MetroWest Region

Municipal Outreach

Massachusetts Office of Business Development
September 25, 2018

Agenda

- Economic Development Incentive Program (EDIP)
- How to "pre-qualify" a project - Questions to ask
- Criteria Used to Evaluate Projects
- Overview of TIF & STA
- 10% Abandoned Building Renovation Deduction
- Job Creation Compliance
- Upcoming: Storefront Vacancy Program
- Wrap-Up

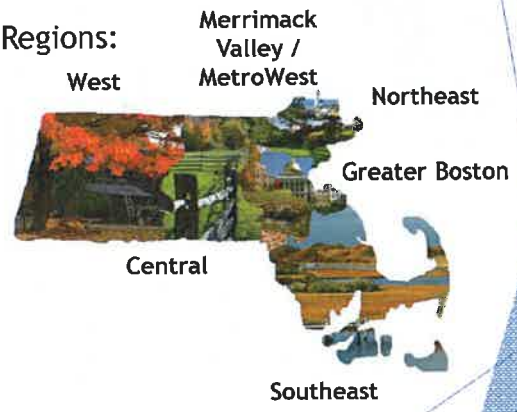
2

Massachusetts Office of Business Development

MOBD

- The state agency dedicated to business development in MA
- Helps businesses relocating to Massachusetts and businesses wishing to expand their current operations here
- Staff operates in regions across the state
- Works closely with the private and public sectors to coordinate and facilitate access to resources

Regions:



Kick-starting growth through incentives, grants, capital financing and more.....

- Economic Development Incentive Program (EDIP)
- State Trade Expansion Program (STEP) Export Grants
- Life Sciences Tax Incentive Program
- Workforce Development & Training
- Site Selection
- Business Planning
- Financing Partnerships
- International Trade Investments
- Infrastructure Support
- Industry Expertise
- Innovation & Technical Assistance
- Start-up Assistance
- Permitting & Regulatory Assistance

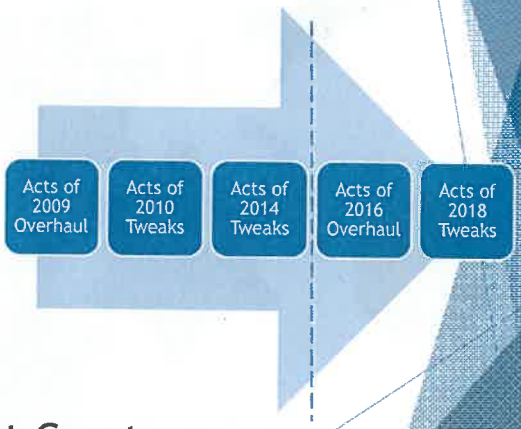
Economic Development Incentive Program - EDIP

- Designed to foster job creation and stimulate business growth
- Companies receive state tax credits and local property tax incentives in exchange for job creation, job retention and private investment commitments.

5

EDIP: History

- Established in the Acts of 1993
- First EDIP projects approved in 1994
- Largest job generating program in the Commonwealth
- Oldest incentive program for businesses in MA
- Major Overhaul of Program in 2009 and 2016
- Subsequent "tweaks" in 2010, 2014 and 2018



Important: Tax Credits - Not Grants

6

Acts of 2016

GOOD NEWS

NOT SO GOOD NEWS

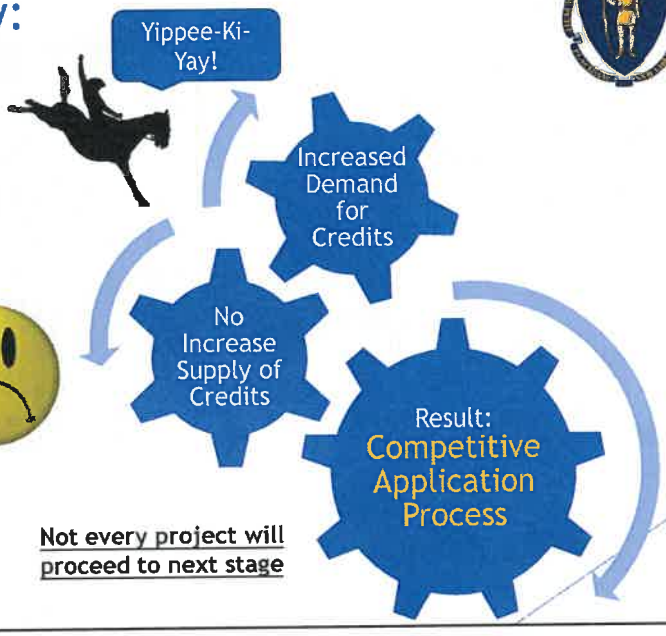
Increased flexibility of EDIP

- Not all projects fit into prior statute project types
- Greater variety of projects eligible for refundable credits
- Out-of-state sales no longer required by statute – one factor of many
- Project may be certified if retains at least 50 jobs in Gateway City
- No project award caps in statute
- More flexibility in STA terms

However:

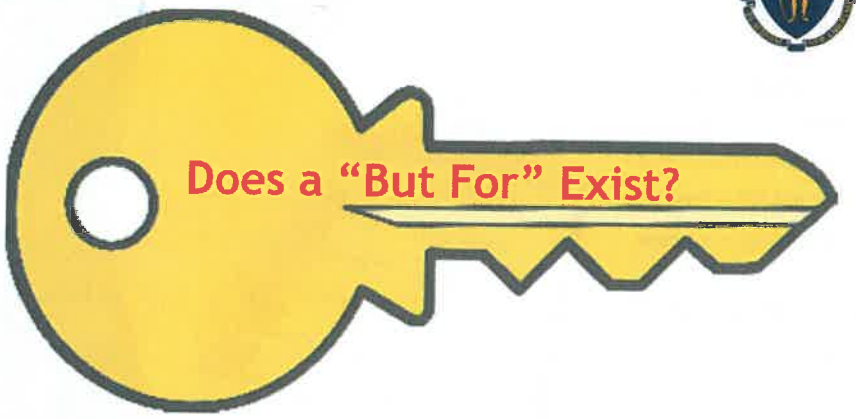
- Budget remains the same
- Amount of refundable credits reduced

The Reality:



Not every project will proceed to next stage

Key Criteria:



"But for" these EDIP tax credit incentives, the project would not occur?

9

Factors EACC Board Considers

- "But For" Considerations:
  - Is property already purchased?
  - Is lease already signed?
  - Has news article appeared on front page of local paper?
  - Has a groundbreaking ceremony been held?
  - Is equipment already placed on order?
  - Has a public announcement been made?
  - Has construction begun?

All indications the project will likely proceed without incentives

10

EDIP: Does it make sense to bring project forward?

- Does the company have Massachusetts state tax liability today?
  - If not, are they in business outside of MA?
  - Pre-revenue companies are not a good fit
- Will the company be creating net, new jobs to Massachusetts?
- Has company spoken to City or Town?
- Will municipality be awarding TIF or STA?
- Do they have business or sell outside Massachusetts?
- Are they a manufacturer?
  - If so.....

11

EDIP: Classified Manufacturers in MA

- EDIP application asks:

  Is the applicant classified as a MA Department of Revenue Manufacturer?

- Why?

  Manufacturers Classified by DOR are eligible for:

  1. Personal property tax exemption
  2. 3% Investment Tax Credit on machinery & equipment (M&E)
  3. No sales or use tax on M&E used in manufacturing process

12

EDIP: Citations for Classified Manufacturers in MA

- **Classification:** M.G.L. c. 64H, § 6(r) and (s) and 830 CMR 64H.6.4.
- **Regulations:** 830 CMR 58.2.1: Manufacturing Corporations
- **How to apply:** Application, Massachusetts Form 355Q
- **Eligible for:**

  (a) a property tax exemption under M.G.L. c. 59, § 5(16)(3),

  (b) an investment tax credit under M.G.L. c. 63, § 31A, and

  (c) an exemption from sales and use tax for the sale or use of certain property used in research and development under M.G.L. c. 64H, § 6(r) and (s) and 830 CMR 64H.6.4.

13

Back of the Envelope Calculations for Manufacturers

- Take 3% times tangible depreciable private investment of expansion project
- Divide that number by number of jobs to be created in project
- What is the $ per job created?
- If ~$10,000 or more, might make sense to stick with 3% manufacturers ITC
- Or, become a Local-Only project receiving property tax reduction

Why?

- Manufacturers' ITC has carry forward provisions, no annual reporting, cannot use both credits on the same assets

14

Back of the Envelope Calculations for Manufacturers

EXAMPLE

- Company has DOR manufacturers' classification
- Private investment of project estimated to be $7 million
- 3% times $7 million is $210,000
- $210,000 ÷ 10 jobs to be created = $21,000 per job to be created
- **Smarter decision to stay with 3% ITC**

15

EDIP: Does it make sense to bring project forward?

- A "but for" exists
- Company has MA state tax liability
- Project creating net new jobs to Commonwealth
- Not eligible for manufacturers ITC or *back of the envelope* calculations indicate it makes sense to proceed
- In discussion with local municipality

Proceed to preliminary EDIP application

16

EDIP: Board Criteria Considerations

- Number of jobs to be created
- Timing of the job creation
- Size of capital investment
- Wages of jobs to be created
- Healthcare? 401K, IRA, pension?
- Industry
- Community Profile
- Municipal support in form of TIF or STA
- Level of out-of-state sales
- Competitiveness of situation
- MA HQ? US HQ? Divisional HQ?
- Commitment to local procurement

17

EDIP: Projects Advancing Forward

- EDIP Review Team screens preliminary applications
- Decisions made as to which projects progress forward to next stage for state tax credits
- Selected projects receive a supplemental application

Economic Development Incentive Program (EDIP)
SUPPLEMENTAL APPLICATION

18

EDIP: Tips to Increase Odds of Moving Forward

- Get MOBD Regional Directors into the loop in the beginning
- Companies should reach out to municipal officials early on
- Fill the application out thoroughly; don't leave blanks or put N/A
- List names of municipal officials contacted
- Ask questions if application is unclear
- List names of MA-based suppliers you know will work on project

19

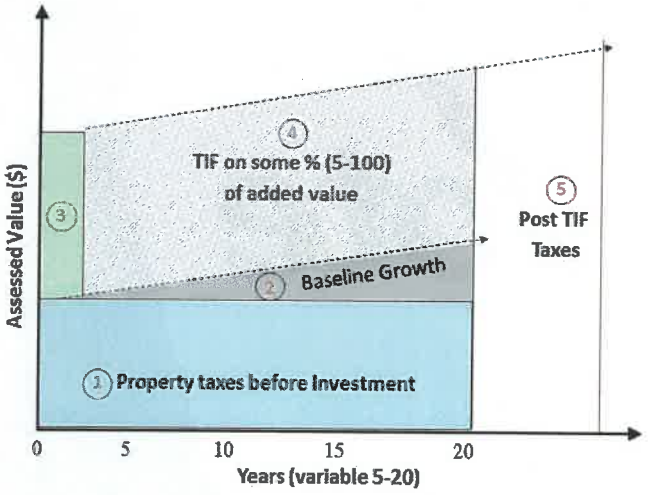
EDIP: Tax Increment Financing(TIF) Basics

Tax Increment Financing (TIF) is a negotiated Agreement between business and host municipality. The percentage exemption applies to the incremental increase of accessed value of the parcel and the agreement may include exemptions on personal property tax. Per M.G.L. 40 § 59:

- TIFs have a 5 year minimum, 20 year maximum or anything in between;
- Business pays full tax rate on the "base value";
- Exemption from property taxation on all or part of the increased value accrued as a result of development (the "increment");
- Percentage of exemption (for incremental real and personal property tax value) may range from 5% to 100%;

20

Tax Increment Financing (TIF) Agreement Mechanics



1. Taxes on original property valuation
2. Expected growth in tax, with no investment
3. Amount investment raises property value
4. Added value subject to TIF Agreement Exemption
5. Company pays taxes on full assessed value of property upon TIF expiration

21

Massachusetts Office of Business Development

EDIP: Special Tax Assessment (STA)

- STAs are a negotiated Agreement between business and host municipality that applies to entire assessed value of a parcel, not just the increment.
  - Current, as well as future local tax revenues are exempted.
- Unlike TIF Agreements, no Personal Property Taxes may be exempted under an STA Agreement
- STAs have 5-year minimum and 20-year maximum terms and must minimally comply with the following 5-year schedule:
  - Year One: not less than 50% of total property taxes exempted
  - Year Two: not less than 25% of total property taxes exempted
  - Year Three: not less than 25% of total property taxes exempted
  - Year Four: not less than 5% of total property taxes exempted
  - Year Five: not less than 5% of total property taxes exempted

May elect to exempt a greater percentage (not less) in any given year; may not elect to go less than 5 years in length.

22

TIFs and STAs:

- Must be approved by City Council or Town Meeting
- Must come to EACC Board for final approval
- Cannot be changed or amended without going through the same "approval process"
- Amendments must come back to EACC Board for final approval
- EACC Board meets 4 times a year: March, June, September, December
- Do not want projects coming to EACC Board before the municipal vote

23

10% Abandoned Building Renovation Deduction

- A one-time deduction (not a credit) taken for the costs of renovating an abandoned building
- EACC definition of abandoned building: at least 75% or more vacant for the preceding two years
- Cannot tear down the building and replace
- MUST be part of a ***Certified Project***
- DOR letter ruling: costs do not include purchase price of building or land

24

EDIP: Contracts & Annual Reporting

- All approved Certified Projects enter into a contract with the Commonwealth
- Terms spell out job creation by year
- Jobs are required to be maintained for at least 5 years
- Annual reporting continues with state for 5 years after the last jobs are hired for projects receiving tax credits or until TIF/STA expires
- Municipalities can access company annual reports online to monitor
- Joey Giovino can provide link and passwords to Cities and Towns

25

EDIP: Job Creation Compliance

- Previously, project certification was revoked if there was a "material variance" from the job creation projections
- Revocation was required when a company created less than half of the new jobs promised
- Now, EACC has more discretion to decertify a non-performing project; *upon decertification the loss of credits may be proportional to the actual job creation*
- DOR has better tools to recoup credits a company claimed but did not earn

26

EDIP: New Job Creation Compliance Policy

- Companies have 24 months from approval to "ramp up"
- RED: creation of 40% or fewer jobs - automatically decertify
- YELLOW: creation of between 41% to 69% of jobs reduce tax credits proportionally
- GREEN: creation of 70% or more jobs, review again next year
- All projects eligible for a hearing if requested

27

EDIP: Vacant Downtown Storefront Initiative

- Called for in Acts of 2018
- Currently under development
- Hope to roll-out first quarter of 2019
- Up to $500,000 in state tax credits may be awarded annually
- Considering setting aside some portion of "refundable credits"
- Initial trial may be a limited pilot to learn from

28

EDIP: Vacant Downtown Storefront Initiative - Community Feedback

- Eligible locations?
- Eligible tenants?
  - Company has track record
- Criteria used for judging applications
  - Length of lease ≥ one year?
  - Municipal or landlord contribution?
  - Synergy with municipal strategic revitalization vision?
  - Tenant commitment to storefront improvements?
  - Project limit per municipality?

29

EDIP: Vacant Downtown Storefront Initiative Timing

Tentative Timing

- Solicit feedback from EDIP Municipal Outreach Meetings
- Draft program guidelines to review and discuss with EACC Board at December meeting
- EACC Board vote at January Policy Meeting
- Roll-out first quarter 2019
- First awards to be approved at March 2019 EACC Board Meeting

30

EDIP: Wrap-up

Contact local MOBD regional director:

- They can guide a business through the process
- Can help "pre-qualify" a project
- Help improve project application
- Help a business with next steps and paperwork
- They know the process, no need for others to become an expert on the program
- Know the deadlines, program nuances, eligibility requirements and the municipalities' historic use of EDIP
- Help to set realistic expectations

31

EDIP: Contacts

Annamarie Kersten, EDIP Director
Phone: 617-973-8534
annamarie.kersten@mass.gov

Joey Giovino, EDIP Program Manager
Phone: 617-973-8536
joey.giovino@mass.gov

Visit:
www.mass.gov/mobd
www.mass.gov/edip
www.mass.gov/hed

Regional Directors:

Peter Milano, Senior Director, Business Development - Merrimack Valley / MetroWest / Greater Boston
Phone: 617-970-1193
peter.milano@mass.gov

Maria DiStefano, Regional Director - Northeast
Phone: 978-745-2387
maria.g.distefano@mass.gov

Maria Marasco, Regional Director - Southeast
Phone: 508-730-1438
maria.marasco@mass.gov

Debra Boronski, Regional Director - West
Phone: 617-595-6363
debra.boronski@mass.gov

32

402 CMR 2.00: ECONOMIC DEVELOPMENT INCENTIVE PROGRAM

Section

2.01: Purpose
2.02: Definitions
2.03: The Economic Assistance Coordinating Council
2.04: Scope and Applicability of the EDIP
2.05: Certification of Projects
2.06: Award of EDIP Tax Credits for Certified Projects
2.07: Certification of TIF and STA Agreements
2.08: Revocation of the Certification of a Project
2.09: Compliance with Local Tax Incentives
2.10: Designation of ETAs and EOAs

2.01: Purpose

The purpose of 402 CMR 2.00 is to establish the procedures by which the Economic Assistance Coordinating Council (EACC) will administer those portions of the Economic Development Incentive Program (EDIP) relating to the certification of projects to be undertaken by businesses thereby entitling those businesses to receive certain tax benefits. 402 CMR 2.00 also establishes the procedures by which project certifications, Tax Increment Financing (TIF) and Special Tax Assessment (STA) agreements, and Economic Target Area (ETA) and Economic Opportunity Area (EOA) designations may be established, approved or revoked by the EACC. 402 CMR 2.00 also further clarifies that the failure of a municipality or participating business to follow proper reporting procedures and to provide requested information to the EACC may result in such revocation.

2.02: Definitions

As used in 402 CMR 2.00, the following words shall, unless the context clearly requires otherwise, have the following meanings:

Business. A private business corporation, partnership, firm, unincorporated association or other entity engaging or proposing to engage in economic activity within the Commonwealth, and any affiliate thereof, the income of which is subject to taxation under M.G.L. c. 62 or M.G.L. c. 63.

Certified Project. A proposed project that has been certified by the EACC consistent with 402 CMR 2.05.

Control. The power to direct the management and policies of a business or a facility thereof, directly or indirectly, through the exercise of voting rights, by contract, or otherwise.

Controlling Business. A business which controls a business or a facility thereof; provided that in the event that the ownership of a business, the operation of real estate, and/or the employment of employees is divided among entities under a common control, then the EACC may treat one or more of such entities as the Controlling Business for purposes of 402 CMR 2.00.

Director. The Director of the Massachusetts Office of Business Development.

Economic Assistance Coordinating Council or EACC. The Council established pursuant to M.G.L. c. 23A, § 3B.

Economic Development Incentive Program or EDIP. A program of various economic development incentives established pursuant to M.G.L. c. 23A, including EDIP tax credits and local tax incentives to promote job creation and increased business development and expansion in the Commonwealth.

Economic Opportunity Area or EOA. An area of the Commonwealth, located wholly within an Economic Target Area, which is designated as such by the EACC pursuant to 402 CMR 2.09.

2.02: continued

Economic Target Area or ETA. An area of the Commonwealth designated as such by the EACC pursuant to 402 CMR 2.09.

EDIP Tax Credits. The tax credits authorized by the EACC pursuant to M.G.L. c. 23A, § 3D and claimed by a taxpayer pursuant to M.G.L. c. 62, § 6(g) or M.G.L. c. 63, § 38N.

Employee. A person who is in an employment relationship with an employer subject to, and within the meaning of, the Massachusetts unemployment insurance statute, M.G.L. c. 151A, § 1.

Facility. The physical location, in real property, which may include multiple buildings, owned or leased by a business of a commercial, manufacturing or industrial activity, division or component controlled by that business, or any real estate project which involves the construction or renovation of real property to serve such purpose, or any combination of the foregoing, at which are employed, or are projected to be employed, permanent full-time employees of the Controlling Business.

Full-time Employee. An employee who has been paid by an employer during its taxable year an amount equal to at least the maximum amount of "wages" with respect to which an employer is required to make contributions under M.G.L. c. 151A, § 14.

Gateway Municipality. A municipality with a population greater than 35,000, a median household income below the Commonwealth's average and educational attainment rates that are below the Commonwealth's average, as measured by the most recent American Community Survey (ACS) of the U.S. Bureau of the Census.

Metropolitan Area. A metropolitan statistical area (MSA) or a primary metropolitan statistical area (PSMA), as defined by the U.S. Bureau of the Census.

Municipal Application. An application submitted by a municipality to the EACC requesting the designation of an area as either an ETA or an EOA, or both.

Municipality. A city or town in the Commonwealth or, in a case in which two or more cities or towns are acting jointly hereunder, then all cities and towns participating in such joint effort.

Permanent Full-time Employee. A full-time employee who is paid wages by a Controlling Business and who:

(a) at the inception of the employment relationship, does not have a termination date which is either a date certain or determined with reference to the completion of a specified scope of work;

(b) works at least 35 hours per week; and

(c) receives employee benefits at least equal to those provided to other full-time employees of the Controlling Business; provided, however, that "permanent full-time employee" shall not include contractors or part-time employees who may be included in a calculation of the Controlling Business' full-time equivalent workforce.

Poverty Rate. The poverty rate, as defined by the Bureau of the Census, using the most recent census data available as of the date of submission of a municipal application.

Proposed Project. A proposal submitted by a Controlling Business to the EACC for designation as a certified project.

Real Estate Project. The construction, rehabilitation or improvement of any building or other structure on a parcel of real property which, when completed, will result in at least a 100% increase in the assessed value of the real property over the assessed value of the real property prior to the project.

2.02: continued

Replacement or Relocation of Permanent Full-time Employees. Any transfer and/or substitution of permanent full-time employees by a participating business where there is no net increase in the number of permanent full-time employees of the business in the Commonwealth. Replacement or Relocation of Permanent Full-time Employees shall not include any situation where there is a net gain in the number of permanent full-time employees of a business in the Commonwealth as a result of a certified project, even though certain employees may have moved from one facility of the business to another facility within the Commonwealth.

Secretary. The Secretary of Housing and Economic Development.

Special Tax Assessment. A temporary reduction in local real property tax authorized by M.G.L. c. 23A, § 3E(c).

STA Agreement. A written agreement by and between a municipality and an owner of real property setting forth the terms and conditions of a special tax assessment.

STA Parcel. One or more parcels of land included in a STA agreement.

STA Project. A commercial, industrial or mixed-use development project that receives the benefit of a special tax assessment.

Substantial Sales Outside of the Commonwealth. On an annual basis, a percentage as determined by the EACC, of a Controlling Business's products or services generated at the facility are sold in the regular course of the Controlling Business's trade or business to customers not resident in the Commonwealth.

Tax Increment Financing. A temporary reduction in local real property tax authorized by M.G.L. c. 40, § 59, and approved by the EACC pursuant to M.G.L. c. 23A, § 3E(b).

TIF Agreement. A written agreement by and between a municipality and an owner of real property setting forth the terms and conditions of a proposed tax increment financing.

TIF Eligible Area. An area of a city or town that has been identified through zoning, planning or other municipal action as a location presenting exceptional opportunities for increased economic development. TIF eligible areas shall include all areas zoned to allow industrial and commercial uses by right, and at the discretion of the city or town may include other areas where new growth is desirable due to availability of infrastructure, access to transportation networks, proximity to downtown areas or the need for increased employment opportunities for residents.

TIF Parcel. One or more parcels of land included in a TIF agreement.

TIF Project. A commercial, industrial or mixed-use development project that receives the benefit of tax increment financing.

2.03: The Economic Assistance Coordinating Council

(1) The EACC:

(a) accepts and reviews applications for EDIP tax credits, certifies projects that undertake to create or retain full-time jobs in the Commonwealth and determines the amount of credits to be awarded to a Controlling Business and the schedule on which the credits may be claimed;

(b) reviews and approves tax increment financing agreements and special tax assessments proposed by municipalities under M.G.L. c. 23A, § 3E and M.G.L. c. 40, § 59;

(c) assists municipalities to identify and obtain state and federal resources and assistance to enhance the ability of certified projects to achieve their job creation and retention commitments;

(d) coordinates with other state programs, agencies, authorities and public instrumentalities to promote the Commonwealth's programs supporting job creation and retention;

2.03: continued

(e) monitors compliance with commitments made by Controlling Businesses to create and retain jobs within the Commonwealth and to decertify projects that materially fail to meet those commitments;
(f) monitors the EDIP tax credits authorized annually in order not to exceed the statutory cap on the amount of credits that can be awarded in a single calendar year;
(g) designates economic target areas and economic opportunity areas and authorizes municipalities to apply for United States Foreign Trade Zone Board for the privileges of establishing, operating and maintaining a foreign trade zone in accordance with M.G.L. c. 23A, § 3G;
(h) adopts by-laws to govern the implementation of its responsibilities; and
(i) within its discretion, promulgates regulations and issues guidance necessary or advisable to implement the EDIP program, assist municipalities and Controlling Businesses to develop and submit applications for potential certified projects.

(2) The EACC may request the assistance of the secretary and the director as needed, and may rely on their recommendations and advice in carrying out its responsibilities.

2.04: Scope and Applicability of the EDIP

(1) Incentives. The Economic Development Incentive Program provides tools to stimulate the creation of employment and economic development opportunities in Massachusetts. EDIP offers incentive tax credits to businesses who undertake to create new jobs in Massachusetts, including relocating jobs from outside the state, and in some cases for retaining jobs threatened by incentives offered by other jurisdictions. The EDIP provides a business with a variety of economic incentives and benefits, including EDIP tax credits, refundable EDIP tax credits, local tax increment financing agreements and special tax assessment agreements.

(2) Certified Projects. Certified project designation provides a mechanism by which economic development can be stimulated by attracting new businesses into those areas and by encouraging existing businesses to expand. Designation can be obtained through a request to the EACC by a business intending to develop or expand a project that the EACC designate a particular project to be undertaken by the business as a "certified project," thereby allowing the business to benefit from the various tax relief programs made available by the EDIP.

(3) Local Incentives. Tax increment financing is available to a certified project and certain other eligible projects pursuant to M.G.L. c. 40, § 59. A special tax assessment is available to a certified project, a real estate project and certain other eligible projects pursuant to M.G.L. c. 23A, § 3E(c). Although these incentives are negotiated and developed at the local level, the EACC must approve TIF agreements and STA agreements pursuant to 402 CMR 2.07 before they become effective.

(4) Relation to Tax Laws. The EACC does not administer or interpret the tax laws of the Commonwealth, and businesses using or considering the use of the EDIP cannot rely on the EACC or its staff for advice or guidance in regard to tax matters. Such businesses are advised to consult their tax advisors and the Massachusetts Department of Revenue on all matters relating to the EDIP tax credits.

2.05: Certification of Proposed Projects

(1) Applications. A Controlling Business may apply for certification of a proposed project by submitting an application to the EACC for review and approval. The application shall be in a form designated by the director and shall include all information that the EACC is required to consider in determining whether to certify a proposed project under the provisions of M.G.L. c. 23A, § 3D. The director may also issue instructions to assist the Controlling Business to use in completing the applications, which may include guidance regarding any factors that may enhance a proposed project's potential to receive favorable consideration and presentation to the EACC for its review and approval.

2.05: continued

(2) Timeframe for Decision. The EACC shall evaluate, grant, or deny certification of a proposed project within 90 days of its receipt of such proposal; provided, however, that if the EACC determines that an application for project certification is incomplete, it may either reject such proposal and return it to the applicant or request additional information to complete the proposal. If the EACC requests additional information, the 90-day review period shall commence upon receipt of the additional information requested. If the EACC fails to act on an application for project certification within the 90-day period as described in 402 CMR 2.05(2), the proposed project shall be considered to have been approved for a term of five years but such approval shall not constitute the grant or approval by the EACC of any EDIP tax credits.

(3) Decisions. The EACC may certify a proposed project subject to any conditions that the EACC deems necessary or appropriate to incent the creation of new jobs in the Commonwealth. The EACC may limit any incentive or EDIP tax credit available to a project pursuant to a specific dollar amount or time duration or in any other manner deemed appropriate by the EACC. The EACC may decline to certify a project if the amount of the tax benefit that the business would receive if the project were certified is disproportionately high in relation to the number of permanent full-time jobs that are expected to be created by the project, other benefits provided by the project to the municipality or to the state.

(4) EDIP Contracts. Each recipient of EDIP tax credits awarded pursuant to 402 CMR 2.05(4) shall execute an EDIP contract approved in form and substance by the director. The contract terms may contain provisions related to:

(a) The Controlling Business's obligation to create jobs and to maintain these new jobs for a time period of not less than five years after the date the jobs are first
(b) filled;
(c) The schedule on which the Controlling Business commits to create the new jobs;
(d) The schedule governing when and in what amounts EDIP tax credits may be claimed;
(e) The entity that is eligible to claim the EDIP tax credits awarded by the EACC;
(f) Requirements to submit information to the director regarding job creation and exercise of EDIP tax credits;
(g) Consequences and procedures for failure to meet the Controlling Business's job creation commitments; and
(h) Such other matters as the director in his or her discretion may from time to time require.

(5) Transfer of Ownership. A facility that has been designated a certified project shall not lose its certified project status upon a transfer of ownership of such facility provided that:

(a) an instrument of assignment is duly executed between the business that originally owned the facility and the successor business, which instrument of assignment shall contain a written acceptance by the successor business of the duties and obligations of the original business including, without limitation, the duties and obligations as such are represented in the EACC's terms of approval of said facility as a certified project; and
(b) the EACC approves by resolution said assignment, such approval to be based on a determination of the EACC that said successor business has the intention and capacity to carry out the duties and obligations of the original business.

2.06: Awards of EDIP Tax Credits for Certified Projects

(1) The EACC may award to the Controlling Business of a certified project, or to its affiliate, EDIP tax credits available under M.G.L. c. 62, § 6(g) or M.G.L. c. 63, § 38N. The amount of any such credits awarded, and the schedule on which such credits may be claimed, shall be determined by the EACC, in its sole discretion, based on the following criteria, weighted and balanced as the EACC shall determine appropriate on a case-by-case basis:

(a) The degree to which the certified project is expected to increase employment opportunities for residents of the commonwealth, with consideration given to the number of new full-time jobs to be created, the number of full-time employees to be retained, the salary, benefits or other compensation that will be paid to the employees, and the amount of new state income tax to be generated;

2.06: continued

(b) The timeframe within which new jobs will be created and the commitment of the Controlling Business for how long they will be maintained, with preference given to certified projects in which a significant portion of the new jobs shall be created within two years;
(c) The amount of capital to be invested by the Controlling Business in the certified project;
(d) The degree to which the certified project is expected to generate net new economic activity within the commonwealth by generating substantial sales from outside of the commonwealth;
(e) The extent to which the project is expected to contribute to the economic revitalization of a Gateway municipality or increase employment opportunities to residents of a Gateway municipality;
(f) The economic need of the municipality or region in which the certified project is located, as determined by income levels, employment levels, or educational attainment level;
(g) The amount and type of local support provided by the municipality in which the certified project will be located;
(h) The amount or timing of incentives, for which the Controlling Business provides documentation, offered by an entity located outside the Commonwealth to undertake the certified project in such foreign jurisdiction;
(i) Whether the Controlling Business has or the certified project proposes to locate its headquarters in the Commonwealth;
(j) The extent to which the project supports the economic development priorities of the Secretary;
(k) Whether the tax credits the Controlling Business is requesting would be refundable under the provisions of 402 CMR 2.06(3) or would be applied to the Controlling Business's ordinary income or corporate excise tax;
(l) Commitments, if any, made by the Controlling Business to use Massachusetts firms, suppliers and vendors, or to retain women or minority-owned businesses, during the construction of the certified project; and
(m) Whether the Controlling Business has received an award of EDIP tax credits in the past, and if applicable its compliance with past job creation requirements.

(2) When making an award of EDIP tax credits pursuant to 402 CMR 2.06(1), the EACC may at its sole discretion limit the award to a specific dollar amount, may specify the schedule on which such credits may be claimed, including an award of credits that spans multiple years. The EACC also may limit or restrict the right of the Controlling Business to carry unused credits forward to future tax years, and no carry forward shall be permitted unless expressly permitted in the EDIP contract. When a Controlling Business expects that new jobs will be created over a period of multiple years, the EACC ordinarily shall allocate and make such credits available to the taxpayer on a schedule that ensures credits are claimed on or after the date that the jobs are created.

(3) The EACC shall have the discretion to grant refundable credits to a certified project, subject to the statutory cap on the amount of refundable credits that may be granted in a calendar year. Preference for refundable credits shall be given to applicants which are:
(a) growing, early-stage ventures with no projected revenue or tax liability over the period in which job creation is expected to occur; and
(b) projects expected to create significant new employment for which a refundable credit is necessary to make the project financially feasible.

(4) MOBD shall require the recipient of EDIP tax credits awarded pursuant to 402 CMR 2.06(4) to execute an EDIP contract after the EACC awards EDIP tax credits under 402 CMR 2.06(4). No EDIP credits may be claimed or taken until the Controlling Business has executed an EDIP contract in form and substance acceptable to MOBD. Failure by a Controlling Business or its affiliate to execute an EDIP contract within 60 days of the EACC award shall be grounds for revocation of the project certification as provided in 402 CMR 2.08.

2.07: Approval of TIF and STA Agreements

(1) Approval of Local Tax Incentives. A project that is not certified pursuant to 402 CMR 2.05 for EDIP tax credits may be eligible for tax increment financing or a special tax assessment if the host municipality separately petitions the EACC for approval of the proposed TIF agreement or STA agreement in accordance with 402 CMR 2.07.

(2) Approval of TIF Agreements. If a municipality desires to provide tax increment financing for a project that is not certified by the EACC, the municipality must petition the EACC for approval of the TIF agreement. The petition for approval shall include a copy of the fully executed TIF agreement and evidence that it has been duly authorized and executed by each party thereto. The TIF agreement shall set out the amount of the tax increment that the project will generate and, for each year that the agreement will be in effect, the percentage of the incremental tax that will be exempt from taxation. The EACC shall approve a proposed TIF agreement if the EACC finds, based upon the information submitted and such additional investigation as the EACC may make, that:

(a) The TIF parcels are located within an Economic Target Area or in a TIF eligible area;

(b) The project involves a significant capital investment and will create new or retain existing permanent, full-time jobs;

(c) The TIF agreement supports the public purpose of encouraging increased industrial and commercial activity in the Commonwealth;

(d) There is a high likelihood that the TIF agreement will result in actual economic benefits to the host community;

(e) The TIF agreement complies with the requirements and limitations of M.G.L. c. 40, § 59, including limitations on the allowable term of the TIF agreement and instructions regarding the manner in which the exemption is calculated; and

(f) The TIF agreement complies with any written guidance promulgated by the EACC or the Department of Revenue Division of Local Services regarding best practices for a TIF agreement.

(3) Approval of STA Agreements. If a municipality desires to provide a special tax assessment for a project that is not certified by the EACC, it must petition the EACC for approval of a proposed STA agreement. The petition for approval shall include a copy of the fully executed STA agreement and evidence that it has been duly authorized and executed by each party thereto. The STA agreement must identify the STA parcel and set forth all job creation, investment and other material obligations of the owner of the STA project.

(a) A proposed STA agreement shall provide:

1. in the first year, an assessment of not less than 50% of the amount that would be due based on the full assessed valuation of the parcel; provided, that such assessment shall be granted for the year designated in the binding written offer;
2. in the second and third years, an assessment of up to 25% of the actual assessed valuation of the parcel;
3. in the fourth and fifth years, an assessment of no less than to 5% of the actual assessed valuation of the parcel.

(b) A real estate project or other eligible project that is not designated as certified project shall be approved for a special tax assessment only upon a finding by the municipality and the EACC that:

1. the property owner is undertaking a project or making other investment that will contribute to economic revitalization of the municipality and will significantly increase employment opportunities for residents of the municipality, or is retaining permanent full-time employees that otherwise would be relocated to a facility outside of the commonwealth;
2. the special tax assessment is reasonably necessary to enable the owner's investment in the project or to retain the jobs that otherwise would be relocated; and
3. the total amount of local tax foregone is reasonably proportionate to the public benefits resulting from the special tax assessment.

(3) Approvals Prior to Execution. The EACC shall have the discretion, but not the obligation, to approve a TIF agreement or STA agreement before said agreement has been duly executed by all parties; provided that such approval shall be contingent upon subsequent receipt of the executed agreement within 60 days or such other reasonable timeframe as the EACC shall determine.

2.07: continued

(4) Amendments. TIF agreements and STA agreements may be amended from time to time following the same procedures that are required to adopt such agreement; provided that no such amendment shall be valid or enforceable unless it is approved by the EACC in accordance with 402 CMR 2.07(4).

2.08: Revocation of the Certification of a Project

(1) Standard for Revocation. The EACC may revoke a project certification if it determines that a Controlling Business or affiliate is in material non-compliance with representations made in its application for project certification or the obligations set forth in an EDIP contract. The EACC shall have the discretion to determine whether material non-compliance shall result in revocation of a project certification, taking into account:

(a) the conduct of the Controlling Business subsequent to the project certification;

(b) the extent to which the material non-compliance is the result of unforeseen conditions that are outside the control of the Controlling Business;

(c) the potential impact on the municipality in which the certified project is located; and

(d) such other considerations as the EACC shall deem relevant to the sound implementation and public purposes of the EDIP.

Where the EACC determines that material non-compliance is due to factors outside the control of the Controlling Business, the EACC may elect to provide the Controlling Business with reasonable opportunity to cure the material non-compliance. The EACC ordinarily shall revoke the certification of a project that does not commence construction within two years of the commencement date provided in the application for project certification. Extensions beyond such two year period may be granted by the EACC only upon good cause shown by the Controlling Business.

(2) Effective Date and Reporting. If the EACC revokes a project's certification, such revocation shall take effect on the first day of the tax year in which the material non-compliance occurred, as determined by the EACC. Within 30 days after a project certification is revoked, the EACC shall report to the Controlling Business and to the Department of Revenue the number of permanent, full-time jobs actually created by the certified project to the number of permanent, full-time jobs the Controlling Business was required to create pursuant to its EDIP contract.

(3) Loss of EDIP Tax Credits. If the EACC revokes a project certification, then:

(a) All EDIP tax credits claimed by the Controlling Business prior to the effective date of the revocation shall be recaptured in accordance with M.G.L. c. 62, § 6(g) and M.G.L. c. 63, § 38N(h); and

(b) The Controlling Business may not claim EDIP tax credits for tax years following the revocation.

(4) Hearing. Prior to revoking the certification of a project, the EACC shall provide the project proponent with reasonable notice and an opportunity to be heard on the matter. Any hearing provided pursuant to 402 CMR 2.08(4) shall be conducted in a manner directed by the EACC.

(5) EDIP Contract Amendment. In circumstances where the EACC may revoke a project certification, the EACC may instead, in its sole discretion, amend the applicable EDIP contract to reduce the EDIP tax credits available to the Controlling Business or modify the schedule for claiming said EDIP tax credits.

(6) Voluntary Withdrawal. Where a Controlling Business is in material non-compliance with the terms and conditions of an EDIP contract, it may elect to voluntarily withdraw from the EDIP program. A voluntary withdrawal shall be treated as the revocation of a project certification for purposes of 402 CMR 2.08(2) and shall result in the loss of EDIP tax credits to the same extent as set forth in 402 CMR 2.08(3).

2.08: continued

(7) Effect of Decertification on a Local Tax Incentive. A TIF agreement or STA agreement will remain in place after the EACC revokes a project's certification if the TIF agreement or STA agreement does not expressly provide for termination upon the revocation of the project certification, and the continuation of the TIF agreement or STA agreement otherwise is consistent with the original municipal authorization. The EACC's revocation of a certified project's certification will result in the termination of a TIF agreement or STA agreement applicable to the decertified project if:

(a) The terms of the TIF agreement or STA agreement expressly provide for termination of the agreement upon the revocation of the project certification; or

(b) As a result of the revocation, the project no longer fulfills the terms and conditions of the municipal action authorizing the host community to enter into the TIF agreement or STA agreement; or

(c) The EACC determines that the project no longer furthers the public purpose of encouraging increased industrial and commercial activity in the commonwealth.

In such case, the host municipality may permit the continuation of the tax increment financing or special tax assessment, as applicable, by amending the TIF agreement or STA agreement. In such a case, the host community should notify the EACC that it will amend the TIF agreement or STA agreement; duly authorize the amendment, including a vote of town meeting, town council, or city council with the approval of the mayor, as required by law; and submit the fully executed amendment to the EACC for approval by the EACC. The EACC shall allow the host municipality to levy taxes on the decertified project in accordance with the original TIF agreement or STA agreement until the date of the EACC's approval of the amendment, but not for more than one year after the date of EACC vote to revoke the project certification.

2.09: Compliance with Local Tax Incentives

(1) Notice of Completion. When TIF project or STA project is complete, the property owner shall submit to the host municipality and to the EACC as-built drawings and such other information as is necessary to determine that the project has been completed in a manner consistent with the information provided to the EACC in the petition for approval of the TIF agreement or STA agreement, as applicable.

(2) Monitoring. Compliance with a TIF agreement or STA agreement shall be monitored by the host municipality. In the case of a certified project that has received EDIP tax credits, the EACC may assist the host municipality with its monitoring obligations by providing to the municipality the job creation data reported to MOBD by the Controlling Business.

(3) Revocation of EACC Approval. If the municipality shall recommend and the EACC shall find that a party to a TIF agreement or STA agreement has breached the agreement or otherwise through its action or failure to act has jeopardized the realization of significant economic benefits that provided part of the basis for the EACC's original approval of the TIF agreement or STA agreement, then the EACC may revoke its approval of the TIF agreement or STA agreement. The effect of such revocation shall be the termination of the tax increment exemption for the TIF parcel or parcels designated in the revocation, or the termination of the special tax assessment set forth in the STA agreement, as the case may be. To initiate the revocation process, the municipality must formally adopt its recommendation of revocation in the same manner as that in which the TIF agreement or STA agreement was authorized prior to approval by the EACC. Prior to revoking the approval of a TIF agreement or STA agreement, the EACC shall provide the owner with reasonable notice and an opportunity to be heard on the matter. Any hearing provided pursuant to 402 CMR 2.16(5) shall be conducted in a manner directed by the EACC.

2.10: Designation of ETAs and EOAs

(1) Any municipality may submit an application to the EACC for designation of an area within the municipality's jurisdiction to be an ETA or an EOA.

2.10: continued

(2) Two or more municipalities may jointly file an application with the EACC for designation of an area as an ETA or EOA if the area in question falls within the land areas of two or more contiguous municipalities. A single application may request simultaneous designation of both an ETA and an EOA.

(3) Each municipal application must include the municipality's certification, accompanied by documentary and statistical information, as appropriate, that the area proposed for designation meets the criteria set forth in M.G.L. c. 23A, § 3G. For the purposes of 402 CMR 2.05, "median household income" shall be determined based on the most recent statistics available from the U.S. Bureau of the Census as of the date of application.

(4) The EACC shall review each ETA and EOA application to determine whether it has met the mandatory criteria. The EACC may, at any time, require an applicant to submit additional information relating to the application and may conduct independent reviews as it determines appropriate.

(5) If the EACC does not approve the ETA or EOA application, it shall provide written notice to the municipality, and shall include a statement of the reasons for the EACC's decision not to make such a designation.

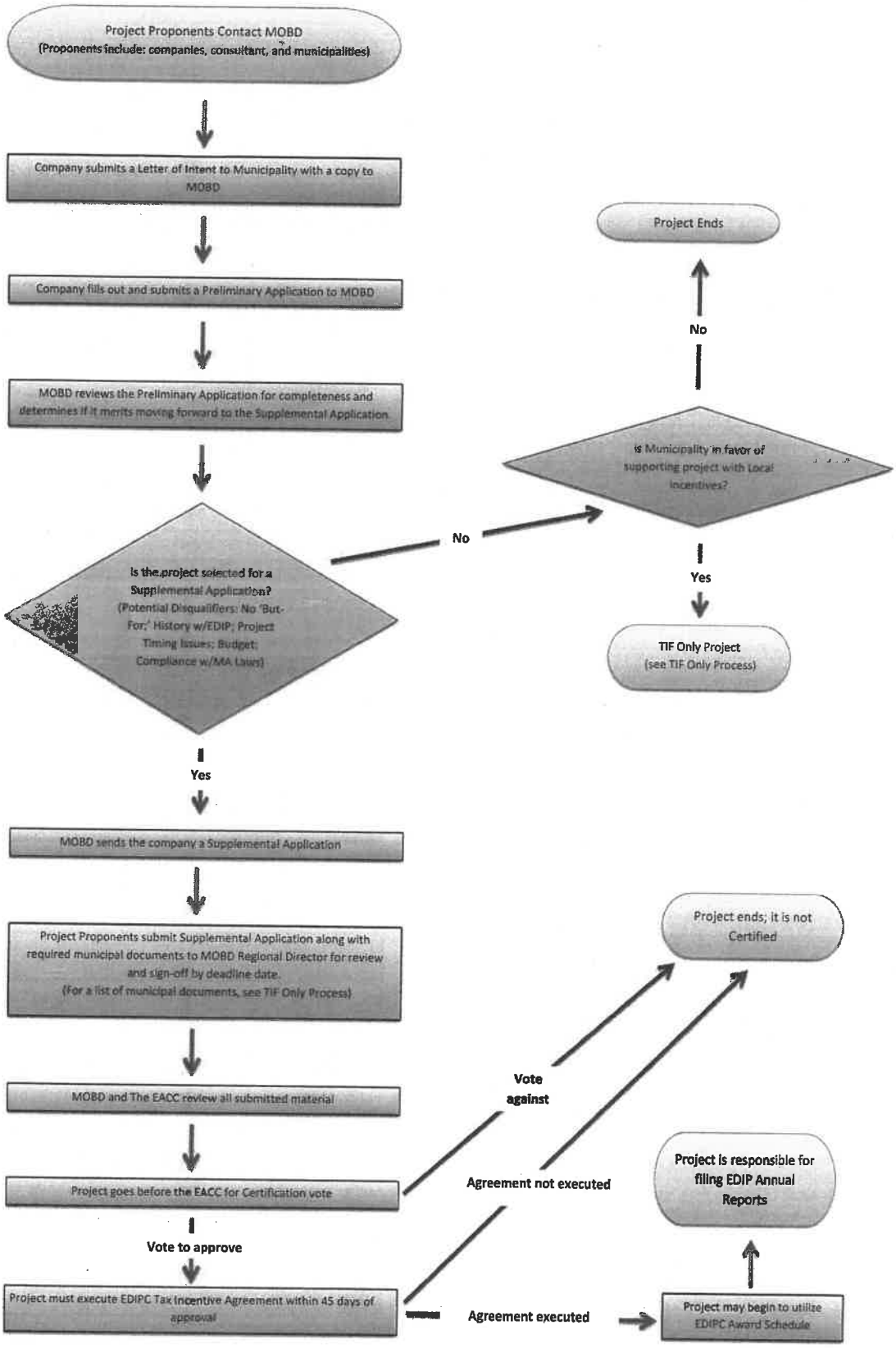
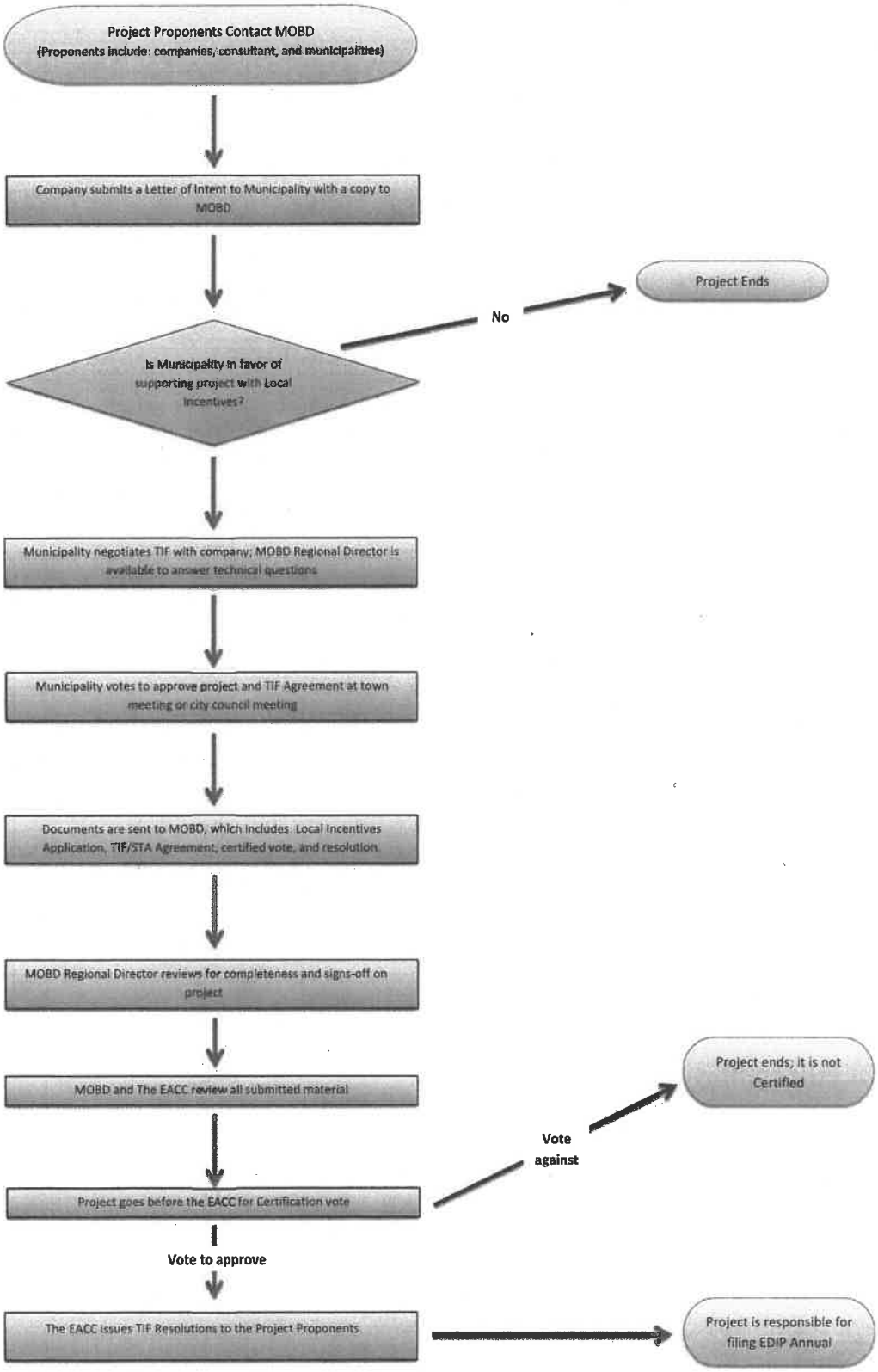
(6) Any municipality whose ETA or EOA application was not designated may, at its discretion, resubmit its application at a later date and the EACC may work with each such municipality to improve the merits of its application.

REGULATORY AUTHORITY

402 CMR 2.00: M.G.L. c. 23A.

(PAGES 21 THROUGH 24 ARE RESERVED FOR FUTURE USE.)

EDIP Process



Local Incentive Only Process