period, but require such

distribution to occur if the community-anchored project is sold before the end of the commitment period;

(4) specify amounts of returns to be retained by the anchor institution and, if applicable, each partner anchor institution for capital reserves, programming, or other purposes;

(5) identify the value of any monetary or financial benefit offered or provided by the anchor institution and, if applicable, each partner anchor institution to any partner business that works with the anchor institution and, if applicable, each partner anchor institution to complete and operate the community-anchored project;

(6) identify any benefits created by the anchor institution and, if applicable, each partner anchor institution for a partner business through equity investment in or debt-financing of a community-anchored project and specify the formula by which such benefits are passed through to a partner business;

(7) specify that the authority or the State may purchase tax credits offered for sale by an anchor institution and, if applicable, each partner anchor institution for 90 percent of the stated value of the tax credit before considering any further discounting to present value which shall be permitted;

(8) at a minimum, require an anchor institution and, if applicable, each partner anchor institution to provide oversight of the community-anchored project through ongoing reporting by a partner business to the anchor institution and, if applicable, each partner anchor institution, and subsequent ongoing reporting by the anchor institution and, if applicable, each partner anchor institution to the authority;

(9) specify other measures through which the authority shall ensure oversight of outstanding tax credit investments, and, in the event that an anchor institution or partner anchor institution fails to meet its obligations under the tax credit agreement or any program requirement, establish the right of the authority to assume direct oversight of any or all projects for which the anchor institution or partner anchor institution has entered into investment agreements and require the anchor institution or partner anchor institution to pursue any remedies it may have against a partner business; and

(10) at a minimum, require that the anchor institution, each partner anchor institution, and any partner businesses, adopt specific nondiscrimination policies for the operation of a community-anchored project.

d. The tax credit agreement shall include a requirement that the chief executive officer of the authority receive annual reports from the anchor institution and, if applicable, each partner institution that are to include separate certifications by the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury demonstrating that the anchor institution and, if applicable, each partner institution any partner business, and each contractor and subcontractor performing work at the community-anchored project is in substantial good standing with that department, or have entered into an agreement with that department that includes a corrective action plan, and the tax credit agreement shall include a provision that the anchor institution and, if applicable, each partner institution shall forfeit the tax credit in any year in which an uncured default exists under the tax credit agreement. The tax credit agreement shall, however, allow the authority to extend, in individual cases, the deadline for any annual reporting or certification requirement.

e. An anchor institution and, if applicable, each partner institution shall, as required at the discretion of the authority, submit to the authority satisfactory evidence of actual project costs, as certified by a certified public accountant, evidence of a temporary certificate of occupancy, or other event evidencing project completion. The anchor institution and, if

applicable, each partner institution, or an authorized agent of the anchor institution or partner institution, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

C.34:1B-319 Awarding of base tax credit.

51. a. Up to the limits established in subsection b. of this section and in accordance with a tax credit agreement, beginning upon the receipt of occupancy permits for any portion of the community-anchored project, or upon any other event evidencing project completion as set forth in the tax credit agreement, an anchor institution and, if applicable, each partner institution of an approved community-anchored project shall be awarded a base tax credit of \$5,000,000 for conversion into an authority investment in the community-anchored project.

b. An anchor institution and, if applicable, each partner institution may be allowed a tax credit in excess of the base amount, if approved by the authority, provided, however, the total tax credit allowed per community-anchored project shall not exceed \$75,000,000 and the total investment of all State resources not including rent payments in a community-anchored project shall not exceed 40 percent of the total cost of the project.

C.34:1B-320 Report by anchor institution.

52. a. An anchor institution and, if applicable, each partner institution that is awarded a tax credit under sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321) shall, commencing in the year in which the tax credit is awarded, and each year thereafter for the remainder of the eligibility period, submit a report indicating whether the anchor institution and, if applicable, each partner institution is aware of any condition, event, or act that would cause the anchor institution or partner institution not to be in compliance with the tax credit agreement or the provisions of sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321) and any additional reporting requirements contained in the tax credit agreement or tax credit certificate. The anchor institution and, if applicable, each partner institution, or an authorized agent of the anchor institution or partner institution, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.

b. (1) Upon receipt and review of each report submitted during the eligibility period, the authority shall provide to the anchor institution and, if applicable, each partner institution and the Director of the Division of Taxation in the Department of the Treasury a certificate of compliance indicating the amount of tax credits awarded to the anchor institution and, if applicable, each partner institution for conversion into an authority investment in the community-anchored project, that the anchor institution and, if applicable, each partner institution may:

(a) offer for sale through the provision of a tax credit transfer certificate pursuant to section 53 of P.L.2020, c.156 (C.34:1B-321); or

(b) use as collateral or to secure any financial instrument approved by the authority to provide financing for the community-anchored project, if that use is in accordance with rules and 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.), to govern the use of program tax credits.

(2) Upon receipt by the director of the certificate of compliance, the director shall coordinate with the anchor institution and, if applicable, each partner institution and the authority to provide the anchor institution and, if applicable, each partner institution with a tax credit transfer certificate, as described in section 53 of P.L.2020, c.156 (C.34:1B-321), or

a tax credit certificate for the value awarded by the authority for that year that the anchor institution and, if applicable, each partner institution may use as provided in paragraph (1) of this subsection b. and in accordance with the rules adopted pursuant to subparagraph (b) of paragraph (1) of this subsection.

C.34:1B-321 Application for tax credit transfer certificate.

53. a. An anchor institution and, if applicable, each partner institution may apply to the director and the chief executive officer of the authority for a tax credit transfer certificate, covering one or more years. The tax credit transfer certificate, upon receipt thereof by the anchor institution or partner institution from the director and the chief executive officer of the authority, may be sold or assigned, in full or in part, in the privilege period during which the anchor institution or partner institution receives the tax credit transfer certificate from the director, to another person, who may apply the credit against a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5.

b. The anchor institution or partner institution shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed under this section for consideration received by the anchor institution or partner institution 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 an anchor institution or partner institution by the director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321) and any other terms and conditions that the director may prescribe.

c. A purchaser or assignee of a tax credit transfer certificate pursuant to this section may make any subsequent transfers, assignments, or sales of a tax credit transfer certificate for an amount to be negotiated with a subsequent purchaser or assignee.

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 transferor;
- (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 transferor.

C.34:1B-322 Short title.

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

C.34:1B-323 Definitions.

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

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

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

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

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

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

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

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

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

"Developer" means a person who enters or proposes to enter into an incentive award agreement pursuant to the provisions of section 60 of P.L.2020, c.156 (C.34:1B-328), including, but not limited, to a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

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

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

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

"Food delivery source" means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to a full-service supermarket or grocery store, and other healthy food retailers of at least 18,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals.

"Food desert community" means a physically contiguous area in the State in which residents have limited access to nutritious foods, such as fresh fruits and vegetables, through supermarkets and grocery stores.

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

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

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

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

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

"Incubator facility" means a commercial property, which contains 5,000 or more square feet of office, laboratory, or industrial space, which is located near, and presents opportunities for collaboration with, a research institution, teaching hospital, college, or university, and within which at least 75 percent of the gross leasable area is restricted for use by one or more technology startup companies.

"Individuals with special needs" means individuals with mental illness, individuals with physical or developmental disabilities, and individuals in other emerging special needs

groups identified by the authority, based on guidelines established for the administration of the Special Needs Housing Trust Fund established pursuant to section 1 of P.L.2005, c.163 (C.34:1B-21.25a) or developed in consultation with other State agencies.

"Low-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

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

"Minimum environmental and sustainability standards" means standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

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

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

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

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

"Project cost" means the costs incurred in connection with a redevelopment project by a developer until the issuance of a permanent certificate of occupancy, or until such other time specified by the authority, for a specific investment or improvement, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus costs not directly related to construction, of an amount not to exceed 20 percent of the total costs, capitalized interest paid to third parties, and the cost of infrastructure improvements, including ancillary infrastructure projects. The cost of acquisition of land or fees associated with the application or administration of a grant under sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335) shall not constitute a project cost.

"Project financing gap" means the part of the total project cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to developer contributed capital, which shall not be less than 20 percent of the total project cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis.

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

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

"Quality childcare facility" is a child care center licensed by the Department of Children and Families, operating continuously, which has not been subject to an enforcement action, and which has and maintains a total licensed capacity of at least 60 children age 6 years or younger.

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

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

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

"SDA municipality" means a municipality in which an SDA district is situated.

"Total project cost" means the costs incurred in connection with the redevelopment project by the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, for a specific investment or improvement.

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

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

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



2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

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

“Workforce housing” means housing that is affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income of more than 80 percent, but less than 120 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

#### C.34:1B-324 New Jersey Aspire Program.

56. a. The New Jersey Aspire Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority. The authority shall administer the program to encourage redevelopment projects through the provision of incentive awards to reimburse developers for certain project financing gap costs. The board may approve the award of an incentive award to a developer upon application to the authority pursuant to sections 58 and 59 of P.L.2020, c.156 (C.34:1B-326 and C.34:1B-327). The value of all tax credits approved by the authority pursuant to sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), shall be subject to the limitations set forth in section 98 of P.L.2020, c.156 (C.34:1B-362).

b. The chief executive officer of the authority shall designate one staff member per government-restricted municipality in order to keep the municipality informed on activities within the municipality and to coordinate economic development initiatives.

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

57. a. Prior to March 1, 2027, a developer shall be eligible to receive an incentive award for a redevelopment project only if the developer demonstrates to the authority at the time of application that:

- (1) without the incentive award, the redevelopment project is not economically feasible;
- (2) a project financing gap exists, or the authority determines that the redevelopment project will generate a below market rate of return;
- (3) the redevelopment project is located in the incentive area;
- (4) except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application, unless the authority determines that the redevelopment project would not be completed otherwise or, in the event the redevelopment project is to be undertaken in phases, the requested incentive award is limited to only phases for which construction has not yet commenced;
- (5) the redevelopment project shall comply with minimum environmental and sustainability standards;
- (6) the redevelopment project shall comply with the authority’s affirmative action requirements, adopted pursuant to section 4 of P.L.1979, c.303 (C.34:1B-5.4);
- (7) during the eligibility period, each worker employed to perform construction work or building services work at the redevelopment project shall be paid not less than the prevailing wage rate for the worker’s craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005,

c.379 (C.34:11-56.58 et seq.). In the event a redevelopment project is undertaken by a tenant and the tenant has a leasehold of more than 55 percent of space in the building owned or controlled by the developer, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire building;

(8) the redevelopment project shall be completed, and the developer shall be issued a certificate of occupancy for the redevelopment project facilities by the applicable enforcing agency within four years of executing the incentive award agreement corresponding to the redevelopment project;

(9) the developer has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 of P.L.2007, c.101 (C.54:50-39); and

(10) the developer is not more than 24 months in arrears at the time of application.

b. In addition to the requirements set forth in subsection a. of this section, for a commercial project to qualify for an incentive award the developer shall demonstrate that:

(1) the incremental increase of State revenues realized from the commercial project upon its completion shall be in excess of the amount necessary to reimburse the developer for its project financing gap; and

(2) the developer shall have an equity participation of at least 20 percent of the total project cost.

c. In addition to the requirements set forth in subsection a. of this section, for a residential project to qualify for an incentive award, the residential project shall:

(1) have a total project cost of at least \$17,500,000, if the project is located in a municipality with a population greater than 200,000 according to the latest federal decennial census;

(2) have a total project cost of at least \$10,000,000 if the project is located in a municipality with a population less than 200,000 according to the latest federal decennial census; or

(3) have a total project cost of at least \$5,000,000 if the project is in a qualified incentive tract or government-restricted municipality.

d. In addition to the requirements set forth in subsections a. and c. of this section, for a residential project consisting of newly-constructed residential units to qualify for an incentive award, the developer shall reserve at least 20 percent, but not more than 50 percent, of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the "Fair Housing Act," P.L.1985, c. 222 (C.52:27D-301 et al.) and at least 5 percent of the residential units constructed as workforce housing, unless: the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan; the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan. If the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan, then the developer shall reserve at least 10 percent, but not more than 50 percent, of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the "Fair Housing

Act," P.L.1985, c.222 (C.52:27D-301 et al.) and at least 15 percent of the residential units constructed as workforce housing.

e. Prior to the board considering an application submitted by a developer, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the developer is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the developer. The authority may also contract with an independent third party to perform a background check on the developer.

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

58. a. Prior to March 1, 2027, a developer that meets the eligibility criteria in section 57 of P.L.2020, c.156 (C.34:1B-325) and is seeking an incentive award for a redevelopment project shall submit an application to the authority and, in the case of a residential project, shall submit an application to the authority and the agency, in a form and manner prescribed in regulations adopted by the authority, in consultation with the agency, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The authority shall accept applications for incentive awards during the grant periods established pursuant to section 59 of P.L.2020, c.156 (C.34:1B-327).

b. The authority shall not consider an application for a commercial project unless the developer submits a letter evidencing support for the commercial project from the governing body of the municipality in which the commercial project is located with the application.

c. The authority shall review the project cost, evaluate and validate the project financing gap estimated by the developer, and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project will result in a net positive benefit to the State, provided that the net benefit analysis shall not apply to capital investment for a food delivery source; a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of Health; or a residential project. In determining whether a project will result in a net positive benefit to the State, the authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et al.), the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The authority shall assess the cost of these reviews to the applicant. A developer shall pay to the authority the full amount of the direct costs of an analysis concerning the developer's application for a tax credit that a third party retained by the authority performs, if the authority deems such retention to be necessary. The authority shall evaluate the net economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed redevelopment project for which an award of tax credits is being sought.

d. For a redevelopment project subject to the requirement of subsection c. of this section to be eligible for any tax credits under the program, a developer shall demonstrate to the authority that the award of tax credits will yield a net positive benefit to the State equaling an

amount determined by the authority through regulation that exceeds the requested tax credit amount. The developer shall certify, under the penalty of perjury, that all documents submitted, and factual assertions made, to the authority to demonstrate that the award of tax credits will yield a net positive benefit to the State in accordance with this subsection are true and accurate at the time of submission. A redevelopment project located in a government-restricted municipality shall yield a net positive benefit to the State that exceeds the requested tax credit amount, but the net benefit requirement set by the authority for such redevelopment projects may be up to 35 percentage points lower than the net benefit requirement set by the authority for all other eligible redevelopment projects.

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

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

#### C.34:1B-327 Awarding of incentive awards.

59. a. Prior to March 1, 2027, for redevelopment projects eligible pursuant to section 57 of P.L.2020, c.156 (C.34:1B-325), the authority shall award incentive awards based on the order in which complete, qualifying applications were received by the authority. If a developer intends to apply to both the authority and the agency for subsidies, the developer shall notify the agency simultaneously with any application made to the authority. The authority shall transmit its grant determination for such residential projects to the agency along with any information developed by the authority and confirmation of the authority's intent to provide an incentive award or award to the project. Approval of an application by the agency shall be the final determination required for an incentive award for a residential project under this section.

b. Prior to allocating an incentive award to a redevelopment project, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the developer and each contractor and subcontractor performing work at the redevelopment project is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan. The authority may also contract with an independent third party to perform a background check on the developer. Provided that the developer and all contractors and subcontractors are in substantial good standing, or have entered into such agreements, the authority shall allocate incentive awards to redevelopment projects according to the redevelopment project's score and until either the available incentive awards are exhausted or all redevelopment projects obtaining the minimum score receive an incentive award, whichever occurs first. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

#### C.34:1B-328 Incentive award agreement.

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

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

c. To ensure the protection of taxpayer money, if the authority determines that the project financing gap is smaller than determined at board approval, the authority shall reduce the amount of the tax credit on a pro rata basis. If there is no project financing gap, then the developer shall forfeit the incentive award. This test shall be conducted at the end of the third year of the eligibility period whereupon the authority shall evaluate the developer's cash flow and compare that cash flow to the projected cash flow at the time of board approval. For a commercial project, if the actual cash flow exceeds the projected cash flow at the time of board approval by more than 15 percent, the authority shall require the developer to pay up to 15 percent of the amount of the excess <sup>1</sup>, which payment shall be deposited in the State General Fund. To the extent applicable, in the case of a residential project, the developer's return on investment shall be subject to the provisions of section 7 of P.L.1983, c.530 (C.55:14K-7).

d. The incentive award agreement shall include a requirement that the chief executive officer of the authority receive annual reports from the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury demonstrating that the developer and each contractor and subcontractor performing work at the redevelopment project is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action. The incentive award agreement shall also include a provision that the developer shall forfeit the incentive award in any year in which any such report is not received. The incentive award agreement shall also require a developer to engage in on-site consultations with the Division of Workplace Safety and Health in the Department of Health.

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

(2) A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The authority may enter into an incentive

award agreement with a developer without the labor harmony agreement required under paragraph (1) of this subsection if the authority determines that the redevelopment project would not be able to go forward if a labor harmony agreement is required. The authority shall support the determination by a written finding, which provides the specific basis for the determination.

(3) As used in this subsection:

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

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

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

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

(3) At the time the developer submits the annual report required pursuant to section 62 of P.L.2020, c.156 (C.34:1B-330) to the authority, the developer shall certify, under the penalty of perjury, that it is in compliance with the terms of the community benefits agreement. If the developer fails to provide the certification required pursuant to this paragraph or the authority determines that the developer is not in compliance with the terms of the community

benefits agreement based on the reports submitted by the community advisory committee pursuant to paragraph (2) of this subsection, then the authority may rescind an award or recapture all or part of any tax credits awarded.

(4) A developer shall not be required to enter into a community benefits agreement pursuant to this subsection if the developer submits to the authority a copy of the developer's redevelopment agreement that is certified by the municipality in which the redevelopment project is located.

g. A developer shall submit, prior to the first disbursement of tax credits under the incentive award agreement, but no later than six months following project completion, satisfactory evidence of actual project costs, as certified by a certified public accountant, evidence of a temporary certificate of occupancy, or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a developer to the authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

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

#### C.34:1B-329 Total tax credit.

61. a. Up to the limits established in subsection b. of this section and in accordance with an incentive award agreement, beginning upon the receipt of occupancy permits for any portion of the redevelopment project, or upon any other event evidencing project completion as set forth in the incentive award agreement, a developer shall be allowed a total tax credit that shall not exceed 45 percent of the total project cost of the redevelopment project, except for a commercial project that is located in a government-restricted municipality, in which case the total tax credit allowed shall not exceed 50 percent of the total project cost of the commercial project.

b. The value of all tax credits approved by the authority under the program for a redevelopment project shall not exceed \$50,000,000 per redevelopment project if located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50, or \$32,000,000 for any other redevelopment project.

#### C.34:1B-330 Report by developer.

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

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

(2) Upon receipt by the director of the certificate of compliance, the director shall allow the developer a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). A developer shall apply the credit awarded against the developer's liability under section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5 for the privilege period during which the director allows the developer a tax credit pursuant to this subsection. A developer shall not carry forward an unused credit unless the developer was unable to use the credit because the developer's redevelopment project was directly impacted due to a natural disaster, state emergency, national emergency, or a situation that was out of the developer's control that impacted the developer's use of the credit that year, in which case the developer is permitted to carry forward an unused credit for up to two years upon submitting evidence of the developer's redevelopment project being directly impacted by such a circumstance and receiving approval from the authority. Credits granted to a partnership shall be passed through to the partners, members, or owners, respectively, pro-rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the director accompanied by any additional information as the director may prescribe.

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

#### C.34:1B-331 Tax credit transfer certificate.

63. a. A developer may apply to the director and the chief executive officer of the authority for a tax credit transfer certificate, covering one or more years, in lieu of the developer being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer from the director and the chief executive officer of the authority, may be sold or assigned, in full or in part in an amount not less than \$25,000, in the privilege period during which the developer receives the tax credit transfer certificate from the director, to another person, who may apply the credit against a tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The certificate provided to the developer shall include a statement waiving the developer's right to claim the amount of the credit that the developer has elected to sell or assign against the developer's tax liability.

b. The developer shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed under this section for consideration received by the developer of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted, except a developer of a residential project consisting of newly-constructed residential units may assign a tax credit transfer certificate for consideration of less than 85 percent subject to the submission of a plan to the



authority and the agency to use the proceeds derived from the assignment of tax credits to complete the residential project, except a developer of a residential project consisting of newly-constructed residential units that has received federal low income housing tax credits under 26 U.S.C. s.42(b)(2)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 75 percent subject to the submission of a plan to the authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project. The tax credit transfer certificate issued to a developer by the director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335) and any other terms and conditions that the director may prescribe.

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

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

- (1) the name of the transferrer;
- (2) the name of the transferee;
- (3) the value of the tax credit transfer certificate; and
- (4) the consideration received by the transferrer.

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

64. a. A developer who has entered into an incentive award agreement pursuant to section 60 of P.L.2020, c.156 (C.34:1B-328) may, upon notice to and written consent of the authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in and to the incentive award agreement and in the incentive awards payable under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the developer under the incentive award agreement. Any assignment shall be an absolute assignment for all purposes, including the federal bankruptcy code.

b. Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the authority. The incentive award pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. As a condition of any incentive grant, the grantee, assignee, pledgee or subsequent holder of the incentive grant shall immediately file notice of the same with the clerk of the county in which the project is located.

c. The authority shall publish on its Internet website the following information concerning each pledge, assignment, transfer, or sale approved by the authority pursuant to this section:

- (1) the name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in an incentive grant agreement or tax credit agreement;
- (2) the name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the incentive grant agreement or tax credit agreement;

(3) the value of the right, title, or interest in the incentive grant agreement or tax credit agreement; and

(4) the consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the incentive grant agreement or tax credit agreement.

C.34:1B-333 “Transformative project.”

65. a. As used in this section, "transformative project" means a redevelopment project that has a project financing gap, that has a total project cost of at least \$100,000,000, and that includes 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space or that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production and which is of special economic importance as measured by the level of new jobs, new capital investment, opportunities to leverage leadership in a high-priority targeted industry, or other state priorities as determined by the authority pursuant to rules and regulations promulgated to implement this section. The criteria developed by the authority shall include, but shall not be limited to:

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

(2) for a residential or mixed-use project, the construction of 1,000 or more new residential units, 20 percent of which shall be constructed for occupancy by low- and moderate-income households with affordability controls as required under the "Fair Housing Act," P.L.1985, c. 222 (C.52:27D-301 et al.) and at least 5 percent of the residential units constructed as workforce housing, unless: the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan; the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan. If the municipality in which the property is located has received substantive certification from the council and such a reservation is not required under the approved affordable housing plan or the municipality has been given a judgment of repose or a judgment of compliance by the court, and such a reservation is not required under the approved affordable housing plan, then the developer shall reserve at least 10 percent, but not more than 50 percent, of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the "Fair Housing Act," P.L.1985, c. 222 (C.52:27D-301 et al.) and at least 15 percent of the residential units constructed as workforce housing; and<sup>1</sup>

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

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

b. The authority may award an incentive award to no more than ten transformative projects in accordance with the provisions of sections 59 through 67 of P.L.2020, c.156 (C.34:1B-327 through C.34:1B-335); provided, however, a transformative project shall not be subject to the competitive application procedure set forth in section 59 of P.L.2020, c.156 (C.34:1B-327). A transformative project receiving an incentive award pursuant to this

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

c. The authority shall review the transformative project cost, evaluate and validate the project financing gap estimated by the developer, and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the transformative project will result in a net positive benefit to the State. In determining whether a transformative project will result in a net positive benefit to the State, the authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the "Five-Year Exemption and Abatement Law," P.L.1991, c.441 (C.40A:21-1 et seq.), the "Long Term Tax Exemption Law," P.L.1991, c.431 (C.40A:20-1 et al.), the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The authority shall assess the cost of these reviews to the applicant. A developer shall pay to the authority the full amount of the direct costs of an analysis concerning the developer's application for an incentive award that a third party retained by the authority performs, if the authority deems such retention to be necessary. The authority shall evaluate the net economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed transformative project for which an award of tax credits is being sought. Projects that are predominantly residential shall be excluded from the calculation of the net benefit test required pursuant to this subsection.

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

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

f. Prior to allocating an incentive award to a developer, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the developer and each contractor and subcontractor performing work at the transformative project is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan. The authority may also contract with an independent third party to perform a background check on the applicant.

g. Notwithstanding the limitation on incentive awards set forth in subsection b. of section 61 and section 98 of P.L.2020, c.156 (C.34:1B-329 and C.34:1B-362) to the contrary, the authority may allow a developer of a transformative project a tax credit, as reimbursement for certain project financing gap costs, in an amount not to exceed 30 percent of the total project cost, the total value of the project financing gap, or \$250,000,000 whichever is less.

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

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

C.34:1B-335 Regulations.

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

C.34:1B-336 Short title.

68. 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."

C.34:1B-337 Definitions.

69. 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. s.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. s.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. A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by full-time employees of an affiliate.

"Capital investment" means expenses that a business or an affiliate of the business incurs 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 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 until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic 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;

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 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) 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., 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.

A "full time employee" further means a person who, except for purposes of the Statewide workforce, is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or federal law and who is paid no 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.

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 per qualified business facility 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.

“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 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 agreement" means the contract between the business and the authority, which sets forth the terms and conditions under which the business shall be eligible to receive the incentives authorized pursuant to the program.

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

"Incentive area" means:

- a. an aviation district;
- b. a port district;
- c. a distressed municipality or transit hub municipality;
- 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, provided an area designated as Planning Area 2 (Suburban) or Planning Area 3 (Fringe Planning Area) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation.
- 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 Strategic 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 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.

"Incentive phase agreement" means a sub-agreement of the incentive agreement that governs the timing, capital investment, employment levels, and other applicable details of the respective phase.

"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. s.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 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 at a qualified business facility 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 and the employment commitment at a qualified business facility 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).

"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 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. s.1400Z-1.

"Quality child care facility" is a child care center licensed by the Department of Children and Families, operating continuously, which has not been subject to an enforcement action, and which has and maintains a total licensed capacity of at least 60 children age 6 years or younger.

"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, is at risk of being lost to another state or country or of being eliminated. 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.

"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 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.

#### C.34:1B-338 Emerge Program.

70. 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).

## C.34:1B-339 Application for tax credits.

71. a. Beginning on the effective date of P.L.2020, c.156 (C.34:1B-269 et al.), but prior to March 1, 2027, 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 at the qualified business facility 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 transit hub municipality 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) the net economic benefits shall be discounted to reflect the uncertainty of the business's location after the commitment period expires, provided that a business may elect a period of extended commitment 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 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; and

(iii) the qualified business facility constitutes a lease of less than 35 percent of the qualified business 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 a business has executed with the authority a commitment letter regarding authority financial assistance and the first payment or other provision of the assistance is received.

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;

(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 located in qualified incentive tract 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 and new construction or rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises equal in size to the space occupied by the business's retained full-time jobs at the time of application;

(e) for a business 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 and new construction or rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises equal in size to the space occupied by 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 shall provide and adhere to a plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business's new or retained full-time employees as approved and shall certify, under the penalty of perjury, that not less than 80 percent of the withholdings of new or retained full-time jobs are subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. 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.

e. The owner of the business, or an authorized agent of the owner, 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 of P.L.2020, c.156 (C.34:1B-269 et al.) but prior to March 1, 2027.

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

72. 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 Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the eligible business is in compliance 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 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, 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 current in-State locations; and all lease agreements, ownership documents, or substantially similar documentation for potential out-of-State location alternatives, to the extent they exist. 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 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 owner of the eligible



business, or an authorized agent of the owner, 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 owner of the eligible business, or an authorized agent of the owner, 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.

#### C.34:1B-341 Project agreement.

73. 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, an incentive 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 incentive agreement when each phase is to begin and be completed, with the awarding of tax credits under the incentive agreement to be predicated on the number of full-time jobs created through the fulfillment of each incentive 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 or meets the agreement requirements described in paragraph (1) of subsection b. of section 71 of P.L.2020, c.156 (C.34:1B-339), 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 Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury demonstrating that the eligible business and each contractor and subcontractor performing work at the qualified business facility is in compliance with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan, and a provision providing that if the eligible business is not in compliance with its legal obligations of rules administered by these departments and has been given formal notice thereof, then the authority may suspend the issuance of tax credits pending resolution of the dispute;

(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 eligible business's project agreement that is certified by the municipality in which the project is located.

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

74. a. Commencing with the date six months following the date the authority and an eligible business execute 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 completion 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 business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

d. The owner of the eligible business, or an authorized agent of the owner, shall certify that the information provided pursuant to this section is true under the penalty of perjury.

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

75. 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 an eligible 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 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 \$1,000 per year for each additional amount of investment that exceeds the minimum amount required for eligibility by 40 percent, with a maximum increase of \$3,000 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 commitment 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, \$1000 per year;
- (iv) if the number of new full-time jobs is between 801 and 1,000, \$1,250 per year;
- (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 that employs full-time positions at the project with a median salary in excess of the median salary for the government-restricted municipality, an increase of \$250 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 \$1,500 per year;

(g) for an eligible business with a qualified business facility located in a qualified incentive tract, an increase of \$500 per year;

(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 into a partnership with a prisoner 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, 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 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;

(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. 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 if the median salary of new full-time jobs and retained full-time jobs at the qualified business facility is less than the existing median salary for the county 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 at the qualified business facility is below the existing median salary for the county 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 at the qualified business facility is 30 percent or more below the existing median salary for the county 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 follows: (1) for each new full-time job, the eligible business shall be allowed tax credits equaling the lesser of 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 current 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.

C.34:1B-344 Forfeit of credit.

76. 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 at the qualified business facility, 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 at the qualified business facility, 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 incentive 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 at the qualified business facility to 80 percent of the number of jobs specified in the project agreement or incentive 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 engaged primarily in a targeted industry with less than 50 employees at application:

(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:

(a) the new facility:

(i) 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

(ii) 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 requirements of the program, provided that the authority shall require a new cost benefit analysis illustrating the 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.

(b) 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 at the qualified business facility 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 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 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 incentive agreement shall not be necessary to add or remove an affiliate after approval or execution of the incentive 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 incentive agreement.

#### C.34:1B-345 Annual report.

77. 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 owner of the eligible business, or an authorized agent of the owner, 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. (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.

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

78. 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;

- (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.

C.52:27D-520 "Recovery Infrastructure Fund."

79. a. The authority shall establish a dedicated fund to be known as the "Recovery Infrastructure Fund." Money in the fund shall be dedicated to the purpose of funding local infrastructure, which shall include:

- (1) buildings and structures, such as schools, fire houses, police stations, recreation centers, public works garages, and water and sewer treatment and pumping facilities;
- (2) sidewalks, streets, roads, ramps, and jug handles;
- (3) open space with improvements such as athletic fields, playgrounds, and planned parks;
- (4) open space without improvements;
- (5) public transportation facilities such as train stations and public parking facilities; and
- (6) the purchase of equipment considered vital to public safety.

b. The fund shall be credited with money remitted by eligible businesses pursuant to paragraph (2) of subsection b. of section 71 of P.L.2020, c.156 (C.34:1B-339).

c. Money remitted to the fund by an eligible business pursuant to paragraph (2) of subsection b. of section 71 of P.L.2020, c.156 (C.34:1B-339) shall be earmarked for use on local infrastructure projects in the municipality in which the eligible business's project is located.

d. A municipality shall apply to the authority, in a form and manner prescribed by the authority, for disbursements from the Recovery Infrastructure Fund. The authority, in consultation with the Department of Community Affairs, shall review and approve applications for disbursements of money from the fund pursuant to the provisions of this section and the rules and regulations promulgated by the authority pursuant to paragraph (1) of subsection f. of this section.

e. The Department of Community Affairs shall coordinate with the authority and other boards, commissions, institutions, departments, agencies, State officers, and employees to carry out the local infrastructure projects funded through the Recovery Infrastructure Fund.

f. (1) The authority shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of subsections a. through d. of this section.

(2) The Department of Community Affairs shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of subsection e. of this section.

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

80. 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.

#### C.34:1B-348 Regulations.

81. 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.).

#### C.34:1B-349 Short title.

82. Sections 82 through 88 of P.L.2020, c.156 (C.34:1B-349 et al.) shall be known and may be cited as the "Main Street Recovery Finance Program Act."

83. As used in sections 82 through 88 of P.L.2020, c.156 (C.34:1B-349 et al.):

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

"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).

"Eligible microbusiness" means a business enterprise located in the State that produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenue of less than \$1,000,000 at the time of application for a loan under the program.

"Eligible small business" means any business that satisfies the criteria set forth in subsection b. of section 85 of P.L.2020, c.156 (C.34:1B-352) at the time of application for a grant under the program.

"Program" means the Main Street Recovery Finance Program established pursuant to section 84 of P.L.2020, c.156 (C.34:1B-351).

"Small business" means a business engaged in the conduct of a trade or business in this State that qualifies as a "small business concern" within the meaning of the federal "Small Business Act," Pub.L.85-536 (15 U.S.C. § 631 et seq.) for the purpose of the small business's eligibility assistance from the United States Small Business Administration.

#### C.34:1B-351 Main Street Recovery Finance Program.

84. The Main Street Recovery Finance Program is hereby established as a program under the jurisdiction of the New Jersey Economic Development Authority. The authority shall administer the program for the purpose of providing grants, loans, and loan guarantees to eligible small businesses in accordance with the provisions of sections 82 through 88 of P.L.2020, c.156 (C.34:1B-349 et al.). A business seeking a grant, loan, or loan guarantee under the program shall submit an application to the authority. The authority shall adopt eligibility criteria for the program and may consider a business's benefit to the community in

which it is situated and the degree to which the business enhances and promotes job creation and economic development in communities that have been severely impacted by the COVID-19 pandemic when making awards under the program.

C.34:1B-352 Grants to eligible small businesses.

85. a. As part of the Main Street Recovery Finance Program, the authority shall provide grants to eligible small businesses from the Main Street Recovery Fund, subject to appropriation or the availability of federal funds provided that not less than 40 percent of such funds shall be made available to eligible microbusinesses certified by the State as a "minority business" or a "women's business" pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.). Grants awarded pursuant to the program may be used by an eligible small business for capital improvements or to cover operating expenses. The authority may dedicate up to 10 percent of any amount appropriated for the purposes of this section to provide technical assistance grants to eligible microbusinesses.

b. (1) A small business shall be eligible to receive a grant pursuant to this section if the small business demonstrates to the authority that:

(a) the small business has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 of P.L.2007, c.101 (C.54:50-39); and

(b) each worker employed by the small business shall be paid not 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, except an employee who customarily and regularly receives gratuities or tips shall be paid not less than 120 percent of the minimum wage.

(2) In addition to the requirements of paragraph (1) of this subsection, a small business shall be eligible to receive a grant pursuant to this subsection for capital improvements only if the small business demonstrates to the authority at the time of application that:

(a) any capital improvement undertaken with grant funds shall comply with standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction; and

(b) each worker employed to perform construction work in connection with a capital improvement undertaken with grant funds in excess of \$50,000 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.).

c. Prior to March 1, 2025, an eligible small business seeking a grant pursuant to this section shall submit an application for approval to the authority in the 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.). Before the board may consider an eligible small business's application for grants, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the eligible small business is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the eligible small business. The authority may also

contract with an independent third party to perform a background check on the eligible small business. The eligible small business, or an authorized agent thereof, shall certify under the penalty of perjury that any information provided in the application required pursuant to this subsection is true.

d. Following approval by the board, but before the disbursement of grant funds, the authority shall require an eligible small business to enter into a grant agreement. The grant agreement shall specify the amount of the grant to be awarded the eligible small business and the frequency of payments. If the authority determines that an eligible small business made a material misrepresentation on the eligible small business's grant application or the eligible small business has failed to comply with any requirement set forth in paragraphs (1) through (4) of subsection b. of this section, then the small business shall return to the authority any grant awarded pursuant to this section.

C.34:1B-353 Moneys available to eligible lenders.

86. a. As part of the Main Street Recovery Finance Program, the authority shall make available from the Main Street Recovery Fund, subject to annual appropriation and the availability of funds, to eligible community development finance institutions and other eligible lenders pursuant to subsection b. of this section and to eligible microbusinesses pursuant to subsection c. of this section, provided that not less than 40 percent of such funds shall be made available to eligible microbusinesses certified by the State as a "minority business" or a "women's business" pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.). The authority may dedicate up to 10 percent of any amount appropriated for the purposes of this section to provide technical assistance grants to eligible microbusinesses.

b. The authority shall provide loans and grants to eligible community development finance institutions and other eligible lenders in accordance with this subsection. Loans and grants made available to eligible community development finance institutions and other eligible lenders pursuant to this paragraph shall be used to strengthen capital structures, leverage additional debt capital, and increase lending and investing in economically disadvantaged communities. The authority shall require an eligible community development finance institution or other eligible lender that receives a grant or loan pursuant to this subsection to enter into an agreement with the authority.

As used in this section, "other eligible lender" means a zone development corporation as defined in section 3 of P.L.1983, c.303 (C.52:27H-62) that is located in a municipality with a population greater than 100,000 or another nonprofit lender with at least 10 years experience lending to microbusinesses.

c. The authority shall provide loans to eligible microbusinesses in accordance with this subsection. Loans made available to eligible microbusinesses pursuant to this subsection may be used for capital improvements, employee training, salaries for new positions, and to pay for day-to-day operating expenditures, including payroll, rent, utilities, insurance, and purchases of goods and services. The authority shall require an eligible microbusiness to enter into a loan agreement. Loans made pursuant to this subsection shall have a term and an interest rate determined by the authority based on conditions currently prevailing in the market. The authority may forgive loans provided to eligible microbusinesses pursuant to this subsection at the authority's discretion. The authority may, through the terms of the loan agreement, establish terms governing the incidence of default by an eligible microbusiness.

d. Prior to March 1, 2025, an eligible community development finance institution or other eligible lender seeking a loan or a grant pursuant to subsection b. of this section or an eligible microbusiness seeking a loan pursuant to subsection c. of this section shall submit an

application for approval to the authority in the 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.). Before the authority may consider an application, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the applicant is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the applicant. The authority may also contract with an independent third party to perform a background check on the applicant. The applicant, or an authorized agent thereof, shall certify under the penalty of perjury that any information provided in the application required pursuant to this subsection is true.

C.52:18A-262 "Main Street Recovery Fund."

87. a. To aid in the economic recovery of those communities most impacted by the COVID-19 pandemic and to better ensure their long-term economic growth, there is created the "Main Street Recovery Fund" to be held by the State Treasurer. All moneys deposited in the fund shall be held and disbursed in the amounts necessary to fulfill the purposes of providing grants and loans pursuant to sections 85 and 86 of P.L.2020, c.156 (C.34:1B-352 and C.34:1B-353) and the purposes enumerated in subsection b. of this section, and for reasonable administrative costs of implementing sections 82 through 88 of P.L.2020, c.156 (C.34:1B-349 et al.). The fund may be credited with pay backs; bonuses; entitlements; money received from the federal government; transfers; grants; gifts; bequests; moneys appropriated by the Legislature; or any other money made available from any source. The State Treasurer, in consultation with the authority, may invest and reinvest any moneys in the fund in the State Treasurer's discretion. Any income from, interest on, or increment to moneys so invested or reinvested shall be included in the fund.

b. Upon application to the State Treasurer, and in consultation with the Chief Executive Officer of the New Jersey Economic Development Authority, the State Treasurer shall make loan guarantees from the fund to leverage private and public lending to help finance small businesses, real estate developments, and manufacturers that are creditworthy but not receiving the financing needed to expand and create jobs. In making loan guarantees under this section, the State Treasurer shall give due consideration to small businesses and real estate developments in underserved communities throughout the State that have been deeply impacted by the COVID-19 pandemic.

c. (1) The State Treasurer shall monitor the activities of the beneficiaries of the loan guarantees issued pursuant to this section on an annual basis to ensure compliance with the terms and conditions imposed on the recipient by the chief executive officer.

(2) An entity receiving a loan guarantee and the beneficiaries of such loan guarantee under this section shall provide the State Treasurer with an annual accounting of how the benefit it received from the fund was applied.

(3) The annual accounting required under this section shall include certifications by the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the entity and the beneficiaries are in substantial good standing with the respective departments, or have entered into an agreement with the respective department that includes a practical corrective action plan.

(4) The entity and beneficiary, or an authorized agent thereof, shall certify under the penalty of perjury that the information provided pursuant to this subsection is true.



**C.34:1B-354 Regulations.**

88. 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 82 through 88 of P.L.2020, c.156 (C.34:1B-349 et al.), 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.).

**C.52:18A-263 Purchase of unused tax credits.**

89. a. The Director of the Division of Taxation in the Department of the Treasury may purchase unused tax credits awarded under a program listed in subsection b. of this section, including tax credit transfer certificates issued by the director in lieu of a tax credit allowed under such programs. The director shall not pay consideration in excess of 75 percent of the credit amount to be purchased, except for a credit awarded under the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), which shall be subject to the provisions of paragraph (4) of subsection d. of section 77 of P.L.2020, c.156 (C.34:1B-345).

b. The Director of the Division of Taxation in the Department of the Treasury may purchase tax credits awarded under the following:

(1) the "Historic Property Reinvestment Act," sections 1 through 8 of P.L.2020, c.156 (C.34:1B-269 through C.34:1B-276);

(2) the "Brownfield Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287);

(3) the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302);

(4) the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310);

(5) the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321);

(6) the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335);

(7) the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.);

(8) the Grow New Jersey Assistance Program established pursuant to section 3 of P.L.2011, c.149 (C.34:1B-244);

(9) section 6 of P.L.2010, c.57 (C.34:1B-209.4);

(10) the State Economic Redevelopment and Growth Grant program established pursuant to section 5 of P.L.2009, c.90 (C.52:27D-489e);

(11) section 1 of P.L.2018, c.56 (C.54:10A-5.39b); and

(12) section 2 of P.L.2018, c.56 (C.54A:4-12b).

**C.34:1B-355 Working Group on Entrepreneur Zones.**

90. a. There is established in the New Jersey Economic Development Authority a Working Group on Entrepreneur Zones for the purpose of making recommendations for the establishment of entrepreneur zones throughout the State. The working group shall consider whether the establishment of entrepreneur zones in which the State provides the tax incentives, regulation relief, and financial support to local entrepreneurs is the most effective

way to create jobs in the State. The working group shall identify census tracts within the State that are suitable for designation as an entrepreneur zone.

b. The working group shall consist of seven members appointed by the chief executive officer of the New Jersey Economic Development Authority.

c. Appointments to the working group shall be made within 30 days after the effective date of this act. Vacancies in the membership of the working group shall be filled in the same manner as the original appointments were made.

#### C.52:34-27 Definitions.

91. a. As used in this section:

"Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators, and other equipment designed to protect the wearer from the spread of infection or illness.

"State agency" means any principal department in the Executive Branch of State government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, and any independent State authority, commission, instrumentality or agency, other than in the Legislative or Judicial Branches of State government, which is authorized by law to award public contracts.

b. Notwithstanding the provisions of any other law to the contrary, whenever the Director of the Division of Purchase and Property, or the head of any State agency shall consider bids on any contract for the purchase of personal protective equipment that is publicly advertised for bids, the director or the head of a State agency shall list the bidders in order based upon which bid, conforming to the invitation for bids, would be most advantageous to the State, price, and other factors considered. If the first bidder on the list has its principal place of business in this State it shall be awarded the contract. If no bidder having its principal place of business in this State has submitted a bid that is within five percent of the bid submitted by the bidder at the top of the list that has its principal place of business outside of this State, the contract shall be awarded to the bidder at the top of the list. If the first bidder on the list has its principal place of business outside of this State and a bidder that has its principal place of business in this State is on the list and has submitted a bid that is within five percent of the bid submitted by the bidder at the top of the list that has its principal place of business outside of this State, the contract shall be awarded to the highest listed in-State bidder.

Any specifications for the provision of personal protective equipment under this act shall be drafted in a manner to encourage free, open, and competitive bidding.

Any specification which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding, or qualifications by any but one bidder shall be null and void and of no effect.

Nothing in this section shall limit the ability of the Director of the Division of Purchase and Property or the head of any State agency to make awards to multiple bidders, pursuant to section 1 of P.L.1986, c.26 (C.52:34-12.1) to furnish the same or similar materials, supplies, services or equipment, where multiple bidders are necessary.

c. The State Treasurer shall adopt such rules and regulations as may be necessary to implement the provisions of this section pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.34:1B-356 Short title.

92. Sections 92 through 97 of P.L.2020, c.156 (C.34:1B-356 through C.34:1B-361) shall be known and may be cited as the "New Jersey Ignite Act."

C.34:1B-357 Definitions.

93. As used in sections 92 through 97 of P.L.2020, c.156 (C.34:1B-356 through C.34:1B-361):

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Authority commitment period" means the period for which the authority commits to provide a start-up rent grant for the payment of rent in a collaborative workspace.

"Collaborative workspace" means a business facility certified pursuant to section 95 of P.L.2020, c.156 (C.34:1B-359), located in this State, developed to provide flexible workspaces for early stage innovation economy businesses, and designed to encourage community and collaboration within an inter-connected environment in which multiple start-up businesses have access to shared community events and shared workplace accommodations including, but not limited to, kitchens and makerspaces.

"Collaborative workspace commitment period" means a period of months equal to one-half the number of months of the authority commitment period.

"Community event" means an event hosted by a collaborative workspace and accessible to start-up tenant or member businesses, without charge or with nominal charge, organized to support an innovation ecosystem, as defined in section 21 of P.L.2020, c.156 (C.34:1B-289), at the collaborative workspace, including, but not limited to, events such as meet-ups, speaker series, and office hours for lawyers, accountants, consultants, or investors.

"Early stage innovation economy business" means a business that operates within a targeted industry with at least one full-time employee, who is assigned to the collaborative workspace, and fewer than 10 employees overall and with less than \$1,000,000 in gross sales over the 12-month period immediately prior to submitting an application for tenancy at a collaborative workspace. To be considered an "early stage innovation economy business" the earliest date of formation for the business must have been not more than three years prior to utilizing or renting space in, or access to, the collaborative workspace under the program, and the business shall not have previously utilized or rented space in, or access to, another collaborative workspace in the State.

"Full time employee" means a person who is: employed by the start-up tenant or member business for at least 35 hours a week; working as an independent contractor providing critical capabilities to the start-up tenant or member business for at least 35 hours a week; or an owner or partner of the start-up tenant or member business who works for at start-up tenant or member business for at least 35 hours a week.

"Grant agreement" means an agreement between the authority and the owner and operator of a collaborative workspace which memorializes the terms and conditions of the collaborative workspace's participation in the program.

"Program" means the New Jersey Ignite Program established pursuant to section 94 of P.L.2020, c.156 (C.34:1B-358).

"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.

"Start-up rent grant" means a grant provided by the authority to a collaborative workspace for the rent that would otherwise be due to the collaborative workspace from a start-up tenant or member business for the period of the authority commitment period.

"Start-up tenant or member business" means an early stage innovation economy business that is registered to do business in New Jersey, rents space in, or access to, a collaborative workspace under the program, and enters into an agreement with the owner and operator of the collaborative workspace to rent space in, or access to, the collaborative workspace for an agreed upon period, which shall include the authority commitment period, collaborative workspace commitment period, and start-up tenant or member business commitment period.

"Start-up tenant or member business commitment period" means a period of months equal to the sum of the authority commitment period and the collaborative workspace commitment period.

#### C.34:1B-358 New Jersey Ignite Program.

94. The New Jersey Ignite Program is hereby established as a program under the jurisdiction of the authority. The purpose of the program shall be to foster early stage innovation economy businesses and to help those businesses overcome barriers to commercial success. The authority shall structure the program as a public-private partnership through which the authority provides start-up rent grants to collaborative workspaces, certified pursuant to section 95 of P.L.2020, c.156 (C.34:1B-359), to support the early months of an early stage innovation economy business's rent at the collaborative workspace.

#### C.34:1B-359 Application for certification as collaborative workspace.

95. a. The owner and operator of a business facility located in the State may apply to the authority to have the business facility certified as a collaborative workspace under the program. A business facility shall be eligible for certification as a collaborative workspace if:

(1) the business facility is developed to provide flexible workspaces for early stage innovation economy businesses;

(2) the business facility is designed to encourage community and collaboration within an inter-connected environment in which multiple start-up businesses have access to shared workplace accommodations;

(3) the owner and operator of the business facility commits to hosting at least eight community events at the business facility each year;

(4) the owner and operator of the business facility possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

(5) the owner and operator of the business facility possesses a business registration certificate issued by the Division of Revenue in the Department of the Treasury;

(6) at least five unique tenant or member businesses, in which the owner and operator of the business facility does not have a direct financial interest, have paid rent for space in, or access to, the business facility over the two years immediately preceding the submission of the application for certification as a collaborative workspace pursuant to this section or, if the business facility has been open for less than 90 days, the owner and operator of the business facility provides to the authority at least three letters of intent from prospective tenant or member businesses;

(7) the business facility is subject to ongoing operating costs, such as rent, mortgage payments, or internal corporate charge-backs, at the time of application for certification pursuant to this section;

(8) the owner and operator of the business facility offers at least one type of workspace at the business facility for rent by an early stage innovation economy business;

(9) the owner and operator of the business facility charges rent to tenants or members; and

(10) the owner and operator of the business facility certifies that any rent charged to a start-up tenant or member business is to be market-rate.

b. In addition to the requirements set forth in subsection a. of this section, for a business facility to qualify for certification as a collaborative workspace, the authority may, in its discretion and subject to available funds, require the owner and operator of the business facility shall commit to paying one month's rent for a start-up tenant or member business at the business facility for every two months of rent to be paid by the authority as a start-up rent grant under the program.

c. (1) The owner and operator of a business facility eligible for certification as a collaborative workspace pursuant to subsections a. and b. of this section shall submit an application for certification and participation in the program in such form as required by the authority. The application shall include any information the authority determines is necessary to administer the program.

(2) In evaluating applications for certification as a collaborative workspace, the authority may conduct site visits or perform any other investigation necessary to confirm any statement made in the application submitted by the owner and operator of the business facility. If the authority later finds that any statement made in the application for certification is inaccurate, then the authority may rescind its certification of the collaborative workspace.

d. Following approval of an application for certification, to participate in the program the authority and the owner and operator of a collaborative workspace shall enter into a grant agreement governing the terms, conditions, and timing under which the authority shall pay the start-up rent grant to the owner and operator of the collaborative workspace. The grant agreement shall require a collaborative workspace to share data concerning its participation in the program and on collaborative workspace utilization for the purpose of better program planning and the development of new programs to further support the State's economy.

#### C.34:1B-360 Start-up rent grants.

96. a. Up to the limits established in this subsection and in accordance with the grant agreement, the authority shall provide start-up rent grants to the owner and operator of a collaborative workspace through a series of scheduled payments as set forth in the grant agreement. The owner and operator of the collaborative workspace shall utilize the grant funding to provide rent-free space to a start-up tenant or member business that agrees to continue renting space in, or access to, the collaborative workspace for the start-up tenant or member business commitment period. The maximum start-up rent grant that the authority may provide to a collaborative workspace for the tenancy of a single start-up tenant or member business shall not exceed \$25,000.

b. The authority may provide a start-up rent grant for the payment of rent for space in, or access to, a collaborative workspace for up to six months; provided, however, if a collaborative workspace or start-up tenant or member business satisfies any of the bonuses set forth in paragraphs (1) through (5) of this subsection, then the authority may provide an additional month of rent for each bonus satisfied by the collaborative workspace or start-up

tenant or member business. The authority may award a bonus to the owner and operator of a collaborative workspace if:

- (1) the collaborative workspace is located in a qualified opportunity zone designated pursuant to 26 U.S.C. s.1400Z-1;
- (2) the collaborative workspace is affiliated with a hospital system or a New Jersey university;
- (3) the collaborative workspace has been open less than 90 days from the date on which the owner and operator of the collaborative workspace applied to the authority to participate in the program and the collaborative workspace is not in the same location as an existing facility;
- (4) the start-up tenant or member business for which the start-up rent grant is paid is certified by the State as a "minority business" or a "women's business" pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.); or
- (5) the start-up tenant or member business for which the start-up rent grant is paid is the first presence of a foreign company entering into the United States.

c. (1) The owner and operator of a collaborative workspace shall annually certify to the authority, under the penalty of perjury, that it is in compliance with the grant agreement.

(2) In addition to the certification required pursuant to paragraph (1) of this subsection, the authority shall conduct an annual inspection and review of the collaborative workspace and may request documentation evidencing that the collaborative workspace utilized the start-up rent grant it received from the authority in accordance with the requirements of the program and the grant agreement.

d. (1) If a start-up tenant or member business stops occupying or accessing a collaborative workspace before the end of the start-up tenant or member business commitment period, then the collaborative workspace shall refund to the authority that portion of the start-up rent grant covering any period in which the start-up tenant or member business did not have space in, or access to, the collaborative workspace.

(2) If the authority determines that a collaborative workspace is not in compliance with the requirements of the program or of the grant agreement, then the authority shall rescind the business facility's certification as a collaborative workspace and bar the business facility from further participation in the program.

#### C.34:1B-361 Rules, regulations.

97. The authority shall promulgate rules and regulations necessary for the effective implementation of sections 92 through 97 of P.L.2020, c.156 (C.34:1B-356 through C.34:1B-361). Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt, immediately upon filing with the Office of Administrative Law, such regulations as are necessary to implement the provisions of sections 92 through 97 of P.L.2020, c.156 (C.34:1B-356 through C.34:1B-361), which shall be effective for a period not to exceed 12 months following enactment, and shall thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

#### C.34:1B-362 Combined value of all tax credits.

98. a. The combined value of all tax credits awarded under the "Historic Property Reinvestment Act," sections 1 through 8 of P.L.2020, c.156 (C.34:1B-269 through C.34:1B-276), the "Brownfield Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287), the "New Jersey Innovation Evergreen

Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302), the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310), the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321); the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335); and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.) shall not exceed an overall cap of \$11.5 billion over a seven-year period, subject to the conditions and limitations set forth in this section. Of this \$11.5 billion, \$2.5 billion shall be reserved for transformative projects approved under the Aspire Program or the Emerge Program.

b. (1) The total value of tax credits awarded under any constituent program of the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.) shall be subject to the following annual limitations, except as otherwise provided in subsection c. of this section:

(a) for tax credits awarded under the "Historic Property Reinvestment Act," sections 1 through 8 of P.L.2020, c.156 (C.34:1B-269 through C.34:1B-376), the total value of tax credits annually awarded during each of the first six years of the seven-year period shall not exceed \$50 million;

(b) for tax credits awarded under the "Brownfield Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through C.34:1B-287), the total value of tax credits annually awarded during each of the first six years of the seven-year period shall not exceed \$50 million;

(c) for tax credits awarded under the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through C.34:1B-302), the total value of tax credits annually awarded during each of the first six years of the seven-year period shall not exceed \$60 million and the total value of tax credits awarded over the entirety of the seven-year program shall not exceed \$300,000,000;

(d) for tax credits awarded under the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through C.34:1B-310), the total value of tax credits annually awarded during each of the first six years of the seven-year period shall not exceed \$40 million;

(e) for tax credits awarded under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321), the total value of tax credits annually awarded during each of the first six years of the seven-year period shall not exceed \$200 million, except that during each of the first six years of the seven-year period, the authority shall annually award tax credits valuing no greater than \$130 million for projects located in the 13 northern counties of the State, and the authority shall annually award tax credits valuing no greater than \$70 million for projects located in the eight southern counties of the State. If during any of the first six years of the seven-year period, the authority awards tax credits in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year, provided that the uncommitted portion of tax credits shall be awarded for projects located in the applicable geographic area, except that (i) after the completion of the third year of the seven-year period, the authority may deploy 50 percent of the uncommitted portion of tax credits from any previous year without consideration to the county in which a project is located; and (ii) after the completion of the sixth year of the seven-year period, the authority may deploy all available tax credits, including the uncommitted portion of the

annual limitation for any previous year, without consideration to the county in which a project is located;

(f) for tax credits awarded under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-34:1B-336 et al.), not including tax credits awarded for transformative projects, the total value of tax credits annually awarded during each of the first six years of the seven-year period shall not exceed \$1.1 billion, except that during each of the first six years of the seven-year period, the authority shall annually award tax credits valuing no greater than \$715 million for projects located in the northern counties of the State, and the authority shall annually award tax credits valuing no greater than \$385 million for projects located in the southern counties of the State. If during any of the first six years of the seven-year period, the authority awards tax credits in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year, provided that the uncommitted portion of tax credits shall be awarded for projects located in the applicable geographic area, except that (i) after the completion of the third year of the seven-year period, the authority may deploy 50 percent of the uncommitted portion of tax credits for any previous year without consideration to the county in which a project is located; and (ii) after the completion of the sixth year of the seven-year period, the authority may deploy all available tax credits, including the uncommitted portion of the annual limitation for any previous year, without consideration to the county in which a project is located; and

(g) for tax credits awarded for transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), the total value of tax credits awarded during the seven-year period shall not exceed \$2.5 billion. The total value of tax credits awarded for transformative projects in a given year shall not be subject to an annual limitation, except that no more than 10 transformative projects shall be awarded tax credits during the seven-year period, and the total value of tax credits awarded to any transformative project shall not exceed \$250 million.

(2) The authority may in any given year determine that it is in the State's interest to approve an amount of tax credits in excess of the annual limitations set forth in paragraph (1) of this subsection, but in no event more than \$200,000,000 in excess of the annual limitation, upon a determination by the authority board that such increase is warranted based on specific criteria that may include:

(i) the increased demand for opportunities to create or retain employment and investment in the State as indicated by the volume of project applications and the amount of tax credits being sought by those applications;

(ii) the need to protect the State's economic position in the event of an economic downturn;

(iii) the quality of project applications and the net economic benefit to the State and municipalities associated with those applications;

(iv) opportunities for project applications to strengthen or protect the competitiveness of the state under the prevailing market conditions;

(v) enhanced access to employment and investment for underserved populations in distressed municipalities and qualified incentives tracts;



(vi) increased investment and employment in high-growth technology sectors and in projects that entail collaboration with education institutions in the State;

(vii) increased development proximate to mass transit facilities;

(viii) any other factor deemed relevant by the authority.

c. In the event that the authority in any year approves projects for tax credits in an amount less than the annual limitations set forth in paragraph (1) of subsection b. of this section, then the uncommitted portion of the annual limitation shall be available to be deployed by the authority in future years for projects under the same program; provided however, that in no event shall the aggregate amount of tax credits approved be in excess of the overall cap of \$11.5 billion, and in no event shall the uncommitted portion of the annual limitation for any previous year be deployed after the conclusion of the seven-year period.

#### C.34:1B-363 Short title.

99. Sections 99 through 105 of P.L.2020, c.156 (C.34:1B-363 through C.34:1B-369) shall be known and may be cited as the "Economic Development Authority Integrity and Protection Act."

#### C.34:1B-364 Definitions.

100. As used in sections 99 through 105 of P.L.2020, c.156 (C.34:1B-363 through C.34:1B-369):

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

"Fraud" means a deception or misrepresentation made by any person or entity with the knowledge that the deception or misrepresentation could result in some unauthorized benefit to that person or entity or another person or entity, including any act that constitutes fraud under applicable federal or State law.

"Economic development investigation" means an investigation of fraud, abuse, or illegal acts perpetrated within economic development incentive programs by applicants for, or recipients of, economic development incentives.

"Office of the Economic Development Inspector General" means the Office of the Economic Development Inspector General created by section 102 of P.L.2020, c.156 (C.34:1B-366).

#### C.34:1B-365 Chief Compliance Officer.

101. a. The New Jersey Economic Development Authority shall employ a Chief Compliance Officer, who shall be appointed by the Chief Executive Officer of the authority to manage the Division of Portfolio Management and Compliance in the authority.

b. The Chief Compliance Officer shall:

(1) create, maintain, monitor, and coordinate procedures to ensure that all economic development incentive programs, authority employees, and economic development incentive program applicants and recipients comply fully with the requirements of the corresponding economic development incentive program;

(2) conduct, on such periodic basis as determined by the authority, systematic audits of economic development incentive programs for compliance with the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning those programs;

(3) maintain a central database of information concerning the management of all economic development incentive programs and information on economic development incentive program applicants and recipients to provide for the regular and ongoing reporting, verification, and monitoring of the State's economic development incentive programs;

(4) prior to the adoption of any rule or regulation by the authority or the board related to the general administration of the programs administered by the authority pursuant to section 6 of P.L.2020, c.156 (C.34:1B-274), section 19 of P.L.2020, c.156 (C.34:1B-287), section 29 of P.L.2020, c.156 (C.34:1B-297), section 34 of P.L.2020, c.156 (C.34:1B-302), section 41 of P.L.2020, c.156 (C.34:1B-309), section 67 of P.L.2020, c.156 (C.34:1B-335), section 79 of P.L.2020, c.156 (C.52:27D-520), section 88 of P.L.2020, c.156 (C.34:1B-354), and section 97 of P.L.2020, c.156 (C.34:1B-361), or any other regulation specifically related to the recapture of economic development incentive award values, review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse; and

(5) refer, to the Economic Development Inspector General and to the Attorney General, information on suspected fraud or abuse identified by the Division of Portfolio Management and Compliance.

c. The Chief Compliance Officer, in consultation with the Department of Labor and Workforce Development and the Department of the Treasury, shall:

Develop, adopt, and implement a corrective action plan, within one year of the effective date of sections 99 through 105 of P.L.2020, c.156 (C.34:1B-363 through C.34:1B-369) and within six months of receiving notice of any program deficiency issued by the Economic Development Inspector General, that is designed to enable the authority to properly manage the economic development incentive programs administered by the authority, and adopt rules and regulations concerning the administration and enforcement of the Division of Portfolio Management and Compliance's duties in a manner that is most compatible with ensuring against fraud and abuse in the State's economic development incentive programs.

C.34:1B-366 Office of the Economic Development Inspector General.

102. a. There is established, in the authority, the Office of the Economic Development Inspector General, which shall operate independent of the oversight or management of the Chief Executive Officer of the authority. The Office of the Economic Development Inspector General shall operate under the Economic Development Inspector General, who shall be a retired member of the Judicial Branch of the State, to be appointed by the Governor with the advice and consent of the Senate for a term of four years. The Economic Development Inspector General shall direct the work of the Office of the Economic Development Inspector General and have the following general functions, duties, powers, and responsibilities:

(1) to appoint such deputies, directors, assistants, and other officers and employees as may be needed for the Office of the Economic Development Inspector General to meet its responsibilities, and to prescribe their duties and fix their compensation within the amounts appropriated therefor;

(2) to conduct and supervise State government activities relating to State economic development incentive integrity, fraud, and abuse;

(3) to call upon any department, office, division, or agency of State government to provide such information, resources, or other assistance as the Economic Development Inspector General deems necessary to discharge the duties and functions and to fulfill the responsibilities of the Economic Development Inspector General under sections 99 through 105 of P.L.2020, c.156 (C.34:1B-363 through C.34:1B-369). Each department, office, division, and agency of this State shall cooperate with the Economic Development Inspector General and furnish the Office of the Economic Development Inspector General with the assistance necessary to accomplish the purposes of sections 99 through 105 of P.L.2020, c.156 (C.34:1B-363 through C.34:1B-369);

(4) to coordinate activities to prevent, detect, and investigate economic development incentive fraud and abuse among the following: the authority, State and local government officials, and all economic development incentive applicants and recipients;

(5) to recommend and implement policies relating to economic development incentive integrity, fraud, and abuse, and monitor the implementation of any recommendations made by the Office of the Economic Development Inspector General to the authority for the administration of economic development incentives;

(6) to perform any other functions that are necessary or appropriate in furtherance of the mission of the Office of the Economic Development Inspector General; and

(7) to direct an economic development incentive applicant or recipient to cooperate with the Office of the Economic Development Inspector General and provide such information or assistance as shall be reasonably required by the Office of the Economic Development Inspector General.

b. As it relates to ensuring compliance with applicable economic development incentive standards and requirements, identifying and reducing fraud and abuse, and improving the efficiency and effectiveness of economic development incentives, the functions, duties, powers, and responsibilities of the Economic Development Inspector General shall include, but not be limited to, the following:

(1) to establish, in consultation with the authority and the Attorney General, guidelines under which the withholding of payments or exclusion from economic development incentive programs shall be imposed on an economic development incentive applicant or recipient;

(2) to review the utilization of economic development incentives to ensure that economic development incentive funds are appropriately spent to meet the goals and purposes of an individual economic development incentive program;

(3) to review and audit contracts, reports, documentation, claims, and all awards of economic development incentives to determine compliance with applicable laws, regulations, guidelines, and standards, and enhance program integrity;

(4) to consult with the authority to optimize the economic development incentive management information system in furtherance of the mission of the Office of the Economic Development Inspector General. The authority shall consult with the Economic Development Inspector General on matters that concern the operation, upgrade, and implementation of the economic development incentive management information system;

(5) to coordinate the implementation of information technology relating to economic development incentive integrity, fraud, and abuse;

(6) to conduct educational programs for economic development incentive for State and local government officials and economic development incentive recipients designed to limit economic development incentive fraud and abuse; and

(7) to provide notice to the Chief Compliance Officer, appointed pursuant to section 101 of P.L.2020, c.156 (C.34:1B-365) if the Economic Development Inspector General

determines that a program deficiency exists in an economic development incentive program administered by the authority and to provide notice to the Chief Executive Officer of the Authority of pending investigations if the Economic Development Inspector General determines that such disclosure is consistent with the public interest in maintaining the integrity of an economic development incentive program administered by the authority or to abate the continuation of fraud or abuse.

c. As it relates to investigating allegations of economic development incentive fraud and abuse and enforcing applicable laws, rules, regulations, and standards, the functions, duties, powers, and responsibilities of the Economic Development Inspector General shall include, but not be limited to, the following:

(1) to conduct economic development investigations concerning any acts of misconduct within economic development incentive programs;

(2) to provide information concerning the economic development investigations of the Office of the Economic Development Inspector General to the Attorney General, law enforcement authorities, and any prosecutor of competent jurisdiction, and endeavor to develop these economic development investigations in a manner that expedites and facilitates criminal prosecutions and the recovery of improperly expended economic development incentives, including the maintenance of detailed records for cases processed by the Economic Development Inspector General. The records shall include: information on the total number of cases processed and, for each case, the agency and division to which the case is referred for an economic development investigation; the date on which the case is referred; and the nature of the suspected fraud or abuse.

(3) to provide information and evidence relating to suspected criminal acts that the Economic Development Inspector General may obtain in carrying out its duties to law enforcement officials when appropriate, and to provide such information to the Attorney General and county prosecutors in order to facilitate criminal economic development investigations and prosecutions;

(4) to refer complaints alleging criminal conduct to the Attorney General or other appropriate prosecutorial authority. The Economic Development Inspector General shall maintain a record of all matters referred to the Attorney General and shall be authorized to disclose information received, as appropriate and as may be necessary to resolve the matter referred, to the extent consistent with the public interest in disclosure, the need for protecting the confidentiality of complainants and informants, and preserving the confidentiality of ongoing criminal economic development investigations. Notwithstanding any referral made pursuant to this subsection, the Economic Development Inspector General may pursue any administrative or civil remedy under the law. A referral by the inspector general to the Attorney General or a prosecutorial authority shall in no way preclude the inspector general from performing its own separate, independent investigation; and

(5) in furtherance of an economic development investigation, to compel at a specific time and place, by subpoena, the appearance and sworn testimony of any person whom the Economic Development Inspector General reasonably believes may be able to give information relating to a matter subject to an economic development investigation:

(a) for this purpose, the Economic Development Inspector General is empowered to administer oaths and examine witnesses under oath, and compel any person to produce at a specific time and place, by subpoena, any documents, books, records, papers, objects, or other evidence that the Economic Development Inspector General reasonably believes may relate to a matter subject to an economic development investigation; and

(b) if any person to whom a subpoena is issued fails to appear or, having appeared, refuses to give testimony, or fails to produce the books, papers, or other documents required, the Economic Development Inspector General may apply to the Superior Court and the court may order the person to appear and give testimony or produce the books, papers, or other documents, as applicable. Any person failing to obey that order may be held by the court in contempt;

(6) subject to applicable State law, to have full and unrestricted access to all records, reports, audits, reviews, documents, papers, data, recommendations, or other material available to the authority and other State and local government agencies with respect to which the Office of the Economic Development Inspector General has responsibilities under sections 102 through 105 of P.L.2020, c.156 (C.34:1B-366 through C.34:1B-369);

(7) to solicit, receive, and investigate complaints related to economic development incentive integrity, fraud, and abuse; and

(8) to prepare cases, provide expert testimony, and support administrative hearings and other legal proceedings.

d. As it relates to recovering improperly obtained economic development incentives, imposing administrative sanctions, damages, or penalties, and negotiating settlements to assure that all governmental resources have been properly expended, the functions, duties, powers, and responsibilities of the Economic Development Inspector General shall include, but not be limited to, the following:

(1) to pursue civil and administrative enforcement actions against those who engage in fraud, abuse, or illegal acts perpetrated under economic development incentive programs. These civil and administrative enforcement actions shall include the imposition of administrative sanctions, penalties, suspension of fraudulent or illegal awards, and actions for civil recovery and seizure of property or other assets connected with such economic incentive awards;

(2) to initiate civil suits consistent with the provisions of sections 99 through 105 of P.L.2020, c.156 (C.34:1B-363 through C.34:1B-369), maintain actions for civil recovery on behalf of the State, and enter into civil settlements;

(3) to require that the authority withhold payments to an economic development incentive applicant or recipient if the applicant or recipient unreasonably fails to produce complete and accurate records related to an economic development investigation that is initiated by the Office of the Economic Development Inspector General with reasonable cause; and

(4) to monitor and pursue the recoupment of economic development incentive awards or portions thereof, damages, penalties, and sanctions.

#### C.34:1B-367 Powers of Economic Development Inspector General.

103. a. The Economic Development Inspector General is authorized to request, and shall be entitled to receive, such information, assistance, and cooperation from any State or local government department, board, bureau, commission, or other agency or unit thereof, as may be necessary to carry out the duties and responsibilities of the Office of the Economic Development Inspector General pursuant to sections 102 through 105 of P.L.2020, c.156 (C.34:1B-366 through C.34:1B-369).

b. Upon the request of a prosecutor of competent jurisdiction, an office, department, or any other State or local government entity, the Economic Development Inspector General shall provide information, data, assistance, staff, and other resources as shall be necessary, appropriate and available to aid and facilitate the economic development investigation and prosecution of economic development incentive fraud.

C.34:1B-368 Report by Economic Development Inspector General.

104. The Economic Development Inspector General shall report annually to the Governor, to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and to the Attorney General, the activities of the Office of the Economic Development Inspector General, as well as recommendations, if any, for legislation to provide for the management of the State's economic development incentive programs.

C.34:1B-369 Rules, regulations.

105. The Economic Development Inspector General, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations, in consultation with the authority, the Department of Labor and Workforce Development, and the Department of the Treasury, concerning the administration and enforcement of the Office of the Economic Development Inspector General's duties pursuant to sections 102 through 105 of P.L.2020, c.156 (C.34:1B-366 through C.34:1B-369) in a manner that is most compatible with ensuring against fraud and abuse in the State's economic development incentive programs.

C.54:10A-5.47 Credit against tax; definitions.

106. a. For privilege periods ending in 2020, 2021, and 2022, a taxpayer, upon approval of an application to the authority, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in the amount of \$10,000 for each qualifying new hire involved in the manufacture of personal protective equipment in a qualified facility in which the taxpayer made a capital investment during the privilege period.

b. The minimum capital investment in a qualified facility required to be eligible for a credit under this section shall be as follows:

(1) for the rehabilitation, improvement, fit-out, or retrofit of an existing premises in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum investment of \$10 per square foot of gross leasable area;

(2) for the rehabilitation, improvement, fit-out, or retrofit of an existing premises in counties in the State not listed in paragraph (1) of this subsection, a minimum investment of \$20 per square foot of gross leasable area;

(3) for the new construction of a premises in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum investment of \$100 per square foot of gross leasable area; or

(4) for the new construction of a premises in counties in the State not listed in paragraph (3) of this subsection, a minimum investment of \$120 per square foot of gross leasable area.

c. The minimum number of new or retained qualifying full-time jobs required to be eligible for a credit under this section shall be as follows:

(1) for a qualified facility in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum of five new or 15 retained qualifying full-time jobs; or

(2) for a qualified facility in counties in the State not listed in paragraph (1) of this subsection, a minimum of ten new or 25 retained qualifying full-time jobs.

d. In addition to the amount of credit allowed pursuant to subsection a. of this section, a taxpayer shall be allowed the following tax credits for privilege periods ending in 2020, 2021, and 2022:

(1) \$1,000 per qualifying full-time job in the privilege period at a qualified facility that is a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet;

(2) \$1,500 per qualifying full-time job in the privilege period at a qualified facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State; and

(3) \$1,000 per qualifying full-time job in the privilege period at a qualified facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or county college located within the State.

e. The total credit allowed to a taxpayer pursuant to this section during the privilege period shall not exceed \$500,000. A taxpayer shall not be eligible for a tax credit under this section for the same qualifying new hire for which the taxpayer is receiving a tax credit incentive award under the Emerge Program established by sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.).

f. Notwithstanding the minimum tax schedule imposed pursuant to subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5), if the amount of the tax credit allowed exceeds the amount of corporation business tax otherwise due pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), the amount of excess shall be treated as a refundable overpayment except that interest shall not be paid pursuant to section 7 of P.L.1992, c.175 (C.54:49-15.1) on the amount of overpayment attributable to this credit amount. The director shall determine the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law.

g. The combined value of all tax credits approved by the authority and the director pursuant to this section and pursuant to section 2 of P.L.2020, c.156 (C.34:1B-270) shall not exceed \$10,000,000 in any State fiscal year to apply against the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

h. An application for the tax credit shall be submitted to the authority in a form and manner prescribed by the chief executive officer of the authority. As a condition of receiving tax credits under this section, an applicant shall be required to commit to employ qualifying new hires for which tax credits are awarded under this section for a period of five years.

i. Notwithstanding any provision of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the director chief executive officer of the authority is authorized to adopt immediately upon filing with the Office of Administrative Law such rules and regulations shall be effective for a period not to exceed 360 days following the date of filing and may thereafter be amended, adopted, or readopted by the chief executive officer of the authority in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.). The chief executive officer of the authority shall consult with the Commissioner of Health related to any specification requirements for what manufactured products are to qualify as personal protective equipment pursuant to this section.

j. As used in this section:

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

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

“Personal protective equipment” means coveralls, face shields, gloves, gowns, masks, respirators, safeguard equipment, and other equipment designed to protect the wearer from

the spread of infection or illness as may be modified from time to time by the board of the authority.

“Qualified facility” means a facility that is:

- (1) located in a redevelopment area or rehabilitation area as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3);
- (2) located in a Smart Growth Area as identified by the Office of Planning Advocacy;
- (3) a facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State;
- (4) a facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or community located within the State; or
- (5) a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet.

“Qualifying full-time job” means a full-time position in a business in this State which the business has filled with a full-time employee for the manufacturing of personal protective equipment in this State. The employee shall be employed for at least 35 hours a week and shall be paid employee wages at a rate of not less than \$15 per hour, or render any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. and is paid employee wages at a rate of not less than \$15 per hour. “Qualifying new hire” shall not include any person who works as an independent contractor or on a consulting basis for the business. “Qualifying new or retained job” includes only a position for which the taxpayer provides employee health benefits under a health benefits plan authorized pursuant to State or federal law.

#### C.54A:4-21 Credit against tax.

107. a. For taxable years 2020, 2021, and 2022, a taxpayer, upon approval of an application to the authority shall be allowed a credit against the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. in the amount of \$10,000 for each qualifying new hire involved in the manufacture of personal protective equipment in a qualified facility in which the taxpayer made a capital investment during the taxable year.

b. The minimum capital investment in a qualified facility required to be eligible for a credit under this section shall be as follows:

- (1) for the rehabilitation, improvement, fit-out, or retrofit of an existing premises in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum investment of \$10 per square foot of gross leasable area;
- (2) for the rehabilitation, improvement, fit-out, or retrofit of an existing premises in counties in the State not listed in paragraph (1) of this subsection, a minimum investment of \$20 per square foot of gross leasable area;
- (3) for the new construction of a premises in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum investment of \$100 per square foot of gross leasable area; or
- (4) for the new construction of a premises in counties in the State not listed in paragraph (3) of this subsection, a minimum investment of \$120 per square foot of gross leasable area.

c. The minimum number of new or retained qualifying full-time jobs required to be eligible for a credit under this section shall be as follows:



(1) for a qualified facility in Atlantic County, Burlington County, Cape May County, Cumberland County, Gloucester County, Ocean County, or Salem County, a minimum of five new or 15 retained qualifying full-time jobs; and

(2) for a qualified facility in counties in the State not listed in paragraph (1) of this subsection, a minimum of ten new or 25 retained qualifying full-time jobs.

d. In addition to the amount of credit allowed pursuant to subsection a. of this section, a taxpayer shall be allowed the following tax credits for taxable years 2020, 2021, and 2022:

(1) \$1,000 per qualifying full-time job in a taxable year at a qualified facility that is a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet;

(2) \$1,500 per qualifying full-time job in a taxable year at a qualified facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State; and

(3) \$1,000 per qualifying full-time job in a taxable year at a qualified facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or county college located within the State.

e. The total credit allowed to a taxpayer pursuant to this section during the taxable year shall not exceed \$500,000. A taxpayer shall not be eligible for a tax credit under this section for the same qualifying new hire for which the taxpayer is receiving a tax credit incentive award under the Emerge Program established by sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.).

f. If the amount of the credit exceeds the amount of tax otherwise due, that amount of excess shall be an overpayment for the purposes of N.J.S.54A:9-7; provided however, that subsection (f) of N.J.S.54A:9-7 shall not apply. The director shall determine the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law.

g. (1) A business entity that is classified as a partnership for federal income tax purposes shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect to the distributive share of entity income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

(2) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this section directly, but the amount of the tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

h. The combined value of all tax credits approved by the authority and the director pursuant to this section and pursuant to section 1 of P.L.2020, c.156 (C.34:1B-269) shall not exceed \$10,000,000 in any State fiscal year to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

i. An application for the tax credit shall be submitted to the authority in a form and manner prescribed by the chief executive officer of the authority. As a condition of receiving tax credits under this section, an applicant shall be required to commit to employ

qualifying new hires for which tax credits are awarded under this section for a period of five years.

j. Notwithstanding any provision 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 is authorized to adopt immediately upon filing with the Office of Administrative Law such rules and regulations shall be effective for a period not to exceed 360 days following the date of filing and may thereafter be amended, adopted, or readopted by the chief executive officer of the authority in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.). The chief executive officer of the authority shall consult with the Commissioner of Health related to any specification requirements for what manufactured products are to qualify as personal protective equipment pursuant to this section.

k. As used in this section:

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

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

“Personal protective equipment” means coveralls, face shields, gloves, gowns, masks, respirators, safeguard equipment, and other equipment designed to protect the wearer from the spread of infection or illness as may be modified from time to time by the board of the authority.

“Qualified facility” means a facility that is:

(1) located in a redevelopment area or rehabilitation area as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3);

(2) located in a Smart Growth Area as identified by the Office of Planning Advocacy;

(3) a facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State;

(4) a facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or community located within the State; or

(5) a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet.

“Qualifying full-time job” means a full-time employee hired by the taxpayer during the privilege period for the manufacturing of personal protective equipment in this State. The person hired shall be employed for at least 35 hours a week and shall be paid employee wages at a rate of not less than \$15 per hour, or render any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. and is paid employee wages at a rate of not less than \$15 per hour. “Qualifying new hire” shall not include any person who works as an independent contractor or on a consulting basis for the business. “Qualifying new or retained job” includes only a position for which the taxpayer provides employee health benefits under a health benefits plan authorized pursuant to State or federal law.

108. Section 6 of P.L.2011, c.149 (C.34:1B-247) is amended to read as follows:

C.34:1B-247 Limits on combined value of approved credits.

6. a. (1) The combined value of all credits approved by the authority pursuant to P.L.2007, c.346 (C.34:1B-207 et seq.) and P.L.2011, c.149 (C.34:1B-242 et al.) prior to December 31, 2013 shall not exceed \$1,750,000,000, except as may be increased by the authority as set

forth in paragraph (5) of subsection a. of section 35 of P.L.2009, c.90 (C.34:1B-209.3). Following the enactment of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), there shall be no monetary cap on the value of credits approved by the authority attributable to the program pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

(2) (Deleted by amendment, P.L.2013, c.161)

(3) (Deleted by amendment, P.L.2013, c.161)

(4) (Deleted by amendment, P.L.2013, c.161)

(5) (Deleted by amendment, P.L.2013, c.161)

b. (1) A business shall submit an application for tax credits prior to July 1, 2019. The authority shall not approve an application for tax credits unless the application was submitted prior to July 1, 2019.

(2) (a) A business shall submit its documentation indicating that it has met the capital investment and employment requirements and all conditions of approvals specified in the incentive agreement for certification of its tax credit amount, to the authority's satisfaction, within three years following the date of approval of its application by the authority. The authority shall have the discretion to grant two six-month extensions of this deadline. If the authority accepts the documentation, the authority shall request that the Division of Taxation in the Department of the Treasury issue a tax credit based on the approved documentation to be used by the business during the eligibility period. Except as provided in subparagraphs (b) and (c) of this paragraph, in no event shall the incentive effective date occur later than four years following the date of approval of an application by the authority.

(b) As of the effective date of P.L.2017, c.314, a business which applied for the tax credit prior to July 1, 2014 under P.L.2011, c.149 (C.34:1B-242 et al.), shall submit its documentation to the authority no later than July 28, 2019, indicating that it has met the capital investment and employment requirements specified in the incentive agreement for certification of its tax credit amount.

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

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

(4) A business seeking a credit for a mega project shall apply for the credit within four years after the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.).

c. (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.

The credit amount for any tax period for which the documentation of a business's credit amount remains uncertified as of a date three years after the closing date of that period shall be forfeited, although credit amounts for the remainder of the years of the eligibility period shall remain available to it.

The credit amount may be taken by the tax certificate holder for the tax period for which it was issued or may be carried forward for use by the tax certificate holder in any of the next 20 successive tax periods, and shall expire thereafter. The tax certificate holder may transfer the tax credit amount on or after the date of issuance or at any time within three years of the date of issuance for use by the transferee in the tax period for which it was issued or in any of the next 20 successive tax periods. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years may be taken in any tax period.

A business may elect to suspend its obligations for the 2020 tax period and, if the public health emergency or state of emergency declared due to the COVID-19 pandemic extends past March 2021, the 2021 tax period, provided that the business shall make such election in writing to the authority before the date the annual report is due and such suspension shall extend the term of the eligibility period by a corresponding amount of time. The authority shall amend the incentive agreement, and the business shall execute the amended incentive agreement within the time period provided by the authority. The amended incentive agreement shall provide that the failure to submit the annual report due to the suspension shall not be a forfeiture or an uncertified tax period.

(2) 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 of the Division of Taxation in the Department of the Treasury accompanied by any additional information as the director may require.

(3) 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), pursuant to sections 2 and 3 of P.L.1945, c.132 (C.54:18A-2 and C.54:18A-3), pursuant to section 1 of P.L.1950, c.231 (C.17:32-15), or pursuant to N.J.S.17B:23-5.

(4) In order to respond to the profoundly negative impact of the COVID-19 pandemic on the State's economy and finances, the authority may request a tax certificate holder, at the tax certificate holder's discretion, to defer the application of a credit amount allowed pursuant to this section to a later tax period. Upon request, the authority and the tax certificate holder shall negotiate the terms of the deferral, which shall hold the certificate holder harmless, which will be made in the incentive agreement or as an addendum to the incentive agreement.

d. (1) If, in any tax period, the 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 section 3 of P.L.2011, c.149 (C.34:1B-244), then the 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 business's Statewide workforce to the threshold levels required by the incentive agreement 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, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area drops below 80 percent of the number of new and retained full-time jobs specified in the incentive agreement, then the 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 number of full-time employees employed by the business at the qualified business facility to 80 percent of the number of jobs specified in the incentive agreement.

(3) (a) If the qualified business facility is sold by the owner in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller and the seller shall forfeit all credits for the tax period in which the sale occurs and all subsequent tax periods, provided however that any credits of the business shall remain unaffected.

(b) In connection with a regional distribution facility of foodstuffs, the business entity or entities which own or lease the facility shall qualify as a business regardless of: (i) the type of the business entity or entities which own or lease the facility; (ii) the ownership or leasing of the facility by more than one business entity; or (iii) the ownership of the business entity or entities which own or lease the facility. The ownership or leasing, whether by members, shareholders, partners, or other owners of the business entity or entities, shall be treated as ownership or leasing by affiliates. The members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility. The business entity or entities may distribute credits to members, shareholders, partners, or other ownership or leasing participants in accordance with their respective interests. If the business entity or entities or their members, shareholders, partners, or other ownership or leasing participants lease space in the facility to members, shareholders, partners, or other ownership or leasing participants or others as tenants in the facility, the leases shall be treated as a lease to an affiliate, and the business entity or entities shall not be subject to forfeiture of the credits. For the purposes of this section, leasing shall include subleasing and tenants shall include subtenants.

(4) (a) For a project located within a Garden State Growth Zone, if, in any tax period, the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement, then the business shall be entitled to an increased base 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 specified in the incentive agreement, until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount will be adjusted accordingly pursuant to this section.

(b) For a project located within a Garden State Growth Zone which qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, and which qualifies for a tax credit pursuant to subsubparagraph (ii) of subparagraphs (a) through (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), if, in any tax period the number of full-time employees employed by the business at the qualified business facility located within a qualified incentive area increases above the number of full-time employees specified in the incentive agreement such that the business shall then meet the minimum number of employees required in subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011, c.149 (C.34:1B-246), then the authority shall recalculate the total tax credit amount per full-time job by using the certified capital investment of the project allowable under the applicable subsubparagraph and the number of full-time jobs certified on the date of the recalculation and applying those numbers to subparagraph (b), (c), (d), or (e) of paragraph (6) of subsection d. of section 5 of P.L.2011,

c.149 (C.34:1B-246), until the first tax period for which documentation demonstrating a reduction of the number of full-time employees employed by the business at the qualified business facility, at which time the tax credit amount shall be adjusted accordingly pursuant to this section.

e. The authority shall not enter into an incentive agreement with a business that has previously received incentives pursuant to the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.), the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.), or any other program administered by the authority unless:

(1) the business has satisfied all of its obligations underlying the previous award of incentives or is compliant with section 4 of P.L.2011, c.149 (C.34:1B-245); or

(2) the capital investment incurred and new or retained full-time jobs pledged by the business in the new incentive agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

f. A business which has already applied for a tax credit incentive award prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), but who has not yet been approved for the tax credits, or has not executed an agreement with the authority, may proceed under that application or seek to amend the application or reapply for a tax credit incentive award for the same project or any part thereof for the purpose of availing itself of any more favorable provisions of the program.

g. A business that has entered into an incentive agreement may request before December 31, 2022 to terminate the incentive agreement due to the COVID-19 public health emergency; provided that the business shall submit a certification from the business's chief executive officer or equivalent officer stating that the termination is due to the public health emergency and describing the impact of the public health emergency on the business. All credits for the tax period in which the termination occurs and all subsequent tax periods shall be forfeited, provided however that any credits of the business shall remain unaffected.

h. A business that has entered into an incentive agreement may request to reduce the number of new or retained full-time jobs specified in the incentive agreement based on a certification of the business of the eligible positions at the qualified business facility commencing with the 2020 tax period and each subsequent tax period remaining in the eligibility period, provided that the business maintains the minimum number of new or retained full-time jobs required to be eligible pursuant to subsection c. of section 3 of P.L.2011, c.149 (C.34:1B-244). The reduction in employment shall first apply to the number of new full-time employees, and then shall apply to the number of retained full-time employees.

The authority shall calculate a new tax credit total amount for the 2020 tax period and the remainder of the eligibility period based on the reduced employment and shall amend the incentive agreement to reflect the recalculated award amount. In no event shall the modification result in an increase in employment or tax credit amount.

109. Section 6 of P.L.2010, c.57 (C.34:1B-209.4) is amended to read as follows:

C.34:1B-209.4 Credit to business for wind energy facility; eligibility.

6. a. (1) A business, upon application to and approval from the authority, shall be awarded a credit of 100 percent of its capital investment, made after the effective date of P.L.2010, c.57 (C.48:3-87.1 et al.) but prior to its submission of documentation pursuant to subsection

c. of this section, in a qualified wind energy facility located in the State, pursuant to the restrictions and requirements of this section. The award of a tax credit pursuant to this section shall be structured so that the authority shall make up to four awards, each equaling 25 percent of the total value of the tax credit, to a qualified business over four privilege periods or taxable years in which the business meets the requirements for the minimum number of new, full-time employees. Otherwise eligible businesses with between 150 and 300 new, full-time jobs may receive an award based on a prorated formula developed by the authority. To be eligible for any tax credits authorized under this section, a business shall demonstrate to the authority, at the time of application, that the State's financial support of the proposed capital investment in a qualified wind energy facility will yield a net positive benefit to the State. The value of all credits approved by the authority pursuant to this section may be up to \$100,000,000, except as may be increased by the authority if the chief executive officer of the authority judges certain qualified offshore wind projects to be meritorious. Credits provided pursuant to this section shall not be applicable to the cap on the credits provided in section 3 of P.L.2007, c.346 (C.34:1B-209).

(2) (a) A business, other than a tenant eligible pursuant to subparagraph (b) of this paragraph, shall make or acquire capital investments totaling not less than \$50,000,000 in a qualified wind energy facility, at which the business, including tenants at the qualified wind energy facility, shall employ the minimum number of new, full-time employees, to be eligible for a credit under this section. A business that acquires a qualified wind energy facility after the effective date of P.L.2010, c.57 (C.48:3-87.1 et al.) shall also be deemed to have acquired the capital investment made or acquired by the seller.

(b) A business that is a tenant in the qualified wind energy facility, the owner of which has made or acquired capital investments in the facility totaling more than \$50,000,000, shall occupy a leased area of the qualified wind energy facility that represents at least \$17,500,000 of the capital investment in the qualified wind energy facility at which the minimum number of new, full-time employees in the aggregate are employed, to be eligible for a credit under this section. The amount of capital investment in a facility that a leased area represents shall be equal to that percentage of the owner's total capital investment in the facility that the percentage of net leasable area leased by the tenant is of the total net leasable area of the qualified business facility. Capital investments made by a tenant shall be deemed to be included in the calculation of the capital investment made or acquired by the owner, but only to the extent necessary to meet the owner's minimum capital investment of \$50,000,000. Capital investments made by a tenant and not allocated to meet the owner's minimum capital investment threshold of \$50,000,000 shall be added to the amount of capital investment represented by the tenant's leased area in the qualified wind energy facility.

(c) The calculation of the number of new, full-time employees required pursuant to subparagraphs (a) and (b) of this paragraph may include the number of new, full-time positions resulting from an equipment supply coordination agreement with equipment manufacturers, suppliers, installers and operators associated with the supply chain required to support the qualified wind energy facility.

For the purposes of this paragraph, "full time employee" shall not include an employee who is a resident of another state and whose income is not subject to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the State of New Jersey.

(3) A business shall not be awarded a tax credit pursuant to this section if the business receives a business employment incentive grant pursuant to the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.), relating to the same capital and

employees that qualify the business for this credit, or if the business receives assistance pursuant to the "Business Retention and Relocation Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.). A business that is awarded a tax credit under this section shall not be eligible for incentives authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.).

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

b. A business shall apply for the credit by July 1, 2025, and a business shall submit its documentation for approval of its credit amount by July 1, 2028.

c. The credit awarded pursuant to this section shall be administered in accordance with the provisions of subsection c. of section 3 of P.L.2007, c.346 (C.34:1B-209) and section 33 of P.L.2009, c.90 (C.34:1B-209.1), except that all references therein to "qualified business facility" shall be deemed to refer to "qualified wind energy facility," as that term is defined in subsection f. of this section.

d. The amount of the credit awarded pursuant to this section shall, except as otherwise provided, be equal to the capital investment made by the business, or the capital investment represented by the business's leased area, and shall be taken over a five-year period, at the rate of one-fifth of the total amount of the business's credit for each tax accounting or privilege period of the business, beginning with the privilege period or taxable year in which the business is first approved by the authority as having met the investment capital and employment qualifications, subject to any disqualification as determined by annual review by the authority. 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. The credit amount for any privilege period or taxable year ending after the date 18 years after the effective date of P.L.2007, c.346 (C.34:1B-207 et seq.) during which the documentation of a business's credit amount remains unapproved shall be forfeited, although credit amounts for the remainder of the years of the five-year credit period shall remain available. The amount of the credit awarded for a privilege period or taxable year to a business that is a tenant in a qualified wind energy facility shall not exceed the business's total lease payments for occupancy of the qualified wind energy facility for the privilege period or taxable year.

e. The authority shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement this section, including, but not limited to: examples of and the determination of capital investment; the nature of businesses and employment positions constituting and participating in an equipment supply coordination agreement; a determination of the types of businesses that may be eligible and expenses that may constitute capital improvements; the promulgation of procedures and forms necessary to apply for a credit; and provisions for applicants to be charged an initial application fee, and ongoing service fees, to cover the administrative costs related to the credit.

The rules and regulations established by the authority pursuant to this subsection shall be effective immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 12 months and may, thereafter, be amended, adopted or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

f. As used in this section: the terms "authority," "business," and "capital investment" shall have the same meanings as defined in section 2 of the "Urban Transit Hub Tax Credit Act," P.L.2007, c.346 (C.34:1B-208), except that all references therein to "qualified business



facility" shall be deemed to refer to "qualified wind energy facility" as defined in this subsection.

In addition, as used in this section:

"Equipment supply coordination agreement" means an agreement between a business and equipment manufacturer, supplier, installer, and operator that supports a qualified offshore wind project, or other wind energy project as determined by the authority, and that indicates the number of new, full-time jobs to be created by the agreement participants towards the employment requirement as set forth in paragraph (2) of subsection a. of this section.

"Minimum number of new, full-time employees" means:

(1) for the first award, at least a cumulative 100 new, full-time employees compared to the number of full-time employees at the time of application;

(2) for the second award, for a privilege period or taxable year following the first award, at least a cumulative 150 new, full-time employees compared to the number of full-time employees at the time of application;

(3) for the third award, for a privilege period or taxable year following the second award, at least a cumulative 200 new, full-time employees compared to the number of full-time employees at the time of application; and

(4) for the fourth award, for a privilege period or taxable year following the third award, at least a cumulative 300 new, full-time employees compared to the number of full-time employees at the time of application.

"Qualified offshore wind project" shall have the same meaning as provided in section 3 of P.L.1999, c.23 (C.48:3-51).

"Qualified wind energy facility" means any building, complex of buildings, or structural components of buildings, including water access infrastructure, and all machinery and equipment used in the manufacturing, assembly, development or administration of component parts that support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the authority.

110. Section 1 of P.L.2018, c.56 (C.54:10A-5.39b) is amended to read as follows:

C.54:10A-5.39b Credit against tax imposed for qualified film production expenses.

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 30 percent of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2028, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period exceed \$1,000,000 per production;

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an approved logo approved by the commission, in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2028, provided that:

(a) at least \$2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection f. of this section; and

(d) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority in which the tax credit allowed pursuant to this section and any other tax credits allowed by law may be taken shall be as prescribed by the director. The amount of the tax 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, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer 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). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

d. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsection c. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection a. or subsection b. of this section may be applied against the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsections c. and d. of section 2 of P.L.2018, c.56 (C.54A:4-12b).

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to taxpayers, other than New Jersey film partners and New Jersey film-lease partners, shall not exceed a cumulative total of \$100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2029 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the \$100,000,000 limitation on the value of tax credits approved by the director for New Jersey film-lease partners and the \$100,000,000 limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film partners shall not exceed a cumulative total of \$100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2034 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the \$100,000,000 limitation on the value of tax credits approved by the director for New Jersey film partners and the \$100,000,000 limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, the value of tax credits, including tax credits allowed through the granting of tax credit transfer

certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease partners shall not exceed a cumulative total of \$100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2034 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of paragraph (1) of this subsection to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) shall not exceed a cumulative total of \$10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2029 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12.b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12.b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that

fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. The report shall be prepared by the independent certified public accountant pursuant to agreed upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to section 1 of P.L.2007, c.101 (C.54:50-39).

"Commission" means the Motion Picture and Television Development Commission.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material

as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, talk show, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests no less than \$3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2). "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer 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 or full-time equivalent employment, 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 who is a partner of a taxpayer, 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 or full-time equivalent 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. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of \$500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Independent contractor" means an individual treated as an independent contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed,

purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more as a “transformative project” pursuant to section 65 of P.L.2020, c.156 (C.34:1B-333). No more than five film production companies may be designated as a New Jersey film partner.

“New Jersey film-lease partner” means a taxpayer, including any taxpayer that is a member of a combined group under P.L.2018, c.131 (C.54:10A-4.11), that has made a commitment to lease or acquire a New Jersey production facility with an aggregate square footage of at least 50,000 square feet, which includes a sound stage and production support space such as production offices or a backlot, for a period of five or more successive years and commits to spend, on a separate-entity basis or in the aggregate with other members of the taxpayer’s combined group, an annual average of \$50,000,000 of qualified film production expenses over the period of at least five but not to exceed 10 years.

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

“Post-production costs” means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

“Pre-production costs” means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

“Qualified digital media content production expenses” means an expense incurred in New Jersey for the production of digital media content. “Qualified digital media content production expenses” shall include but not be limited to: wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be deemed a “qualified digital media content production expense” unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. “Qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer’s digital media content shall not be deemed “qualified digital media content production expenses.”

“Qualified film production expenses” means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. “Qualified film production expenses” shall include but not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a “qualified film production expense” unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made

the withholding required pursuant to subsection g. of this section. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except as follows:

(1) for a New Jersey film partner that incurs more than \$15,000,000, but less than \$50,000,000, in qualified film production expenses in the State, an amount, not to exceed \$15,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses;

(2) for a New Jersey film partner that incurs \$50,000,000 or more, but less than \$100,000,000, in qualified film production expenses in the State, an amount, not to exceed \$25,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses;

(3) for a New Jersey film partner that incurs \$100,000,000 or more, but less than \$150,000,000, in qualified film production expenses in the State, an amount, not to exceed \$40,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(4) for a New Jersey film partner that incurs \$150,000,000 or more in qualified film production expenses in the State, an amount, not to exceed \$60,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

i. A business that is not a "taxpayer" as defined and used in the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) and therefore is not directly allowed a credit under this section, but is a business entity that is classified as a partnership for federal income tax purposes and is ultimately owned by a business entity that is a "corporation" as defined in subsection (c) of section 4 of P.L.1945, c.162 (C.54:10A-4), or a limited liability company formed under the "Revised Uniform Limited Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.), or qualified to do business in this State as a foreign limited liability company, with one member, and is wholly owned by the business entity that is a "corporation" as defined in subsection (c) of section 4 of P.L.1945, c.162 (C.54:10A-4), but otherwise meets all other requirements of this section, shall be considered an eligible applicant and "taxpayer" as that term is used in this section.

111. Section 2 of P.L.2018, c.56 (C.54A:4-12b) is amended to read as follows:  
C.54A:4-12b Tax credit for certain film expenses.

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 30 percent of the



qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2028, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the taxable year exceed \$1,000,000 per production;

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an appropriate logo approved by the commission, in the end credits of the film;

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection g. of this section; and

(e) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection h. of this section.

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2028, provided that:

(a) at least \$2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

(b) at least 50 percent of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with subsection g. of this section; and

(d) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection h. of this section.

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 25 percent for the qualified digital media content production

expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the taxable year for which a tax credit authorized pursuant to this section is allowed. The order of priority in which the tax credit allowed pursuant to this section and any other tax credits allowed by law may be taken shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than zero. The amount of the tax credit otherwise allowable under this section which cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.54A:1-1 et seq., may be carried forward, if necessary, to the seven taxable years following the taxable year for which the tax credit was allowed.

d. (1) A business entity that is classified as a partnership for federal income tax purposes shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a distributive share of entity income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

(2) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

A business entity that is not a gross income "taxpayer" as defined and used in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and therefore is not directly allowed a credit under this section, but otherwise meets all the other requirements of this section, shall be considered an eligible applicant and "taxpayer" as that term is used in this section, and the application of an otherwise allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subsection.

e. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the

taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsections c. and d. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection e. of this section may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection c. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b).

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to taxpayers, other than New Jersey film partners and New Jersey film-lease partners, shall not exceed a cumulative total of \$100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2029 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). In addition to the \$100,000,000 limitation on the value of tax credits approved by the director for New Jersey film-lease partners and the \$100,000,000 limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film partners shall not exceed a cumulative total of \$100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2034 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the \$100,000,000 limitation on the value of tax credits approved by the director for New Jersey film partners and the \$100,000,000 limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease partners shall not exceed a cumulative total of \$100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2034 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under

subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of paragraph (1) of this subsection to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) shall not exceed a cumulative total of \$10,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2029 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. The report shall be prepared by the independent certified public accountant pursuant to agreed upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the

taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company or to an independent contractor an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to section 1 of P.L.2007, c.101 (C.54:50-39).

"Commission" means the Motion Picture and Television Development Commission.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, talk show, sports event, or reality show, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes. "Film" shall not include

an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer 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 or full-time equivalent employment, 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 who is a partner of a taxpayer, 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 or full-time equivalent 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. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of \$500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Independent contractor" means an individual treated as an independent contractor for federal and State tax purposes who is contracted with by the taxpayer for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more as a "transformative project" pursuant to section 65 of P.L.2020, c.156 (C.34:1B-333). No more than five film production companies may be designated as a New Jersey film partner.

"New Jersey film-lease partner" means a taxpayer, including any taxpayer that is a member of a combined group under P.L.2018, c.131 (C:54:10A-4.11), that has made a commitment to lease or acquire a New Jersey production facility with an aggregate square footage of at least 50,000 square feet, which includes a sound stage and production support space such as production offices or a backlot, for a period of five or more successive years and commits to spend, on a separate-entity basis or in the aggregate with other members of the taxpayer's combined group, an annual average of \$50,000,000 of qualified film production expenses over the period of at least five but not to exceed 10 years.

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

"Post-production costs" means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects.

"Pre-production costs" means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated.

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection h. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except as follows:

(1) for a New Jersey film partner that incurs more than \$15,000,000, but less than \$50,000,000, in qualified film production expenses in the State, an amount, not to exceed \$15,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses;

(2) for a New Jersey film partner that incurs \$50,000,000 or more, but less than \$100,000,000, in qualified film production expenses in the State, an amount, not to exceed \$25,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses;

(3) for a New Jersey film partner that incurs \$100,000,000 or more, but less than \$150,000,000, in qualified film production expenses in the State, an amount, not to exceed \$40,000,000, of the wages or salaries or other compensation for writers, directors, including

music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(4) for a New Jersey film partner that incurs \$150,000,000 or more in qualified film production expenses in the State, an amount, not to exceed \$60,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses.

"Total digital media content production expenses" means costs for services performed and property used or consumed in the production of digital media content.

"Total film production expenses" means costs for services performed and tangible personal property used or consumed in the production of a film.

112. Section 1 of P.L.1979, c.303 (C.34:1b-5.1) is amended to read as follows:

C.34:1b-5.1 Rules, regulations.

1. a. The New Jersey Economic Development Authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any construction contract, including contracts for millwork fabrication, undertaken in connection with authority financial assistance or any of its projects, those projects which it undertakes pursuant to P.L.2002, c.43 (C.52:27BBB-1 et al.), or undertaken to fulfill any condition of receiving authority financial assistance, including the performance of any contract to construct, renovate or otherwise prepare a facility for operations which are necessary for the receipt of authority financial assistance, unless the work performed under the contract is performed on a facility owned by a landlord of the entity receiving the assistance and less than 35 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). For the purposes of this section, "authority financial assistance" means any loan, loan guarantee, grant, incentive, tax exemption or other financial assistance that is approved, funded, authorized, administered or provided by the authority to any entity and is provided before, during or after completion of a project, including but not limited to, all authority financial assistance received by the entity pursuant to the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.) that enables the entity to engage in a construction contract, but this section shall not be construed as requiring the payment of the prevailing wage for construction commencing more than two years after an entity has executed with the authority a commitment letter regarding authority financial assistance and the first payment or other provision of the assistance is received.

b. The New Jersey Economic Development Authority shall adopt rules and regulations requiring that not less than the prevailing wage rate be paid to workers employed in the performance of any contract, for construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, including painting and decorating, or excavation, grading, pile driving, concrete form, or other types of foundation work in connection with the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "New Jersey Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.). The requirements of this subsection shall apply to any



site preparation work performed 24 months prior to and during the incentive eligibility period of any project receiving tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321), the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "New Jersey Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), in which there is a continuity of ownership in the site of the redevelopment project, including work undertaken to fulfill any condition of receiving tax credits under the programs. Work that is subject to the requirements of this subsection shall include the performance of any contract for construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, including painting and decorating, or excavation, grading, pile driving, concrete form, or other types of foundation work undertaken on a facility for operations which are necessary for the receipt of tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321), the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "New Jersey Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), unless the work performed under the contract is performed on a facility owned by a landlord of the entity receiving the tax credit and less than 35 percent of the facility is leased by the entity at the time of the contract and under any agreement to subsequently lease the facility. The prevailing wage rate shall be the rate determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.), and all contractors and subcontractors subject to the prevailing wage requirement set forth in this section shall be registered with the Department of Labor and Workforce Development pursuant to the provisions of section 5 of P.L.1999, c.238 (C.34:11-56.52). An applicant for tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through C.34:1B-321), the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through C.34:1B-335), and the "New Jersey Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall certify under penalty of perjury as part of its application that all construction contracts undertaken on any project in connection with an award under the programs comply with the prevailing wage requirements of this subsection. If at any time the authority determines that the developer made a material misrepresentation regarding compliance with the provisions of this subsection on the developer's application, the developer shall forfeit 35 percent of the tax credits allowed under the programs, and pay to the affected workers back wages in an amount that compensates the workers at the prevailing wage rate for the work performed.<sup>1</sup>

113. Section 1 of P.L.1997, c. 334 (C.34:1B-7.42a) is amended to read as follows:

C.34:1B-7.42a Corporation business tax benefit certificate transfer program.

1. a. The New Jersey Economic Development Authority shall establish within the New Jersey Emerging Technology and Biotechnology Financial Assistance Program established pursuant to P.L.1995, c.137 (C.34:1B-7.37 et seq.), a corporation business tax benefit certificate transfer program to allow new or expanding emerging technology and biotechnology companies in this State with unused amounts of research and development tax credits otherwise allowable which cannot be applied for the credit's tax year due to the limitations of subsection b. of section 1 of P.L.1993, c.175 (C.54:10A-5.24) and unused prior

net operating loss conversion carryover or net operating loss carryover pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits for use by other corporation business taxpayers in this State, provided that the taxpayer receiving the surrendered tax benefits is not affiliated with a corporation that is surrendering its tax benefits under the program established under P.L.1997, c.334. For the purposes of this section, the test of affiliation is whether the same entity directly or indirectly owns or controls five percent or more of the voting rights or five percent or more of the value of all classes of stock of both the taxpayer receiving the benefits and a corporation that is surrendering the benefits. The tax benefits may be used on the corporation business tax returns to be filed by those taxpayers in exchange for private financial assistance to be provided by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate to assist in the funding of costs incurred by the new or expanding emerging technology and biotechnology company. For purposes of this subsection, a member of a combined group may sell prior net operating loss conversion carryover to other members of the combined group, if otherwise applicable and allowable under section 2 of P.L.1997, c.334 (C.54:10A-4.2) and this section; provided, however, such sale of prior net operating loss conversion carryover shall be made at arm's length price at the same rate as though the sale was to an unrelated taxpayer.

b. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by new or expanding emerging technology and biotechnology companies in this State with unused but otherwise allowable carryover of research and development tax credits pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), and unused but otherwise allowable prior net operating loss conversion carryover or net operating loss carryover pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4), to surrender those tax benefits in exchange for private financial assistance to be made by the corporation business taxpayer that is the recipient of the corporation business tax benefit certificate in an amount equal to at least 80% of the amount of the surrendered tax benefit. Provided that the amount of the surrendered tax benefit for a surrendered research and development tax credit carryover is the amount of the credit, and provided that the amount of the surrendered tax benefit for a surrendered prior net operating loss conversion carryover or net operating loss carryover is that amount for the tax year in which the benefit is transferred and subsequently multiplied by the corporation business tax rate provided pursuant to subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5). The authority shall be authorized to approve the transfer of no more than \$75,000,000 of tax benefits in a State fiscal year. If the total amount of transferable tax benefits requested to be surrendered by approved applicants exceeds \$75,000,000 for a State fiscal year, the authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall not be authorized to approve the transfer of more than \$75,000,000 for that State fiscal year and shall allocate the transfer of tax benefits by approved companies using the following method:

(1) an eligible applicant with \$250,000 or less of transferable tax benefits shall be authorized to surrender the entire amount of its transferable tax benefits;

(2) an eligible applicant with more than \$250,000 of transferable tax benefits shall be authorized to surrender a minimum of \$250,000 of its transferable tax benefits;

(3) (Deleted by amendment, P.L.2009, c.90.)

(4) an eligible applicant with more than \$250,000 shall also be authorized to surrender additional transferable tax benefits determined by multiplying the applicant's transferable tax benefits less the minimum transferable tax benefits that company is authorized to surrender under paragraph (2) of this subsection by a fraction, the numerator of which is the total

amount of transferable tax benefits that the authority is authorized to approve less the total amount of transferable tax benefits approved under paragraphs (1), (2), and (5) of this subsection and the denominator of which is the total amount of transferable tax benefits requested to be surrendered by all eligible applicants less the total amount of transferable tax benefits approved under paragraphs (1), (2), and (5) of this subsection;

(5) The authority shall establish the boundaries for three innovation zones to be geographically distributed in the northern, central, and southern portions of this State. Of the \$75,000,000 of transferable tax benefits authorized for each State fiscal year, \$10,000,000 shall be allocated for the surrender of transferable tax benefits exclusively by new and expanding emerging technology and biotechnology companies that operate within the boundaries of the innovation zones, except that any portion of the \$10,000,000 that is not so approved shall be available for that State fiscal year for the surrender of transferable tax benefits by new and expanding emerging technology and biotechnology companies that do not operate within the boundaries of an innovation zone.

If the total amount of transferable tax benefits that would be authorized using the above method exceeds \$75,000,000 for a State fiscal year, then the authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall limit the total amount of tax benefits authorized to be transferred to \$75,000,000 by applying the above method on an apportioned basis.

For purposes of this section transferable tax benefits include an eligible applicant's unused but otherwise allowable prior net operating loss conversion carryover or net operating loss carryover determined pursuant to section 4 of P.L.1945, c.162 (C.54:10A-4) for the tax year in which the benefit is transferred and subsequently multiplied by the corporation business tax rate as provided in subsection (c) of section 5 of P.L.1945, c.162 (C.54:10A-5) plus the total amount of the applicant's unused but otherwise allowable carryover of research and development tax credits. An eligible applicant's transferable tax benefits shall be limited to net operating losses and research and development tax credits that the applicant requests to surrender in its application to the authority and shall not, in total, exceed the maximum amount of tax benefits that the applicant is eligible to surrender.

No application for a corporation business tax benefit transfer certificate shall be approved in which the new or expanding emerging technology or biotechnology company (1) has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board; or (2) is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board or is part of a consolidated group of affiliated corporations, as filed for federal income tax purposes, that in the aggregate has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board.

For purposes of this subsection, a member of a combined group may sell prior net operating loss conversion carryover to other members of the combined group, if otherwise applicable and allowable under section 2 of P.L.1997, c.334 (C.54:10A-4.2) and this section; provided, however, such sale of prior net operating loss conversion carryover shall be made at arm's length price at the same rate as though the sale was to an unrelated taxpayer.

The maximum lifetime value of surrendered tax benefits that a corporation shall be permitted to surrender pursuant to the program is \$20,000,000. Applications must be received on or before June 30 of each State fiscal year.

The authority, in consultation with the Division of Taxation, shall establish rules for the recapture of all, or a portion of, the amount of a grant of a corporation business tax benefit certificate from the new or expanding emerging technology and biotechnology company having surrendered tax benefits pursuant to this section in the event the taxpayer fails to use the private financial assistance received for the surrender of tax benefits as required by this section or fails to maintain a headquarters or a base of operation in this State during the five years following receipt of the private financial assistance; except if the failure to maintain a headquarters or a base of operation in this State is due to the liquidation of the new or expanding emerging technology and biotechnology company.

c. The authority, in cooperation with the Division of Taxation in the Department of the Treasury, shall review and approve applications by taxpayers under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), to acquire surrendered tax benefits approved pursuant to subsection b. of this section which shall be issued in the form of corporation business tax benefit transfer certificates, in exchange for private financial assistance to be made by the taxpayer in an amount equal to at least 80% of the amount of the surrendered tax benefit of an emerging technology or biotechnology company in the State. A corporation business tax benefit transfer certificate shall not be issued unless the applicant certifies that as of the date of the exchange of the corporation business tax benefit certificate it is operating as a new or expanding emerging technology or biotechnology company and has no current intention to cease operating as a new or expanding emerging technology or biotechnology company.

The managerial member of a combined group shall be the member that acquires a corporation business tax benefit certificate on behalf of the combined group for use on the combined return.

The private financial assistance shall assist in funding expenses incurred in connection with the operation of the new or expanding emerging technology or biotechnology company in the State, including but not limited to the expenses of fixed assets, such as the construction and acquisition and development of real estate, materials, start-up, tenant fit-out, working capital, salaries, research and development expenditures and any other expenses determined by the authority to be necessary to carry out the purposes of the New Jersey Emerging Technology and Biotechnology Financial Assistance Program.

The authority shall require a corporation business taxpayer that acquires a corporation business tax benefit certificate to enter into a written agreement with the new or expanding emerging technology or biotechnology company concerning the terms and conditions of the private financial assistance made in exchange for the certificate. The written agreement may contain terms concerning the maintenance by the new or expanding emerging technology or biotechnology company of a headquarters or a base of operation in this State.

d. (Deleted by amendment, P.L.2009, c.90.)

114. Section 1 of P.L.1999, c.140 (C.34:1B-7.42b) is amended to read as follows:

C.34:1B-7.42b Definitions relative to certain corporation tax benefit programs.

1. As used in P.L.1997, c.334 (C.34:1B-7.42a et al.):

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

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances that add to that body of fundamental knowledge. This definition may be modified by regulation to conform to definitions in other programs administered by the authority.

“Biotechnology company” means an emerging corporation that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that is engaged in the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes. This definition may be modified by regulation to conform to definitions in other programs administered by the authority.

“Full-time employee” means a person employed by a new or expanding emerging technology or biotechnology company 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., or who is a partner of a new or expanding emerging technology or biotechnology company 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. To qualify as a “full-time employee,” an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under a health benefits plan authorized pursuant to State or federal law. “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology company.

“New or expanding” means a technology or biotechnology company that (1) on June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate, has fewer than 225 employees in the United States of America; (2) on June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated for less than three years, has at least five full-time employees working in this State if the company has been incorporated for more than three years but less than five years, and has at least 10 full-time employees working in this State if the company has been incorporated for more than five years; and (3) on the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in part (2) of this definition.

“Technology company” means an emerging corporation that has its headquarters or base of operations in this State; that owns, has filed for, or has a valid license to use protected, proprietary intellectual property; and that employs some combination of the following: highly educated or trained managers and workers, or both, employed in this State who use sophisticated scientific research service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service. This definition may be

modified by regulation to conform to definitions in other programs administered by the authority.

115. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

C.34:1B-5 Powers.

5. The authority shall have the following powers:
  - a. To adopt bylaws for the regulation of its affairs and the conduct of its business;
  - b. To adopt and have a seal and to alter the same at pleasure;
  - c. To sue and be sued;
  - d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project in qualifying municipalities as defined under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;
  - e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project and to pay or compromise any claims arising therefrom;
  - f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project and any project financed pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);
  - g. To sell, convey or lease to any person all or any portion of a project for such consideration and upon such terms as the authority may determine to be reasonable;
  - h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project, or revenues, whenever it shall find such action to be in furtherance of the purposes of this act, P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);
  - i. To grant options to purchase or renew a lease for any of its projects on such terms as the authority may determine to be reasonable;
  - j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and conditions thereof;

k. In connection with any action undertaken by the authority in the performance of its duties and any application for assistance or commitments therefor and modifications thereof, to require and collect such fees and charges as the authority shall determine to be reasonable, including but not limited to fees and charges for the authority's administrative, organizational, insurance, operating, legal, and other expenses;

l. To adopt, amend and repeal regulations to carry out the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.);

m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

o. To purchase, acquire, attach, seize, accept or take title to any project or school facilities project by conveyance or by foreclosure, and sell, lease, manage or operate any project or school facilities project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

p. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof, as provided in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project or school facilities project, which credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, of such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;

r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the redevelopment utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their compensation from funds available to the redevelopment utility therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.), under, through or by means of its own officers, agents and employees, or by contract with any person;

u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

v. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality;

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.);

z. To enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the redevelopment utility to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts, the New Jersey Schools Development Authority, and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

aa. (Deleted by amendment, P.L.2007, c.137);

bb. To make and contract to make loans to local units to finance the cost of school facilities projects and to acquire and contract to acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the purchase upon tender or otherwise of the bonds, lines of credit, letters of credit,



reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith;

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing of school facilities projects;

ee. To make loans to refinance solid waste facility bonds through the issuance of bonds or other obligations and the execution of any agreements with counties or public authorities to effect the refunding or rescheduling of solid waste facility bonds, or otherwise provide for the payment of all or a portion of any series of solid waste facility bonds. Any county or public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of not less than fifty percent of the aggregate debt service for the refunded or rescheduled debt of the particular county or public authority for the duration of the loan; except that, whenever the solid waste facility bonds to be refinanced were issued by a public authority and the county solid waste facility was utilized as a regional county solid waste facility, as designated in the respective adopted district solid waste management plans of the participating counties as approved by the department prior to November 10, 1997, and the utilization of the facility was established pursuant to tonnage obligations set forth in their respective interdistrict agreements, the public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of a percentage of the aggregate debt service for the refunded or rescheduled debt of the public authority not to exceed the percentage of the specified tonnage obligation of the host county for the duration of the loan. Whenever the solid waste facility bonds are the obligation of a public authority, the relevant county shall execute a deficiency agreement with the authority, which shall provide that the county pledges to cover any shortfall and to pay deficiencies in scheduled repayment obligations of the public authority. All costs associated with the issuance of bonds pursuant to this subsection may be paid by the authority from the proceeds of these bonds. Any county or public authority is hereby authorized to enter into any agreement with the authority necessary, desirable or convenient to effectuate the provisions of this subsection.

The authority shall not issue bonds or other obligations to effect the refunding or rescheduling of solid waste facility bonds after December 31, 2002. The authority may refund its own bonds issued for the purposes herein at any time;

ff. To pool loans for any local government units that are refunding bonds and do and perform any and all acts or things necessary, convenient or desirable for the purpose of the authority to achieve more favorable interest rates and terms for those local governmental units;

gg. To finance projects approved by the board, provide staff support to the board, oversee and monitor progress on the part of the board in carrying out the revitalization, economic development and restoration projects authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its responsibilities pursuant thereto;

hh. To offer financial assistance to qualified film production companies as provided in the "New Jersey Film Production Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.);

ii. To finance or develop private or public parking facilities or structures, which may include the use of solar photovoltaic equipment, in municipalities qualified to receive State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and municipalities that contain areas designated pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town center, and to provide appropriate assistance, including but not limited to, extensions of credit, loans, and guarantees, to municipalities qualified to receive State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and municipalities that contain areas designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town center, and their agencies and instrumentalities or to private entities whose projects are located in those municipalities, in order to facilitate the financing and development of parking facilities or structures in such municipalities. The authority may serve as the issuing agent of bonds to finance the undertaking of a project for the purposes of this subsection;

jj. To make grants for the planning, designing, acquiring, constructing, reconstructing, improving, equipping, and furnishing of a project, including, but not limited to, grants for working capital and meeting payroll requirements, upon such terms and conditions as the authority shall deem reasonable, during periods of emergency declared by the Governor and for the duration of economic disruptions due to the emergency; and

kk. To purchase and lease real property at a nominal rate when it would result in a net economic benefit to the State, enhance access to employment and investment for underserved populations, or increase investment and employment in high-growth technology sectors.

116. Section 4 of P.L.1992, c.16 (C.34:1B-7.13) is amended to read as follows:

C.34:1B-7.13 Use of moneys in fund.

4. The authority may use the moneys in the fund to pay principal of, premium, if any, and interest on bonds or notes, which shall be entitled "Economic Recovery Fund Bonds or Notes," as appropriate, the proceeds, or net proceeds, of which shall be deposited into the fund, or used for purposes of the fund, and moneys in the fund, including money received from the sale of bonds shall, in such manner as is determined by the authority, and pursuant to subsections d., e., and f. of this section, be used for the financing of projects as set forth in section 3 of P.L.1974, c.80 (C.34:1B-3) and to establish:

a. an economic growth account for programs and initiatives, which will support and invest in small and medium-size businesses and other entities engaged in economic, community, and workforce development that have the greatest potential for creating jobs and stimulating economic growth through such elements including, but not limited to:

(1) a Statewide lending pool and guarantee pool for small business, whether directly or through a community development financial institution;

(2) a business composite bond guarantee;

(3) a fund to further supplement the export finance program of the authority to provide direct loans and working capital necessary for New Jersey businesses to compete in the global market, real estate partnerships;

(4) a Statewide composite bond pool to assist municipalities in acquiring needed financing for capital expenditures;

(5) financial assistance to assist municipalities, municipal entities, counties, county entities, regional entities, State instrumentalities, and not-for-profit local economic and community development entities to execute programs and initiatives to stimulate community and economic development;

(6) a venture, seed, or angel capital fund for start-up costs for businesses developing new concepts and inventions;

(7) a fund to assist businesses, either directly or through a not-for-profit or for-profit entity with expansion or transition to a new business model in such areas including, but not limited to, manufacturing retooling to improve quality, to reduce production costs and to train employees to apply the latest technology;

(8) a "Main Street Business Assistance Program" to provide guarantees and loans to small and mid-size businesses and not-for-profit entities to stimulate the economy;

(9) in consultation with the Department of Labor and Workforce Development and the Office of the Secretary of Higher Education, a fund to support and invest in innovative workforce development approaches and programs, including those that could benefit individuals directly, either undertaken directly by the authority or through a governmental, not-for-profit, or for-profit entity, that align with targeted industries as defined by the authority's board or support a high-demand occupation;

(10) a fund to provide grants, financing, or equity to collaborations between large corporations, small-to-medium sized businesses, academic institutions, government entities, or not-for-profit entities, where one of the purposes of the collaboration is to stimulate community or economic development;

(11) a fund to provide grants, financing, or equity in innovation centers, research centers, incubators, and accelerators, and other similar innovation-oriented entities, which are focused on the targeted industries as defined by the authority's board or support increasing diversity and inclusion within the State's entrepreneurial economy; the fund may also be used to pay for membership fees, or other similar arrangements, for the authority to join or participate in such innovation-oriented entities;

(12) a fund to provide grants or competition prizes to fund initiative-based activities which stimulate growth in targeted industries as defined by the authority's board or supports increasing diversity and inclusion within the State's entrepreneurial economy; this fund may also support not-for-profit industry, trade, and labor organization initiatives; and

(13) a fund to provide grants or competition prizes, either directly or through a not-for-profit entity, that is consistent with economic development priorities as defined by the authority's board, where funds have been specifically allocated to the economic recovery fund for this purpose, including but not limited to an appropriation or transfer from another government entity.

The authority may promulgate rules and regulations for the effective implementation of the "Main Street Business Assistance Program." Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt, immediately upon filing with the Office of Administrative Law, such regulations as are necessary to implement the provisions of this act, which shall be effective for a period not to exceed 12 months following enactment, and may thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The authority may use the economic growth account for the planning, designing, acquiring, constructing, reconstructing, improving, equipping, and furnishing by small and medium-size businesses and not-for-profit corporations of a project as defined in section 3 of P.L.1974, c. 80

(C.34:1B-3), including, but not limited to, grants for working capital and meeting payroll requirements, upon such terms and conditions as the authority shall deem reasonable;

b. an economic development infrastructure program account, which shall provide for the financing and development of infrastructure and transportation projects, including but not limited to ports, terminal and transit facilities, roads and airports, parking facilities used in connection with transit facilities, and related facilities, including public-private partnerships, that are integral to economic growth;

c. an account for a cultural, recreational, fine and performing arts, military and veterans memorial, historic preservation project and tourism facilities and improvements program, which shall provide for the financing and development of cultural, recreational, fine and performing arts, military and veterans memorial, historic preservation and tourism projects, including partnerships with public, private and nonprofit entities;

d. an account, into which shall be deposited an amount not less than \$45,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, for the financing of capital facilities for primary and secondary schools in the State for the purpose of the renovation, repair or alteration of existing school buildings, the construction of new school buildings or the conversion of existing school buildings to other instructional purposes.

(1) Of the amount deposited in the account, not less than \$25,000,000 shall be deposited in the "Public School Facilities Code Compliance Loan Fund" established pursuant to section 4 of P.L.1993, c.102 (C.34:1B-7.23).

(2) Of the amount deposited in the account, not less than \$20,000,000 shall be deposited in the "Public School Facilities Loan Assistance Fund" established pursuant to section 5 of P.L.1993, c.102 (C.34:1B-7.24);

e. an environmental cleanup assistance account, into which shall be deposited an amount not less than \$10,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, to provide financial assistance to the persons and other entities entitled to apply for financial assistance pursuant to P.L.1993, c.139; and

f. an account, into which shall be deposited an amount not less than \$15,000,000, out of the total amounts deposited or credited to the fund from the proceeds of the sale of Economic Recovery Fund Bonds or Notes, for the financing of shore restoration, maintenance, monitoring, protection and preservation projects pursuant to the shore protection master plan prepared by the Department of Environmental Protection pursuant to P.L.1978, c.157.

117. Section 2 of P.L.1997, c.349 (C.54:10A-5.29) is amended to read as follows:

C.54:10A-5.29 Definitions relative to emergency businesses.

2. As used in sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30):

“Advanced computing” means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand- held calculators to super computers, and peripheral equipment.

“Advanced materials” means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic

levels, as well as novel products, services, technologies, and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

“Carbon footprint reduction technology” means a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

“Control” with respect to a corporation means ownership, directly or indirectly, of stock possessing 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and “control” with respect to a trust means ownership, directly or indirectly, of 80 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. § 267), other than paragraph (3) of subsection (c) of that section.

“Controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least 80 percent of the voting power of all classes of stock of at least one of the other corporations.

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

“Diverse entrepreneur” means a New Jersey based business that meets the criteria for a minority business or female business set forth in section 3 of P.L.1983, c.482 (C.52:32-19).

“Electronic device technology” means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

“Information technology” means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

“Life sciences” means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products, or physical and biological research.

“Medical device technology” means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration.

“Mobile communications technology” means a technology involving the functionality and reliability of the transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but not be limited to, smartphones, electronic books and tablets, digital audio players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

“New Jersey based business” means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State.

“New Jersey emerging technology business” means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: has qualified research expenses paid or incurred for research conducted in this State; conducts pilot scale manufacturing in this State; or conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

“New Jersey emerging technology business holding company” means any corporation, association, firm, partnership, trust, or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

“Partnership” means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

“Pilot scale manufacturing” means the design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, and renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from the sales of the product, service, or process do not exceed \$1,000,000.

“Qualified investment” means the non-refundable transfer of cash to a New Jersey emerging technology business or to a New Jersey emerging technology business holding company by a taxpayer that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, the transfer of which is in connection with either: a transaction between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or a purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both. “Qualified investment” also means the non-refundable transfer of cash or irrevocable contractual commitment to a qualified venture fund.

“Qualified research expenses” means qualified research expenses, as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. § 41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

“Qualified venture fund” means a venture fund required by contract to invest a minimum of 50 percent of its funds in New Jersey based businesses that the authority, in its sole discretion, based upon the qualified venture fund’s investment history, if any, its private placement memorandum and other relevant information, has determined has the capacity to make the minimum investment.

“Related person” means:

a corporation, partnership, association or trust controlled by the taxpayer;

an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

a member of the same controlled group as the taxpayer.

“Renewable energy technology” means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

“Tax year” means the fiscal or calendar accounting period of a taxpayer.

“Venture fund” means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in, which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.

“Verified transfer of funds” means a non-refundable transfer of funds equal to 100 percent of the taxpayer’s qualified investment in the New Jersey emerging technology business holding company to a New Jersey emerging technology business by the New Jersey emerging technology business holding company that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same tax year.

The definitions of “advanced computing,” “advanced materials,” “biotechnology,” “carbon footprint reduction technology,” “electronic device technology,” “information technology,” “life sciences,” “medical device technology,” “mobile communications technology,” “New Jersey emerging technology business,” “pilot scale manufacturing,” and “renewable energy technology” may be modified by regulation to conform to definitions in other programs administered by the authority.

118. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to read as follows:

C.54:10A-5.30 Taxpayer allowed credit.

3. a. (1) A taxpayer, upon approval of the taxpayer’s application therefor by the New Jersey Economic Development Authority and in consultation with the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 20 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging

technology business, or in a qualified venture fund; provided, however, a taxpayer may be allowed a tax credit in an amount equal to 25 percent of the qualified investment if the taxpayer satisfies one of the requirements set forth in paragraph (2) of this subsection. The value of tax credits allowed to a taxpayer pursuant to this section shall not exceed \$500,000 for the privilege period for each qualified investment made by the taxpayer.

(2) Subject to the limits established in paragraph (1) of this subsection, the New Jersey Economic Development Authority, in consultation with the director, shall increase the amount of a tax credit allowed pursuant to this section by five percent if the taxpayer makes a qualified investment in a New Jersey emerging technology business, or in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business, or in a qualified venture fund, if the New Jersey emerging technology business is either located in a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1, or a low-income community as defined in subparagraph (e) of 26 U.S.C. § 45D or

certified by the State as a minority business or a women's business pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.) and, in the case of a qualified venture fund, if the qualified venture fund commits by contract to invest 50 percent of its funds in diverse entrepreneurs.

b. A credit shall not be allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24), for expenses paid from funds for which a credit is allowed, or which are includable in the calculation of a credit allowed, under this section. Notwithstanding any other provision of law, the order of priority in which the credit allowed by this section and any other credits allowed by law may be taken shall be as prescribed by the director.

c. Except as provided in subsection d. of this section, the amount of credit otherwise allowable under this section which cannot be applied for the privilege period against tax liability otherwise due for that privilege period may either be carried over, if necessary, to the 15 privilege periods following the privilege period for which the credit was allowed or, at the election of the taxpayer, be claimed as and treated as an overpayment for the purposes of R.S.54:49-15, provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not apply.

d. A taxpayer may not carry over any amount of credit allowed under subsection a. of this section to a privilege period during which a corporate acquisition with respect to which the taxpayer was a target corporation occurred or during which the taxpayer was a party to a merger or a consolidation, or to any subsequent privilege period, if the credit was allowed for a privilege period prior to the year of acquisition, merger or consolidation, except that if in the case of a corporate merger or corporate consolidation the taxpayer can demonstrate, through the submission of a copy of the plan of merger or consolidation and such other evidence as may be required by the director, the identity of the constituent corporation which was the acquiring person, a credit allowed to the acquiring person may be carried over by the taxpayer. As used in this subsection, "acquiring person" means the constituent corporation the stockholders of which own the largest proportion of the total voting power in the surviving or consolidated corporation after the merger or consolidation.

e. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and section 4 of P.L.2013, c.14 (C.54A:4-13), including, but not limited to: examples of and the determination of qualified investments of which applicants shall provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for



a credit; provisions for recapture in the event a taxpayer receives a credit on the basis of its commitment to transfer cash to a qualified venture fund and it does not fund its commitment; and provisions for credit applicants to be charged an initial application fee and ongoing service fees to cover the administrative costs related to the credit.

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority, and in consultation with the director, pursuant to subsection a. of this section and pursuant to section 4 of P.L.2013, c.14 (C.54A:4-13), shall not exceed a cumulative total of \$35,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 4 of P.L.2013, c.14 (C.54A:4-13) are not in excess of the amount of credits available.

119. Section 4 of P.L.2013, c.14 (C.54A:4-13) is amended to read as follows:

C.54A:4-13 Credit against tax due.

4. a. (1) A taxpayer, upon approval of the taxpayer's application therefor by the New Jersey Economic Development Authority, and in consultation with the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the qualified investment made by the taxpayer in a New Jersey emerging technology business, in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business, or in a qualified venture fund; provided, however, a taxpayer may be allowed a tax credit in an amount equal to 25 percent of the qualified investment if the taxpayer satisfies one of the requirements set forth in paragraph (2) of this subsection. The value of tax credits allowed to a taxpayer pursuant to this section shall not exceed \$500,000 for the taxable year for each qualified investment made by the taxpayer.

(2) Subject to the limits established in paragraph (1) of this subsection, the New Jersey Economic Development Authority, in consultation with the director, shall increase the amount of a tax credit allowed pursuant to this section by five percent if the taxpayer makes a qualified investment in a New Jersey emerging technology business, in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business, or in a qualified venture fund, if the New Jersey emerging technology business is either located in a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1, or a low-income community as defined in subparagraph (e) of 26 U.S.C. § 45D; or

certified by the State as a minority business or a women's business pursuant to P.L.1986, c.195 (C.52:27H-21.17 et seq.) and, in the case of a qualified venture fund, if the qualified venture fund commits by contract to invest 50 percent of its funds in diverse entrepreneurs.

b. The amount of the credit allowed pursuant to this section shall be applied against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., after all other credits and payments. If the credit exceeds the amount of tax liability otherwise

due, that amount of excess shall be an overpayment for the purposes of N.J.S.54A:9-7, provided, however, that subsection (f) of N.J.S.54A:9-7 shall not apply.

c. (1) A partnership shall not be allowed a credit under this section directly, but the amount of credit of a taxpayer in respect of a distributive share of partnership income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer's taxable year. For the purposes of subsection b. of this section, the amount of tax liability that would be otherwise due of a taxpayer is that proportion of the total liability of the taxpayer that the taxpayer's share of the partnership income or gain included in gross income bears to the total gross income of the taxpayer.

(2) The credit for a corporation that has made a valid election as a New Jersey S corporation pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22) may be applied by the shareholders of the S corporation against the tax liability otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., provided that the amount of credit that may be used by a shareholder of the S corporation shall be determined by allocating to each shareholder of the S corporation that proportion of the tax credit of the S corporation that is equal to the shareholder's proportionate share of the S corporation, whether or not distributed, of the total distributive income or gain of the S corporation for its tax period ending with or within the shareholder's tax period, and the credit may be applied by the shareholders against the tax liability otherwise due pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

d. The Executive Director of the New Jersey Economic Development Authority, in consultation with the director, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations that are necessary to implement sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through C.54:10A-5.30) and this section, including, but not limited to: examples of and the determination of qualified investments of which applicants shall provide documentation with their tax credit application; the promulgation of procedures and forms necessary to apply for a credit; provisions for recapture in the event a taxpayer receives a credit on the basis of its commitment to transfer cash to a qualified venture fund and it does not fund its commitment; and provisions for credit applicants to be charged an initial application fee and ongoing service fees to cover the administrative costs related to the credit.

The amount of credits approved by the Executive Director of the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury, pursuant to subsection a. of this section and pursuant to section 3 of P.L.1997, c.349 (C.54:10A-5.30), shall not exceed a cumulative total of \$35,000,000 in any calendar year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed to taxpayers in a calendar year exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of the tax credit on the first day of the next succeeding calendar year in which tax credits under this section and section 3 of P.L.1997, c.349 (C.54:10A-5.30) are not in excess of the amount of credits available.

e. As used in this section:

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

"Biotechnology" means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies, and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

"Carbon footprint reduction technology" means a technology using equipment for the commercial, institutional, and industrial sectors that: increases energy efficiency; develops and delivers renewable or non-carbon-emitting energy technologies; develops innovative carbon emissions abatement with significant carbon emissions reduction potential; or promotes measurable electricity end-use energy efficiency.

"Control" with respect to a corporation, means ownership, directly or indirectly, of stock possessing 80 percent or more of the total combined voting power of all classes of the stock of the corporation entitled to vote; and "control," with respect to a trust, means ownership, directly or indirectly, of 80 percent or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in subsection (c) of section 267 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than paragraph (3) of subsection (c) of that section.

"Controlled group" means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least 80 percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations and the common parent owns directly stock possessing at least 80 percent of the voting power of all classes of stock of at least one of the other corporations.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Diverse entrepreneur" means a New Jersey based business that meets the criteria for a minority business or female business set forth in section 3 of P.L.1983, c.482 (C.52:32-19).

"Electronic device technology" means a technology involving microelectronics, semiconductors, electronic equipment and instrumentation, radio frequency, microwave and millimeter electronics, and optical and optic-electrical devices, or data and digital communications and imaging devices.

"Information technology" means software publishing, motion picture and video production, television production and post-production services, telecommunications, data processing, hosting and related services, custom computer programming services, computer system design, computer facilities management services, other computer related services, and computer training.

"Life sciences" means the production of medical equipment, ophthalmic goods, medical or dental instruments, diagnostic substances, biopharmaceutical products, or physical and biological research.

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the federal Food and Drug Administration.

"Mobile communications technology" means a technology involving the functionality and reliability of the transmission of voice and multimedia data using a communication infrastructure via a computer or a mobile device, that shall include, but not be limited to, smartphones, electronic books and tablets, digital audio players, motor vehicle electronics, home entertainment systems, and other wireless appliances, without having connected to any physical or fixed link.

"New Jersey based business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State.

"New Jersey emerging technology business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State and: has qualified research expenses paid or incurred for research conducted in this State; conducts pilot scale manufacturing in this State; or conducts technology commercialization in this State in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

"New Jersey emerging technology business holding company" means any corporation, association, firm, partnership, trust or other form of business organization, but not a natural person, which directly or indirectly, owns, has the power or right to control, or has the power to vote, a controlling share of the outstanding voting securities of a corporation or other form of a New Jersey emerging technology business.

"Partnership" means a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate, a corporation, or a sole proprietorship.

"Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of advanced computing, advanced materials, biotechnology, carbon footprint reduction technology electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology, other than for commercial sale, excluding sales of prototypes or sales for market testing if the total gross receipts, as calculated in the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6), from the sales of the product, service, or process do not exceed \$1,000,000.

"Qualified investment" means the non-refundable transfer of cash to a New Jersey emerging technology business or to a New Jersey emerging technology business holding company by a taxpayer that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, the transfer of which is in connection with either: a transaction between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology holding company or both in exchange for stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including, but not limited to, options or rights to acquire any of the items included herein; or a purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the

New Jersey emerging technology holding company or both. “Qualified investment” also means the non-refundable transfer of cash or irrevocable contractual commitment to transfer cash to a qualified venture fund.

“Qualified research expenses” means qualified research expenses, as defined in section 41 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology.

“Qualified venture fund” means a venture fund required by contract to invest a minimum of 50 percent of its funds in New Jersey based businesses that the authority, in its sole discretion, based upon the qualified venture fund’s investment history, if any, its private placement memorandum and other relevant information, has determined has the capacity to make the minimum investment.

“Related person” means:

a corporation, partnership, association or trust controlled by the taxpayer;

an individual, corporation, partnership, association or trust that is in the control of the taxpayer;

a corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in the control of the taxpayer; or

a member of the same controlled group as the taxpayer.

“Renewable energy technology” means a technology involving the generation of electricity from solar energy; wind energy; wave or tidal action; geothermal energy; the combustion of gas from the anaerobic digestion of food waste and sewage sludge at a biomass generating facility; the combustion of methane gas captured from a landfill; and a fuel cell powered by methanol, ethanol, landfill gas, digester gas, biomass gas, or other renewable fuel but not powered by a fossil fuel.

“Venture fund” means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in, which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.

“Verified transfer of funds” means a non-refundable transfer of funds equal to 100 percent of the taxpayer's qualified investment in the New Jersey emerging technology business holding company to a New Jersey emerging technology business by the New Jersey emerging technology business holding company that is accompanied by documentation, as required by the New Jersey Economic Development Authority, which provides proof of a cash transaction originating with a taxpayer and concluding with a New Jersey emerging technology business, provided that the transactions from origin to destination occur within the same taxable year.

The definitions of “advanced computing,” “advanced materials,” “biotechnology,” “carbon footprint reduction technology,” “electronic device technology,” “information technology,” “life sciences,” “medical device technology,” “mobile communications technology,” “New Jersey emerging technology business,” “pilot scale manufacturing,” and “renewable energy technology” may be modified by regulation to conform to definitions in other programs administered by the authority.

120. Section 2 of P.L.2011, c.149 (C.34:1B-243) is amended to read as follows:

C.34:1B-243 Definitions relative to the "Grow New Jersey Act."

2. As used in P.L.2011, c.149 (C.34:1B-242 et seq.):

"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. s.1563) or the entity is an organization in a group of organizations under common control as defined pursuant to subsection (b) or (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. s.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 those statutes. An affiliate of a business may contribute to meeting either the qualified investment or full-time employee requirements of a business that applies for a credit under section 3 of P.L.2007, c.346 (C.34:1B-209).

"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.

"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);

- a corporation that is subject to the tax imposed pursuant to 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;

- a partnership;

- an S corporation;

- a limited liability company; or

- a non-profit corporation.

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.

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.

"Capital investment" in a qualified business facility means expenses by a business or any affiliate of the business incurred after application 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. s.168 and s.179), for the operation

of a business on real property or in a building, structure, facility, or improvement to real property;

c. receiving Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L.2004, c.120 (C.13:20-13); or

d. any of the foregoing.

In addition to the foregoing, in a Garden State Growth Zone, the following qualify as a capital investment: any development, redevelopment, and relocation costs, including, but not limited to, site acquisition if made within 24 months of application to the authority, engineering, legal, accounting, and other professional services required; and relocation, environmental remediation, and infrastructure improvements for the project area, including, but not limited to, on- and off-site utility, road, pier, wharf, bulkhead, or sidewalk construction or repair.

In addition to the foregoing, if a business acquires or leases a qualified business facility, the capital investment made or acquired by the seller or owner, as the case may be, if pertaining primarily to the premises of the qualified business facility, shall be considered a capital investment by the business and, if pertaining generally to the qualified business facility being acquired or leased, shall be allocated to the premises of the qualified business facility on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility. The capital investment described herein may include any capital investment made or acquired within 24 months prior to the date of application so long as the amount of capital investment made or acquired by the business, any affiliate of the business, or any owner after the date of application equals at least 50 percent of the amount of capital investment, allocated to the premises of the qualified business facility being acquired or leased on the basis of the gross leasable area of the premises in relation to the total gross leasable area in the qualified business facility made or acquired prior to the date of application.

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

"Commitment period" means the period of time that is 1.5 times the eligibility period.

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

"Deep poverty pocket" means a population census tract having a poverty level of 20 percent or more, and which is located within the qualified incentive area and has been determined by the authority to be an area appropriate for development and in need of economic development incentive assistance.

"Disaster recovery project" means a project located on property that has been wholly or substantially damaged or destroyed as a result of a federally-declared disaster which, after utilizing all disaster funds available from federal, State, county, and local funding sources, demonstrates to the satisfaction of the authority that access to additional funding authorized pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), is necessary to complete the redevelopment project, and which is located within the qualified 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.

"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 a business may claim a tax credit under the Grow New Jersey Assistance Program, beginning with the tax period in which the authority accepts certification of the business that it has met the capital investment and employment requirements of the Grow New Jersey Assistance Program and extending thereafter for a term of not more than 10 years, with the term to be determined solely at the discretion of the applicant.

"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.

"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; or

b. who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with 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. 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.; and

d. who, except for purposes of the Statewide workforce, is provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or federal law.

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;

full-time employment shall include, but not be limited to, employees that have been hired by way of a labor union hiring hall or its equivalent;

35 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether or not the hours of work were performed by one or more persons.

For any project located in a Garden State Growth Zone which qualifies under the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), or any project located in the Atlantic City Tourism District as established pursuant to



section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority, and which will include a retail facility of at least 150,000 square feet, of which at least 50 percent will be occupied by either a full-service supermarket or grocery store, 30 hours of employment per week at a qualified business facility shall constitute one "full-time employee," regardless of whether the hours of work were performed by one or more persons, and the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the employees of the business are covered by a collective bargaining agreement.

"Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business.

Full-time employee shall also not include any person who at the time of project application works in New Jersey for consideration for at least 35 hours per week, 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.

"Garden State Create Zone" means the campus of a doctoral university, and the area within a three-mile radius of the outermost boundary of the campus of a doctoral university, according to a map appearing in the doctoral university's official catalog or other official publication on the effective date of P.L.2017, c.221.

"Garden State Growth Zone" or "growth zone" means the four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the US Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009); a municipality which contains a Tourism District as established pursuant to section 5 of P.L.2011, c.18 (C.5:12-219) and regulated by the Casino Reinvestment Development Authority; or an aviation district.

"Highlands development credit receiving area or redevelopment area" means an area located within a qualified incentive area and designated by the Highlands Water Protection and Planning Council for the receipt of Highlands Development Credits under the Highlands Transfer Development Rights Program authorized pursuant to section 13 of P.L.2004, c.120 (C.13:20-13).

"Incentive agreement" means the contract between the business and the authority, which sets forth the terms and conditions under which the business shall be eligible to receive the incentives authorized pursuant to the program.

"Incentive effective date" means the date a business submits the documentation required pursuant to paragraph (1) of subsection b. of section 6 of P.L.2011, c.149 (C.34:1B-247) in a form satisfactory to the authority.

"Independent institution of higher education" means a college or university incorporated and located in New Jersey, which by virtue of law or character or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education which 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.

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

"Mega project" means:

a. a qualified business facility located in a port district housing a business in the logistics, manufacturing, energy, defense, or maritime industries, either:

(1) having a capital investment in excess of \$20,000,000, and at which more than 250 full-time employees of the business are created or retained; or

(2) at which more than 1,000 full-time employees of the business are created or retained;

b. a qualified business facility located in an aviation district housing a business in the aviation industry, in a Garden State Growth Zone, or in a priority area housing the United States headquarters and related facilities of an automobile manufacturer, either:

(1) having a capital investment in excess of \$20,000,000, and at which more than 250 full-time employees of the business are created or retained, or

(2) at which more than 1,000 full-time employees of the business are created or retained;

c. a qualified business facility located in an urban transit hub housing a business of any kind, having a capital investment in excess of \$50,000,000, and at which more than 250 full-time employees of the business are created or retained;

d. a project located in an area designated in need of redevelopment, pursuant to P.L.1992, c.79 (C.40A:12A-1 et al.) prior to the enactment of P.L.2014, c.63 (C.34:1B-251 et al.) within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties having a capital investment in excess of \$20,000,000, and at which more than 150 full-time employees of the business are created or retained; or

e. a qualified business facility primarily used by a business principally engaged in research, development, or manufacture of a drug or device, as defined in R.S.24:1-1, or primarily used by a business licensed to conduct a clinical laboratory and business facility pursuant to the "New Jersey Clinical Laboratory Improvement Act," P.L.1975, c.166 (C.45:9-42.26 et seq.), either:

(1) having a capital investment in excess of \$20,000,000, and at which more than 250 full-time employees of the business are created or retained, or

(2) at which more than 1,000 full-time employees of the business are created or retained.

"Minimum environmental and sustainability standards" means standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

"Moderate-income housing" means housing affordable, according to United States Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal Revitalization Index" means the 2007 index by the Office for Planning Advocacy within the Department of State measuring or ranking municipal distress.

"New full-time job" means an eligible position created by the business at the qualified business facility that did not previously exist in this State. For the purposes of determining a 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 qualified incentive area that are not located within a distressed municipality, or the priority area.

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

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

a. the "Port of New York District" of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or

b. a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to "The South Jersey Port Corporation Act," P.L.1968, c.60 (C.12:11A-1 et seq.).

"Priority area" 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 until June 30, 2013, or until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition;

b. intersect with portions of: a deep poverty pocket, a port district, or federally-owned land approved for closure under a federal Commission on Base Realignment and Closure action;

c. are the proposed site of a disaster recovery project, a qualified incubator facility, a highlands development credit receiving area or redevelopment area, 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 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).

"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 "Grow New Jersey Assistance Program" established pursuant to section 3 of P.L.2011, c.149 (C.34:1B-244).

"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 within a qualified incentive area, 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 located within a qualified incentive area, are used in connection with the operation of:

a. a final point of sale retail business located in a Garden State Growth Zone that will include a retail facility of at least 150,000 square feet, of which at least 50 percent is occupied by either a full-service supermarket or grocery store; or

b. 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 area" means:

a. an aviation district;

- b. a port district;
  - c. a distressed municipality or urban transit hub municipality;
  - d. an area (1) designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as:
    - (a) Planning Area 1 (Metropolitan);
    - (b) Planning Area 2 (Suburban); or
    - (c) Planning Area 3 (Fringe Planning Area);
  - (2) 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);
  - (3) 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);
  - (4) located within a regional growth area, rural development area zoned for industrial use as of the effective date of P.L.2016, c.75, 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.);
  - (5) located within the planning area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3) or a highlands development credit receiving area or redevelopment area;
  - (6) located within a Garden State Growth Zone;
  - (7) located within land approved for closure under any federal Commission on Base Realignment and Closure action; or
  - (8) located only within the following portions of the areas 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) if Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive) or Planning Area 5 (Environmentally Sensitive) is located within:
    - (a) a designated center under the State Development and Redevelopment Plan;
    - (b) a designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State Strategic Plan and adopts regulations to revise this definition as it pertains to Statewide planning areas;
    - (c) 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);
    - (d) 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 expansion otherwise complies with all applicable federal, State, county, and local permits and approvals;
    - (e) the planning area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3) or a highlands development credit receiving area or redevelopment area; or
    - (f) any area on which an existing tourism destination project is located.
- "Qualified incentive area" shall not include any property located within the preservation area of the Highlands Region as defined in section 3 of P.L.2004, c.120 (C.13:20-3).

"Qualified incubator facility" means a commercial building located within a qualified incentive area: which contains 50,000 or more square feet of office, laboratory, or industrial space; which is located near, and presents opportunities for collaboration with, a research institution, teaching hospital, college, or university; and within which, at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

"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, is at risk of being lost to another state or country, or eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For the purposes of the certifications and annual reports required in the incentive agreement pursuant to subsection e. of section 4 of P.L.2011, c.149 (C.34:1B-245), to the extent an eligible position that was the basis of the award no longer exists, a business shall include as a retained full-time job a new eligible position that is filled by a full-time employee provided that the position is included in the order of date of hire and is not the basis for any other incentive award. For a project located in a Garden State Growth Zone which qualified for the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), retained full-time job shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone which qualified for the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.).

"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 situate.

"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 five years and is developing or possesses a proprietary technology or business method of a high-technology or life science-related product, process, or service which the business intends to move to commercialization.

"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 qualified 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 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 Garden State Growth Zone, 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.

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

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

121. Section 4 of P.L.2011, c.149 (C.34:1B-245) is amended to read as follows:

C.34:1B-245 Incentive agreement required prior to issuance of tax credits.

4. The authority shall require an eligible business to enter into an incentive agreement prior to the issuance of tax credits. The incentive agreement shall include, but shall not be limited to, the following:

- a. A detailed description of the proposed project which will result in job creation or retention, and the number of new or retained full-time jobs that are approved for tax credits.
- b. The eligibility period of the tax credits, including the first year for which the tax credits may be claimed.
- c. Personnel information that will enable the authority to administer the program.
- d. A requirement that the applicant maintain the project at a location in New Jersey for the commitment period, with at least the minimum number of full-time employees as required by this program, except as otherwise agreed to pursuant to subsection h. of section 6 of P.L.2011, c.159 (C.34:1B-247) and a provision to permit the authority to recapture all or part of any tax credits awarded, at its discretion, if the business does not remain in compliance with this provision for the required term, and in the instance of the business terminating an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), such permitted recapture may be calculated to recognize the period of time that the business was in compliance prior to termination.
- e. A method for the business to certify that it has met the capital investment and employment requirements of the program pursuant to paragraph (1) of subsection a. of section 3 of P.L.2011, c.149 (C.34:1B-244) and to report annually to the authority the number of full-time employees for which the tax credits are to be made.
- f. A provision permitting an audit of the payroll records of the business from time to time, as the authority deems necessary.
- g. A provision which permits the authority to amend the agreement.
- h. A provision establishing the conditions under which the agreement may be terminated.

122. Section 5 of P.L.2009, c.90 (C.52:27D-489e) is amended to read as follows:

5. a. The New Jersey Economic Development Authority, in consultation with the State Treasurer, shall establish an Economic Redevelopment and Growth Grant program for the purpose of encouraging redevelopment projects in qualifying economic redevelopment and growth grant incentive areas that do not qualify as such areas solely by virtue of being a

transit village, through the provision of incentive grants to reimburse developers for certain project financing gap costs.

b. (1) A developer shall submit an application for a State incentive grant prior to July 1, 2019, except: (a) a developer of a qualified residential project or a mixed use parking project seeking an award of credits toward the funding of its incentive grant for a project restricted under category (viii) of subparagraph (b) of paragraph (3) of subsection b. of section 6 of P.L.2009, c.90 (C.52:27D-489f) shall submit an incentive grant application prior to December 31, 2021 and (b) a developer seeking an award of credits toward the funding of its incentive grant under subparagraphs (f) and (g) of paragraph (3) of subsection b. of section 6 of P.L.2009, c.90 (C.52:27D-489f) shall submit an incentive grant application prior to December 31, 2021. A developer that submits an application for a State incentive grant shall indicate on the application whether it is also applying for a local incentive grant. Tax credits awarded to developers who apply after the effective date of P.L.2020, c.156 (C.34:1B-269 et al.) under subparagraphs (f) and (g) of paragraph (3) of subsection b. of section 6 of P.L.2009, c.90 (C.52:27D-489f) shall not exceed \$200,000,000 subject to the limitations of subparagraphs (f) and (g) of that paragraph.

(2) When an applicant indicates it is also applying for a local incentive grant, the authority shall forward a copy of the application to the municipality wherein the redevelopment project is to be located for approval by municipal ordinance.

c. An application for a State incentive grant shall be reviewed and approved by the authority. The authority shall not approve an application for a State incentive grant unless the application was submitted prior to July 1, 2019, except: (1) the authority shall not approve an application for a State incentive grant by a developer of a qualified residential project or a mixed use parking project seeking an award of credits toward the funding of its incentive grant for a project restricted under category (viii) of subparagraph (b) of paragraph (3) of subsection b. of section 6 of P.L.2009, c.90 (C.52:27D-489f) unless the application was submitted prior to December 31, 2021 and (2) the authority shall not approve an application for a State incentive grant by a developer under subparagraphs (f) and (g) of paragraph (3) of subsection b. of section 6 of P.L.2009, c.90 (C.52:27D-489f) unless the application was submitted prior to December 31, 2021.

d. A developer shall not be required to purchase pinelands development credits under the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), the pinelands comprehensive management plan, or any other rule or regulation adopted pursuant to that act in connection with any approval or relief obtained related to a redevelopment project located in an aviation district on or after the effective date of P.L.2018, c.120, except if seeking to develop in permanently protected open space pursuant to the Pinelands Protection Act. The provisions of this subsection shall not apply to a developer of a qualified residential project.

123. Section 6 of P.L.2009, c.90 (C.52:27D-489f) is amended to read as follows:

C.52:27D-289f Payment to developer from State.

6. a. Up to the limits established in subsection b. of this section and in accordance with a redevelopment incentive grant agreement, beginning upon the receipt of occupancy permits for any portion of the redevelopment project, or upon any other event evidencing project completion as set forth in the incentive grant agreement, the State Treasurer shall pay to the developer incremental State revenues directly realized from businesses operating at the site of the redevelopment project from the following taxes: the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the tax imposed on marine insurance

companies pursuant to R.S.54:16-1 et seq., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed on sewerage and water corporations pursuant to P.L.1940, c.5 (C.54:30A-49 et seq.), those tariffs and charges imposed by electric, natural gas, telecommunications, water and sewage utilities, and cable television companies under the jurisdiction of the New Jersey Board of Public Utilities, or comparable entity, except for those tariffs, fees, or taxes related to societal benefits charges assessed pursuant to section 12 of P.L.1999, c.23 (C.48:3-60), any charges paid for compliance with the "Global Warming Response Act," P.L.2007, c.112 (C.26:2C-37 et seq.), transitional energy facility assessment unit taxes paid pursuant to section 67 of P.L.1997, c.162 (C.48:2-21.34), and the sales and use taxes on public utility and cable television services and commodities, the tax derived from net profits from business, a distributive share of partnership income, or a pro rata share of S corporation income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., the tax derived from a business at the site of a redevelopment project that is required to collect the tax pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.), the tax imposed pursuant to P.L.1966, c.30 (C.54:32B-1 et seq.) from the purchase of furniture, fixtures and equipment, or materials for the remediation, the construction of new structures at the site of a redevelopment project, the hotel and motel occupancy fee imposed pursuant to section 1 of P.L.2003, c.114 (C.54:32D-1), or the portion of the fee imposed pursuant to section 3 of P.L.1968, c.49 (C.46:15-7) derived from the sale of real property at the site of the redevelopment project and paid to the State Treasurer for use by the State, that is not credited to the "Shore Protection Fund" or the "Neighborhood Preservation Nonlapsing Revolving Fund" ("New Jersey Affordable Housing Trust Fund") pursuant to section 4 of P.L.1968, c.49 (C.46:15-8). Any developer shall be allowed to assign their ability to apply for the tax credit under this subsection to a non-profit organization with a mission dedicated to attracting investment and completing development and redevelopment projects in a Garden State Growth Zone. The non-profit organization may make an application on behalf of a developer which meets the requirements for the tax credit, or a group of non-qualifying developers, such that these will be considered a unified project for the purposes of the incentives provided under this section.

b. (1) Up to an average of 75 percent of the projected annual incremental revenues or 85 percent of the projected annual incremental revenues in a Garden State Growth Zone may be pledged towards the State portion of an incentive grant.

(2) In the case of a qualified residential project or a project involving university infrastructure, if the authority determines that the estimated amount of incremental revenues pledged towards the State portion of an incentive grant is inadequate to fully fund the amount of the State portion of the incentive grant, then in lieu of an incentive grant based on the incremental revenues, the developer shall be awarded tax credits equal to the full amount of the incentive grant.

(3) In the case of a mixed use parking project, if the authority determines that the estimated amount of incremental revenues pledged towards the State portion of an incentive grant is inadequate to fully fund the amount of the State portion of the incentive grant, then, in lieu of an incentive grant based on the incremental revenues, the developer shall be awarded tax credits equal to the full amount of the incentive grant.

The value of all credits approved by the authority pursuant to paragraphs (2) and (3) of this subsection shall not exceed \$1,043,000,000, of which:

(a) \$250,000,000 shall be restricted to qualified residential projects within Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties, of



which \$175,000,000 of the credits shall be restricted to the following categories of projects: (i) qualified residential projects located in a Garden State Growth Zone located within the aforementioned counties; and (ii) mixed use parking projects located in a Garden State Growth Zone or urban transit hub located within the aforementioned counties; (iii) and \$75,000,000 of the credits shall be restricted to qualified residential projects in municipalities with a 2007 Municipal Revitalization Index of 400 or higher as of the date of enactment of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.) and located within the aforementioned counties;

(b) \$395,000,000 shall be restricted to the following categories of projects: (i) qualified residential projects located in urban transit hubs that are commuter rail in nature that otherwise do not qualify under subparagraph (a) of this paragraph; (ii) qualified residential projects located in Garden State Growth Zones that do not qualify under subparagraph (a) of this paragraph; (iii) mixed use parking projects located in urban transit hubs or Garden State Growth Zones that do not qualify under subparagraph (a) of this paragraph, provided however, an urban transit hub shall be allocated no more than \$25,000,000 for mixed use parking projects; (iv) qualified residential projects which are disaster recovery projects that otherwise do not qualify under subparagraph (a) of this paragraph; (v) qualified residential projects in SDA municipalities located in Hudson County that were awarded State Aid in State Fiscal Year 2013 through the Transitional Aid to Localities program and otherwise do not qualify under subparagraph (a) of this paragraph; (vi) \$25,000,000 of credits shall be restricted to mixed use parking projects in Garden State Growth Zones which have a population in excess of 125,000 and do not qualify under subparagraph (a) of this paragraph; (vii) \$40,000,000 of credits shall be restricted to qualified residential projects that include a theater venue for the performing arts and do not qualify under subparagraph (a) of this paragraph, which projects are located in a municipality with a population of less than 100,000 according to the latest federal decennial census, and within which municipality is located an urban transit hub and a campus of a public research university, as defined in section 1 of P.L.2009, c.308 (C.18A:3B-46); and (viii) \$125,000,000 of credits shall be restricted to qualified residential projects and mixed use parking projects in Garden State Growth Zones having a population in excess of 125,000 and do not qualify under subparagraph (a) of this paragraph;

(c) \$87,000,000 shall be restricted to the following categories of projects: (i) qualified residential projects located in distressed municipalities, deep poverty pockets, highlands development credit receiving areas or redevelopment areas, otherwise not qualifying pursuant to subparagraph (a) or (b) of this paragraph; and (ii) mixed use parking projects that do not qualify under subparagraph (a) or (b) of this paragraph, and which are used by an independent institution of higher education, a school of medicine, a nonprofit hospital system, or any combination thereof; provided, however, that \$20,000,000 of the \$87,000,000 shall be allocated to mixed use parking projects that do not qualify under subparagraph (a) or (b) of this paragraph;

(d) (i) \$16,000,000 shall be restricted to qualified residential projects that are located within a qualifying economic redevelopment and growth grant incentive area otherwise not qualifying under subparagraph (a), (b), or (c) of this paragraph; and

(ii) an additional \$50,000,000 shall be restricted to qualified residential projects which, as of the effective date of P.L.2016, c.51, are located in a city of the first class with a population in excess of 270,000, are subject to a Renewal Contract for a Section 8 Mark-Up-To-Market Project from the United States Department of Housing and Urban Development, and for

which an application for the award of tax credits under this subsection was submitted prior to January 1, 2016;

(e) \$25,000,000 shall be restricted to projects involving university infrastructure;

(f) \$150,000,000 shall be restricted to applications submitted after the effective date of P.L.2020, c.156 (C.34:1B-269 et al.) for projects which are predominantly commercial and contain 100,000 or more square feet of office and retail space, or industrial space for purchase or lease and may include a parking component; and

(g) \$50,000,000 shall be restricted to applications submitted after the effective date of P.L.2020, c.156 (C.34:1B-269 et al.) for residential projects in any county of the State.

(h) For subparagraphs (a) through (d) of this paragraph, not more than \$40,000,000 of credits shall be awarded to any qualified residential project in a deep poverty pocket or distressed municipality and not more than \$20,000,000 of credits shall be awarded to any other qualified residential project. The developer of a qualified residential project seeking an award of credits towards the funding of its incentive grant shall submit an incentive grant application prior to July 1, 2016 and if approved after September 18, 2013, the effective date of P.L.2013, c.161 (C.52:27D-489p et al.) shall submit a temporary certificate of occupancy for the project no later than December 31, 2023. The developer of a mixed use parking project seeking an award of credits towards the funding of its incentive grant pursuant to subparagraph (c) of this paragraph and if approved after the effective date of P.L.2015, c.217, shall submit a temporary certificate of occupancy for the project no later than December 31, 2023. The developer of a qualified residential project or a mixed use parking project seeking an award of credits toward the funding of its incentive grant for a project restricted under categories (vi) and (viii) of subparagraph (b) of this paragraph shall submit an incentive grant application prior to July 1, 2019 or, in the case of a project restricted under category (viii) of subparagraph (b) of this paragraph, December 31, 2021, and if approved after the effective date of P.L.2017, c.59, shall submit a temporary certificate of occupancy for the project no later than December 31, 2023 provided that the municipality in which the project is located shall have submitted to the chief executive officer of the authority a letter of support identifying up to six projects prior to July 1, 2018. The letter of support is to contain a project scope for each of the projects and may be supplemented or amended from time to time until July 1, 2019 or, in the case of a project restricted under category (viii) of subparagraph (b) of this paragraph, December 31, 2021. Applications for tax credits pursuant to this subsection relating to an ancillary infrastructure project or infrastructure improvement in the public right-of-way, or both, shall be accompanied with a letter of support relating to the project or improvement by the governing body or agency in which the project is located. Credits awarded to a developer pursuant to this subsection shall be subject to the same financial and related analysis by the authority, the same term of the grant, and the same mechanism for administering the credits, and shall be utilized or transferred by the developer as if the credits had been awarded to the developer pursuant to section 35 of P.L.2009, c.90 (C.34:1B-209.3) for qualified residential projects thereunder. No portion of the revenues pledged pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.) shall be subject to withholding or retainage for adjustment, in the event the developer or taxpayer waives its rights to claim a refund thereof.

(i) The developer of a project seeking an award of credits for a project restricted under subparagraphs (f) and (g) of this paragraph shall submit an incentive grant application prior to December 31, 2021, and if approved after the effective date of P.L.2020, c.156 (C.34:1B-269 et al.), shall submit a temporary certificate of occupancy for the project no later than December 31, 2024. In addition to the requirements for an award of credits set forth in

P.L.2009, c.90 (C.52:27D-489a et al.), a developer shall be eligible to receive an award of credits for a project restricted under subparagraphs (f) and (g) of this paragraph only if the developer demonstrates to the authority at that time of application that: (i) the project shall comply with minimum environmental and sustainability standards; (ii) 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); (iii) each worker employed by the developer or subcontractor of a developer working at the project shall be paid not 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; and (iv) during the eligibility period, each worker employed to perform construction work or building services work at the project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

Prior to the board considering an application submitted by a developer for a project restricted under subparagraphs (f) and (g) of this paragraph, the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury shall each report to the chief executive officer of the authority whether the developer is in substantial good standing with the respective department, or has entered into an agreement with the respective department that includes a practical corrective action plan for the developer. The developer, or an authorized agent of the developer, shall certify to the authority that all factual assertions made in the developer's application are true under the penalty of perjury. If at any time the authority determines that the developer made a material misrepresentation on the developer's application, the developer shall forfeit the award of credits and the authority shall recapture any tax credits awarded to the developer.

(4) A developer may apply to the Director of the Division of Taxation in the Department of the Treasury and the chief executive officer of the authority for a tax credit transfer certificate, if the developer is awarded a tax credit pursuant to paragraph (2) or paragraph (3) of this subsection, covering one or more years, in lieu of the developer being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer from the director and the chief executive officer of the authority, may be sold or assigned, in full or in part, to any other person who 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 C.54:18A-3), section 1 of P.L.1950, c.231 (C.17:32-15), or N.J.S.17B:23-5. The certificate provided to the developer shall include a statement waiving the developer's right to claim that amount of the credit against the taxes that the developer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this paragraph shall not be exchanged for consideration received by the developer of less than 75 percent of the transferred credit amount before considering any further discounting to present value that may be permitted. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the developer who originally applied for and was allowed the credit.

c. All administrative costs associated with the incentive grant shall be assessed to the applicant and be retained by the State Treasurer from the annual incentive grant payments.

d. The incremental revenue for the revenues listed in subsection a. of this section shall be calculated as the difference between the amount collected in any fiscal year from any eligible revenue source included in the State redevelopment incentive grant agreement, less the revenue increment base for that eligible revenue.

e. The municipality is authorized to collect any information necessary to facilitate grants under this program and remit that information in order to assist in the calculation of incremental revenue.

124. Section 8 of P.L.2009, c.90 (C.52:27D-489h) is amended to read as follows:

C.52:27D-489h Incentive grant application form, procedures.

8. a. (1) The authority, in consultation with the State Treasurer, shall promulgate an incentive grant application form and procedure for the Economic Redevelopment and Growth Grant program.

(2) (a) The Local Finance Board, in consultation with the authority, shall develop a minimum standard incentive grant application form for municipal Economic Redevelopment and Growth Grant programs.

(b) Through regulation, the authority shall establish standards for redevelopment projects seeking State or local incentive grants based on the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction.

b. Within each incentive grant application, a developer shall certify information concerning:

(1) the status of control of the entire redevelopment project site;

(2) all required State and federal government permits that have been issued for the redevelopment project, or will be issued pending resolution of financing issues;

(3) local planning and zoning board approvals, as required, for the redevelopment project;

(4) estimates of the revenue increment base, the eligible revenues for the project, and the assumptions upon which those estimates are made.

c. (1) With regard to State tax revenues proposed to be pledged for an incentive grant the authority and the State Treasurer shall review the project costs, evaluate and validate the project financing gap estimated by the developer, and conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the project, except with regards to a qualified residential project, a mixed use parking project, or a project involving university infrastructure, will result in net benefits to the State including, without limitation, both direct and indirect economic benefits and non-financial community revitalization objectives, including but not limited to, the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project.

(2) With regard to local incremental revenues proposed to be pledged for an incentive grant the authority and the Local Finance Board shall review the project costs, and except with respect to an application by a municipal redeveloper, evaluate and validate the project financing gap projected by the developer, and conduct a local fiscal impact analysis to ensure that the overall public assistance provided to the project, except with regards to a qualified residential project, a mixed use parking project, or a project involving university infrastructure, will result in net benefits to the municipality wherein the redevelopment project is located including, without limitation, both direct and indirect economic benefits and non-financial community revitalization objectives, including but not limited to, the promotion of the use of public transportation in the case of the ancillary infrastructure project portion of any transit project.

(3) The authority, State Treasurer, and Local Finance Board may act cooperatively to administer and review applications, and shall consult with the Office of State Planning on matters concerning State, regional, and local development and planning strategies.

(4) The costs of the aforementioned reviews shall be assessed to the applicant as an application fee, except for applications submitted on or after January 1, 2018, but before June 30, 2018, which are amended after the effective date of P.L.2020, c.156 (C.34:1B-269 et al.), the authority may waive fees.

(5) A developer who has already applied for an incentive grant award prior to the effective date of the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), but who has not yet been approved for the grant, or has not executed an agreement with the authority, may proceed under that application or seek to amend the application or reapply for an incentive grant award for the same project or any part thereof for the purpose of availing himself or herself of any more favorable provisions of the Economic Redevelopment and Growth Grant program established pursuant to the "New Jersey Economic Opportunity Act of 2013," P.L.2013, c.161 (C.52:27D-489p et al.), except that projects with costs exceeding \$200,000,000 shall not be eligible for revised percentage caps under subsection d. of section 19 of P.L.2013, c.161 (C.52:27D-489i).

125. R.S.54:50-8 is amended to read as follows:

Confidentiality.

54:50-8. a. The records and files of the director respecting the administration of the State Uniform Tax Procedure Law or of any State tax law shall be considered confidential and privileged and neither the director nor any employee engaged in the administration thereof or charged with the custody of any such records or files, nor any former officer or employee, nor any person who may have secured information therefrom under subsection d., e., f., g., p., q., or r. of R.S.54:50-9 or any other provision of State law, shall divulge, disclose, use for their own personal advantage, or examine for any reason other than a reason necessitated by the performance of official duties any information obtained from the said records or files or from any examination or inspection of the premises or property of any person. Neither the director nor any employee engaged in such administration or charged with the custody of any such records or files shall be required to produce any of them for the inspection of any person or for use in any action or proceeding except when the records or files or the facts shown thereby are directly involved in an action or proceeding under the provisions of the State Uniform Tax Procedure Law or of the State tax law affected, or where the determination of the action or proceeding will affect the validity or amount of the claim of the State under some State tax law, or in any lawful proceeding for the investigation and prosecution of any violation of the criminal provisions of the State Uniform Tax Procedure Law or of any State tax law.

b. The prohibitions of this section, against unauthorized disclosure, use or examination by any present or former officer or employee of this State or any other individual having custody of such information obtained pursuant to the explicit authority of State law, shall specifically include, without limitation, violations involving the divulgence or examination of any information from or any copy of a federal return or federal return information required by New Jersey law to be attached to or included in any New Jersey return. Any person violating this section by divulging, disclosing or using information shall be guilty of a crime of the fourth degree. Any person violating this section by examining records or files for any

reason other than a reason necessitated by the performance of official duties shall be guilty of a disorderly persons offense.

c. Whenever records and files are used in connection with the prosecution of any person for violating the provisions of this section by divulging, disclosing or using records or files or examining records and files for any reason other than a reason necessitated by the performance of official duties, the defendant shall be given access to those records and files. The court shall review such records and files in camera, and that portion of the court record containing the records and files shall be sealed by the court.

126. R.S.54:50-9 is amended to read as follows:

Certain officers entitled to examine records.

54:50-9. Nothing herein contained shall be construed to prevent:

a. The delivery to a taxpayer or the taxpayer's duly authorized representative of a copy of any report or any other paper filed by the taxpayer pursuant to the provisions of this subtitle or of any such State tax law;

b. The publication of statistics so classified as to prevent the identification of a particular report and the items thereof;

c. The director, in the director's discretion and subject to reasonable conditions imposed by the director, from disclosing the name and address of any licensee under any State tax law, unless expressly prohibited by such State tax law;

d. The inspection by the Attorney General or other legal representative of this State of the reports or files relating to the claim of any taxpayer who shall bring an action to review or set aside any tax imposed under any State tax law or against whom an action or proceeding has been instituted in accordance with the provisions thereof;

e. The examination of said records and files by the Comptroller, State Auditor or State Commissioner of Finance, or by their respective duly authorized agents;

f. The furnishing, at the discretion of the director, of any information contained in tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the tax laws, to the taxing officials of any other state, the District of Columbia, the United States and the territories thereof, providing said jurisdictions grant like privileges to this State and providing such information is to be used for tax purposes only;

g. The furnishing, at the discretion of the director, of any material information disclosed by the records or files to any law enforcing authority of this State who shall be charged with the investigation or prosecution of any violation of the criminal provisions of this subtitle or of any State tax law;

h. The furnishing by the director to the State agency responsible for administering the Child Support Enforcement program pursuant to Title IV-D of the federal Social Security Act, Pub.L.93-647 (42 U.S.C. s.651 et seq.), with the names, home addresses, social security numbers and sources of income and assets of all absent parents who are certified by that agency as being required to pay child support, upon request by the State agency and pursuant to procedures and in a form prescribed by the director;

i. The furnishing by the director to the Board of Public Utilities any information contained in tax information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be necessary for the administration of P.L.1991, c.184 (C.54:30A-18.6 et al.) and P.L.1997, c.162 (C.54:10A-5.25 et al.);

j. The furnishing by the director to the Director of the Division of Alcoholic Beverage Control in the Department of Law and Public Safety any information contained in tax

information statements, reports or returns or any audit thereof or a report of any investigation made with respect thereto, as may be relevant, in the discretion of the director, in any proceeding conducted for the issuance, suspension or revocation of any license authorized pursuant to Title 33 of the Revised Statutes;

k. The inspection by the Attorney General or other legal representative of this State of the reports or files of any tobacco product manufacturer, as defined in section 2 of P.L.1999, c.148 (C.52:4D-2), for any period in which that tobacco product manufacturer was not or is not in compliance with subsection a. of section 3 of P.L.1999, c.148 (C.52:4D-3), or of any licensed distributor as defined in section 102 of P.L.1948, c.65 (C.54:40A-2), for the purpose of facilitating the administration of the provisions of P.L.1999, c.148 (C.52:4D-1 et seq.);

l. The furnishing, at the discretion of the director, of information as to whether a contractor or subcontractor holds a valid business registration as defined in section 1 of P.L.2001, c.134 (C.52:32-44);

m. The furnishing by the director to a State agency as defined in section 1 of P.L.1995, c.158 (C.54:50-24) the names of licensees subject to suspension for non-payment of State tax indebtedness pursuant to P.L.2004, c.58 (C.54:50-26.1 et al.);

n. The release to the United States Department of the Treasury, Bureau of Financial Management Service, or its successor of relevant taxpayer information for purposes of implementing a reciprocal collection and offset of indebtedness agreement entered into between the State of New Jersey and the federal government pursuant to section 1 of P.L.2006, c.32 (C.54:49-12.7);

o. The examination of said records and files by the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Medicaid Inspector General, or their respective duly authorized agents, pursuant to section 5 of P.L.2007, c.217 (C.26:2H-18.60e), section 3 of P.L.1968, c.413 (C.30:4D-3), or section 5 of P.L.2005, c.156 (C.30:4J-12);

p. The furnishing at the discretion of the director of employer provided wage and tax withholding information contained in tax reports or returns filed pursuant to N.J.S.54A:7-2, 54A:7-4 and 54A:7-7, to the designated municipal officer of a municipality authorized to impose an employer payroll tax pursuant to the provisions of Article 5 (Employer Payroll Tax) of the "Local Tax Authorization Act," P.L.1970, c.326 (C.40:48C-14 et seq.), for the limited purpose of verifying the payroll information reported by employers subject to the employer payroll tax;

q. The furnishing by the director to the Commissioner of Labor and Workforce Development of any information, including, but not limited to, tax information statements, reports, audit files, returns, or reports of any investigation for the purpose of labor market research or assisting in investigations pursuant to any State wage, benefit or tax law as enumerated in section 1 of P.L.2009, c.194 (C.34:1A-1.11); or pursuant to P.L.1940, c.153 (C.34:2-21.1 et seq.).

r. The furnishing by the director to the New Jersey Economic Development Authority any information contained in tax information statements, reports or returns, or any audit thereof or a report of any investigation made with respect thereto, as may be relevant to assist the authority in the implementation of programs through which grants, loans, tax credits, or other forms of financial assistance are provided. The director shall provide to the New Jersey Economic Development Authority, upon request, such information.

127. There is appropriated from the General Fund:

- a. to the Main Street Recovery Fund, the sum of \$50,000,000 to implement the provisions of sections 82 through 88 of P.L.2020, c.156 (C.34:1B-349 et al.);
- b. to the Office of the Economic Development Inspector General in the Economic Development Authority, the sum of \$250,000 to implement the provisions of sections 99 through 105 of P.L.2020, c.156 (C.34:1B-363 through C.34:1B-369);
- c. to the Economic Development Authority, the sum of \$250,000 to implement the provisions of sections 92 through 97 of P.L.2020, c.156 (C.34:1B-356 through C.34:1B-361); and
- d. to the Economic Development Authority, the sum of \$5,000,000 to be used to award competitive grants for zoning and economic planning services in government-restricted municipalities or economic redevelopment plans for distressed assets in other municipalities.

128. This act shall take effect immediately.

Approved January 7, 2021.