

credit amount shall be calculated and credited to the business annually for each year of the eligibility period; however, except as set forth in N.J.A.C. 19:31-18.11(e), the total tax credit amount credited annually to the business shall not exceed the maximum amount determined by the Board under N.J.A.C. 19:31-18.7(d) and the amount calculated pursuant to N.J.A.C. 19:31-18.7(g), divided by the number of years in the eligibility period. **The total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. The total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings.**

(b)-(h) (No change.)

19:31-18.11 Reporting requirements and annual reports

(a) After notification pursuant to N.J.A.C. 19:31-18.7(g), the business shall furnish to the Authority an annual report certified by the chief financial officer of the business in a format as may be determined by the Authority, which shall contain the following information:

1. The number of full-time employees and new or retained full-time positions employed at the qualified business facility, **the list of affiliates that contributed to the full-time employees at the qualified business facility**, the number of full-time employees in its Statewide workforce as defined in N.J.A.C. 19:31-18.15(a), **the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application**, total lease payments, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. This certified report is due 120 days after the end of the business's tax privilege period; and failure to submit the certified report within 120 days, absent extenuating circumstances and the written approval of the Authority, will result in forfeiture of the tax credit for that privilege period. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs; and

2. (No change.)

(b)-(f) (No change.)

19:31-18.15 Reduction and forfeiture of tax credits

(a) If, in any tax period during the eligibility 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, 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 this paragraph 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. The Statewide workforce shall not include full-time employees at any point-of-final purchase retail facilities, unless the award includes full-time employees engaged in final point of sale retail.

**1. For purposes of this subsection, "business" shall include any affiliate that contributed to the full-time employees at the qualified business facility for the relevant tax period or contributed capital investment to the project.**

(b)-(d) (No change.)

19:31-18.16 Effect of sale or lease of qualified facilities

(a) (No change.)

(b) Unless otherwise permitted in this subchapter, if a [tenant] **business leases or subleases [its tenancy] the qualified business facility** in whole or in part during the eligibility period, the new tenant shall not acquire the credit of the [sublessor] **business**, and the [sublessor tenant] **business** shall forfeit all credits for the tax period of its lease or sublease and all subsequent tax periods. **Notwithstanding the foregoing, a business may lease or sublease an amount up to five percent of the qualified business facility to a new tenant without forfeiting any of the business's credits; however, no full-time employees or capital**

**investment by the new tenant shall contribute to the business's eligible full-time employees or capital investment.**

(a)

## CASINO REINVESTMENT DEVELOPMENT AUTHORITY

### Casino Reinvestment Development Authority Rules

#### Proposed Readoption: N.J.A.C. 19:65

Authorized By: Casino Reinvestment Development Authority, John Palmieri, Executive Director.

Authority: N.J.S.A. 5:12-144.1.j and 5:12-161.f.

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

Proposal Number: PRN 2015-141.

Submit comments by February 19, 2016, to:

Sharon D. Dickerson, Esq., Staff Attorney  
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15 South Pennsylvania Avenue  
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The agency proposal follows:

#### Summary

The chapter governing the Casino Reinvestment Development Authority (Authority), N.J.A.C. 19:65, was originally filed and became effective as emergency new rules on April 3, 1986 (expired June 2, 1986). See 18 N.J.R. 852(a). The chapter was readopted as new rules, effective July 7, 1986 (expired July 7, 1991), as R.1986 d.256. See 18 N.J.R. 1405(a). The chapter was proposed for readoption on May 4, 1992 (see 24 N.J.R. 1692(b)), and readopted as new rules effective October 5, 1992 (see 24 N.J.R. 1692(b), 3535(a)). On August 18, 1997, the Authority again proposed for readoption, with amendments, N.J.A.C. 19:65 and readopted N.J.A.C. 19:65 effective September 26, 1997 (see 29 N.J.R. 3708(a)). The Authority promulgated new rules, N.J.A.C. 19:65-8, in 1999, governing the award of professional services contracts as R.1999 d.326, effective September 20, 1999 (see 31 N.J.R. 1455(a), 2759(a)). N.J.A.C. 19:65 was readopted with amendments, effective February 5, 2003 (see 34 N.J.R. 3177(a), 35 N.J.R. 1274(a)). In accordance with N.J.S.A. 52:14B-5.1.d, the expiration date of Chapter 65 was extended from August 3, 2008 to October 2, 2008, by Gubernatorial Directive (see 40 N.J.R. 5070(b)). N.J.A.C. 19:65 was readopted with a repeal, effective October 2, 2008, and November 3, 2008, respectively (see 40 N.J.R. 1632(a), 6481(a)). Pursuant to N.J.S.A. 52:14B-5.1.b, the expiration date of Chapter 65 was extended two years to October 2, 2015 (see 43 N.J.R. 1203(a)).

N.J.A.C. 19:65 was set to expire on October 2, 2015, pursuant to N.J.S.A. 52:14B-5.1. Since this notice was filed with the Office of Administrative Law prior to that date, the expiration date has been extended 180 days to March 30, 2016, pursuant to N.J.S.A. 52:14B-5.1.c. The Authority proposes to readopt N.J.A.C. 19:65 without amendment. An administrative review has been conducted, and a determination made that all subchapters should be continued because the rules are necessary, reasonable, adequate, efficient, and responsive for the purposes for which they were promulgated. The readoption of the rules will allow the Authority to continue to promote the urban redevelopment of the State of New Jersey, and, in particular, the City of Atlantic City, by providing funding for eligible projects in which casino licensees may invest.

The rules proposed for readoption govern the procedures and criteria followed by the Authority to determine the eligibility of projects under P.L. 1984, c. 218, as amended and supplemented (the Act), the terms and conditions of contracts by and between the Authority and holders of current and valid casino licenses (licensees) issued by the New Jersey Casino Control Commission pursuant to the Act, licensees' direct investment in construction projects, investment by licensees, fees and

charges, debarment and suspension, waivers, and miscellaneous provisions.

On February 1, 2011, P.L. 2011, c. 18, the Tourism District Act, was enacted amending the Act. The Tourism District Act mandated that the Authority establish the Atlantic City Tourism District (ACTD). Under the Tourism District Act, the Authority took necessary and appropriate steps to develop and implement an ACTD Master Plan and commenced sole zoning jurisdiction over the ACTD. The Authority also created the Special Improvement District Division and designated the Authority's Atlantic City Special Improvement District by resolution dated April 18, 2011. On April 1, 2013, pursuant to the Tourism District Act, the Atlantic City Convention and Visitors' Authority was transferred to the Authority, becoming the Convention Center Division.

A summary of the rules contained in N.J.A.C. 19:65 follows:

N.J.A.C. 19:65-1.1 states the purpose and objectives of the chapter.

N.J.A.C. 19:65-1.2 is the definitions section for the chapter.

N.J.A.C. 19:65-2.1 discusses applications generally.

N.J.A.C. 19:65-2.2 discusses the time for application to the Authority for an Authority determination of project eligibility for funding.

N.J.A.C. 19:65-2.3 sets forth the documentation required as part of the application submission.

N.J.A.C. 19:65-2.4 sets forth the application review and approval process for projects. The process consists of a preliminary determination of project eligibility made by the Authority. After a preliminary determination of eligibility, the Authority will conduct a public hearing on the project. Subsequent to public hearing, the Authority, by resolution, shall determine if the project is approved. Lastly, if approved, the Authority, by resolution, shall approve a fund reservation in an amount necessary to complete the project in accordance with these rules and the Act.

N.J.A.C. 19:65-2.5 establishes the criteria the Authority will use when approving a project in accordance with the Act.

N.J.A.C. 19:65-2.6 sets forth the type of projects to which the Authority will accord priority in considering whether to approve a project.

N.J.A.C. 19:65-2.7 sets forth the methodology for conducting the public hearing required under N.J.A.C. 19:65-2.4 to determine project approval. This rule also established notice requirements for conducting the public hearing.

N.J.A.C. 19:65-2.8 sets forth the requirements pursuant to which a licensee may request and the Authority may approve an equivalent investment by the licensee in lieu of its purchase of bonds.

N.J.A.C. 19:65-2.9 sets forth the conditions under which a licensee may request and the Authority may approve a donation of money or realty by the licensee in lieu of its purchase of bonds.

N.J.A.C. 19:65-2.10 sets forth the procedure for allocating the \$75,000,000 set aside under P.L. 1996, c. 118 for investment in hotel development projects undertaken by licensees. This section also provides for the reallocation of monies from a hotel development project that is abandoned, terminated, or not funded due to noncompliance with the Act or the rules, to other approved hotel development projects.

N.J.A.C. 19:65-2.11 sets out cost certification requirements of a hotel development project by an independent entity.

N.J.A.C. 19:65-3.1 sets forth the condition of a contract with the Authority that a licensee must meet, to be entitled to any investment tax credit under the Act.

N.J.A.C. 19:65-3.2 sets forth, without limitation, certain terms and provisions the contract must contain.

N.J.A.C. 19:65-3.3 sets for the procedure for determination of the applicable year for purposes of allocation by the Authority of the Investment Alternative Tax obligation of a licensee under the Act.

N.J.A.C. 19:65-4.1 sets forth the requirements for loans from the Authority to public bodies.

N.J.A.C. 19:65-5.1 delineates the eligibility of investments by licensees commenced or made prior to the effective date of the Act.

N.J.A.C. 19:65-6.1 sets forth application fees.

N.J.A.C. 19:65-6.2 establishes administrative fees charged by the Authority.

N.J.A.C. 19:65-6.3 permits the Executive Director of the Authority to waive the application and administrative fees.

N.J.A.C. 19:65-7.1 is a definitional section for the disqualification, debarment, and suspension subchapter.

N.J.A.C. 19:65-7.2 sets forth causes for debarment.

N.J.A.C. 19:65-7.3 sets forth the conditions affecting debarment.

N.J.A.C. 19:65-7.4 sets forth the procedures the Authority will undertake when debarring a person and the period of debarment.

N.J.A.C. 19:65-7.5 sets forth the causes for suspension of a person.

N.J.A.C. 19:65-7.6 sets forth the conditions for suspension of a person.

N.J.A.C. 19:65-7.7 sets forth the procedures, period of suspension, and scope of suspension to be adhered to by the Authority.

N.J.A.C. 19:65-7.8 sets forth the extent of debarment and suspension.

N.J.A.C. 19:65-7.9 requires that the Authority issue, prior to action, a notice of proposed debarment or suspension to the Attorney General and the State Treasurer.

N.J.A.C. 19:65-7.10 allows the Authority to rely upon a Federal debarment or suspension list when participating in a program financed, issued, or guaranteed by the Federal government.

N.J.A.C. 19:65-7.11 grants broad discretion to Authority regarding debarment or suspension.

N.J.A.C. 19:65-7.12 provides that the Executive Director is authorized to implement Subchapter 7.

N.J.A.C. 19:65-8.1 establishes the procurement process for architects, engineers, and land surveyors whose contract exceeds \$25,000 in amount.

N.J.A.C. 19:65-8.2 is the definitions section of Subchapter 8.

N.J.A.C. 19:65-8.3 provides the criteria to be used by the Authority in selecting the most highly qualified architects, engineers, and land surveyors.

N.J.A.C. 19:65-8.4 provides for the effective date of Subchapter 8.

N.J.A.C. 19:65-9.1 authorizes the Authority to grant waivers from the rules or any provisions of the Act as expressly provided for in the Act.

N.J.A.C. 19:65-9.2 sets forth the procedure for requesting a waiver.

N.J.A.C. 19:65-10.1, provides that if any portion of the rules shall be held to be invalid, such holding shall not affect the operability of the remainder of the chapter.

N.J.A.C. 19:65-11.1, sets forth the procedures for handling protest of solicitations and award of contracts.

The members of the Authority and the Executive Director of the Authority will bear responsibility for implementing the rules proposed for readoption.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The rules proposed for readoption are expected to have a positive social impact because they will permit the Authority to continue financing eligible projects that promote affordable workforce housing and the urban redevelopment in the State and, in particular, Atlantic City. The infusion of new capital into the economy of Atlantic City continues to stimulate the creation of new jobs, the construction of affordable workforce housing, and the provision of other facilities which directly serve pressing social and economic needs of the residents of the State of New Jersey. Such projects will have the effect of improving the living standards of the residents of the State of New Jersey and also attracting new business ventures and investment in the Atlantic City. In the long term, the financing of eligible projects will benefit the housing stock and employment opportunities for the public at large.

#### Economic Impact

The Authority believes that the rules proposed for readoption will present a minimal cost, if any, to the State. The cost of the Authority's operations will be paid out of application fees and administrative fees to be borne by applicants for the Authority's assistance. The economic impact upon licensees consists of the credit licensees will receive against the investment alternative obligation imposed pursuant to N.J.S.A. 5:12-144.1 when they purchase bonds of the Authority, make direct investments in eligible projects or donate money or property to eligible projects.

The rules proposed for readoption continue to effectuate the Legislature's policy that licensees receive a credit to the extent they make investments in projects found to be eligible by the Authority, purchase

bonds of the Authority, or donate cash or property to eligible projects. The economic benefits to be received by the citizens of New Jersey from such investments outweigh any other impact the rules proposed for readoption might have.

#### **Federal Standards Statement**

No Federal standards analysis is required because the rules proposed for readoption are not being proposed under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to a Federal law, standard, or requirement. Rather, the rules proposed for readoption are authorized by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

#### **Jobs Impact**

While not directly having an effect upon jobs, the rules proposed for readoption will allow the Authority to continue its mission of economic development within Atlantic City. The rules proposed for readoption will allow the Authority to continue to fund eligible projects that will result in the creation of permanent jobs as part of the on-going operation of such projects. It is not anticipated that any jobs will be lost as a result of the rules proposed for readoption.

#### **Agriculture Industry Impact**

No impact on the agriculture industry is anticipated as a result of the rules proposed for readoption.

#### **Regulatory Flexibility Analysis**

The rules proposed for readoption, authorized by N.J.S.A. 5:12-144.1.j and 5:12-161.f, govern the operation of the funding process undertaken by the Authority for the benefit of Atlantic City. Regulated entities may include small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The costs to small businesses to comply with the rules proposed for readoption are not burdensome. In addition, the costs to non-profit small businesses can be waived by the

Authority. Special provisions included at N.J.A.C. 19:65-4.1 will likely benefit small businesses that are owned by women or members of minority groups. While such businesses are required, as in other State rules, to provide evidence of their status, such documentation is not considered burdensome, nor does it require professional services, and it is balanced by the economic benefit obtained by the businesses. Additional differential requirements are not considered appropriate by the Authority. In regard to professional services, although such applications are seldom received, if a small business applied for a loan, accounting and legal services would probably be needed. However, these services are the same as would be required by a bank or other private sector financing.

#### **Housing Affordability Impact Analysis**

The rules proposed for readoption are unlikely to impact the affordability of housing or evoke a change in the average costs associated with housing funding of projects, including Brownfields redevelopment, promotes economic activity and the revitalization of the Atlantic City and surrounding communities.

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

These rules, implementing the Casino Reinvestment Development Authority's statutory mandate, follows smart growth principles that focus new growth into redevelopment in the Atlantic City area. The impact of the rules proposed for readoption promotes the principles of smart growth and would not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, because funding of projects, including Brownfields redevelopment, promotes economic activity and the revitalization of the Atlantic City and surrounding communities.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:65.