

CHAPTER 31**GRANT AND LOAN PROGRAMS****Authority**

N.J.S.A. 52:27F-11q.

Source and Effective Date

R.1995 d.68, effective January 12, 1995.
See: 26 N.J.R. 4482(c), 27 N.J.R. 503(a).

Executive Order No. 66(1978) Expiration Date

Chapter 31, Grant and Loan Programs, expires on January 12, 2000.

Chapter Historical Note

Chapter 31, Grant and Loan Programs, was adopted as R.1990 d.28 and was originally codified as Chapter 6 of Title 14A (N.J.A.C. 14A:6), effective January 16, 1990. See: 21 N.J.R. 2005(a), 22 N.J.R. 240(a). Prior rules at Chapter 6, regarding grants and loans, expired on August 6, 1989.

Pursuant to Executive Order No. 66(1978), Chapter 6 was readopted as R.1995 d.68. See: Source and Effective Date. As a part of R.1995 d.68, Chapter 6 was recodified as Chapter 31 of Title 14, effective February 6, 1995. See: 26 N.J.R. 4482(c), 27 N.J.R. 503(a). See, also, section annotations.

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SUBCHAPTER 1. BUSINESS ENERGY IMPROVEMENT PROGRAM**14:31-1.1 Scope and purpose**

This subchapter establishes the rules governing the Business Energy Improvement Program. The Program provides funds to eligible applicants for the purpose of fostering energy conservation. The intent of the funds is to encourage investment in, and to provide cost reduction for, renovations, equipment replacement, energy conservation construction, alternative energy production facilities, resource recovery projects and energy demonstration projects.

14:31-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Alternative energy production facility” includes, but is not limited to, a facility that produces energy by using cogeneration, hydro power, wind power, solar technologies, resource recovery methods, or district heating/cooling.

“Applicant” means the owner or lessee of an eligible facility who applies for funds pursuant to this subchapter.

“Application” means a Business Energy Improvement Program document.

“Avoided costs” means the annual cost savings, based on improved efficiencies using the differences between the normal annual purchased energy costs, and the cost of equivalent energy production by the facility for which an application is made.

“Closely held company” means a business organization in which ownership and control are vested in 10 or fewer individuals.

“Demonstration program” means an on-site installation of a state-of-the-art energy conservation measure, or integrated system of energy conservation measures, under the direction and control of a Division approved organization which serves to illustrate, by example, the practical application of energy conservation measure(s). The intent and purpose of such demonstration projects is to induce widespread adoption of the energy conservation measure(s) as a normal operating practice.

“Division” means the Division of Energy Planning and Conservation.

“District heating and cooling” means a system supplying heating and/or cooling for more than one facility when the energy source is remote from one or more user.

“Eligible applicant” means a person who qualified for one or more types of funding defined in this chapter; however, such person may not receive funds from more than one program category for a given project.

“Eligible loan” means a loan made by a lender to the applicant for energy conservation renovations or an alternative energy production facility which meets the requirements of N.J.A.C. 14:31-1.6 and 1.7.

"Energy audit" means a study of a building(s) or facilities conducted by an engineer or an architect/engineering firm or other Division approved party to determine operating and maintenance procedures and renovations which would result in reduced energy consumption. The energy audit shall provide the estimated costs of implementation and the expected dollar and energy savings for the recommended project and maintenance procedures. The energy audit shall include, but not be limited to, the energy conserving renovations listed in N.J.A.C. 7:32-1.12.

"Energy conservation renovation" means any equipment, materials, alterations or improvements installed within an existing structure owned or leased by an eligible applicant that would reduce energy consumption or increase energy efficiency, and which have been approved by the Division pursuant to N.J.A.C. 14:31-1.11, but shall not include new construction or energy conservation renovations installed prior to receipt of a completed Business Energy Improvement Program application by the Division.

"Energy conserving construction" means materials, practices or equipment that exceeds the energy efficiency of those required under the Energy Subcode, N.J.A.C. 5:23-3.18 as amended.

"Energy service company" (ESCO) means a vendor engaged in the business of furnishing energy conserving renovations to users through a shared-savings or guaranteed-savings program, and includes all representatives, agents, assignees, and other persons or entities performing activities for, or acting on behalf of, the vendor.

"Family-owned farm" means a farm which is any place producing agricultural or horticultural or other food products worth \$2,500 or more annually and meets the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act of 1964, P.L. 1964, c.48 (N.J.S.A. 54:4-23.1 et seq.).

"Feasibility planning for future energy conservation techniques" means projects undertaken by eligible applicants to make their own facilities, or the facilities of other eligible applicants, energy efficient by utilizing the construction of alternative energy production facilities, demonstration programs, energy audits, energy conservation renovations, energy conserving construction or other conservation techniques as will be specified by the Division as these technologies reach commercial application.

"Incremental grant" means full payment for the incremental cost of using materials, practices and equipment that exceed those materials, practices and equipment required under the Energy Subcode, N.J.A.C. 5:23-3.18 as amended.

"Interest subsidy" means funds provided by the Division to reduce the effective interest rate on an eligible loan.

"Lessee" means a person or business operation to whom property or equipment is leased or loaned for a fee.

"Lender" means State-chartered banks, savings banks, savings and loan associations, national banks, Federally-chartered savings and loan associations, approved out-of-State banks, economic development agencies, and other Division approved corporations authorized to transact the business of financing.

"Matching grant" means the one-time provision of funds by the Division to an eligible applicant to assist in the implementation of an approved project.

"Multi-family buildings" means buildings used for residential occupancy and containing five or more dwelling units.

"Municipal facility" means a facility owned and operated by either an incorporated unit of local government or a designee of the incorporated unit under contract to the unit for a specific energy conservation purpose.

"Payback" means the calculated number of years required for the first year energy cost savings, or avoided costs, to equal the capital cost of the renovation or alternative energy facility. It is calculated by the following formula:

Payback = Total estimated capital cost of renovation(s) or alternative energy facility divided by estimated net annual energy cost savings or avoided costs accruing to the applicant for the first year following installation of the energy conservation measure or alternative energy facility.

"Private nonprofit organization" means a secular or religious organization described in Section 501(c) of the Internal Revenue Code of 1954 which:

1. Is exempt from taxation under Subtitle A of the Code;
2. Has an accounting system and a voluntary Board of Directors; and
3. Practices nondiscrimination in providing assistance.

"Program" means the Business Energy Improvement Program established by this subchapter.

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of municipal solid waste for energy production and the recovery of metals and other materials for reuse; or a mechanized composting facility, or any other solid waste facility constructed or operated for the collection, separation, recycling, and recovery of metals, glass, paper, and other materials for reuse or disposal or for energy production.

"Revolving Loan Fund" means a pool of money available at zero-interest or low interest to accommodate individually owned businesses, closely held companies, family farms, multifamily buildings, counties and municipalities which are unable to use either conventional lending sources or an energy service company (ESCO), for energy conservation projects whose principal repayments are structured around the energy savings generated.

"Subsidy" means funds furnished by the Division for energy conservation projects.

"Urban Enterprise Zone" or "Enterprise Zone" means an area that has been designated by the Commissioner of Community Affairs as an "area in need of rehabilitation" under the five-year tax abatement process (P.L. 1977, c.12 (N.J.S.A. 54:4-3.95) et seq.) or is qualified for that designation, and meets the criteria established by the Enterprise Zone Authority.

Amended by R.1995 d.68, effective February 6, 1995.
See: 26 N.J.R. 4482(c), 27 N.J.R. 503(a).

14:31-1.3 Program duration and limitation of funding

(a) The number and amount of subsidies and the duration of the Program shall depend on the availability of sufficient revenues to cover subsidies previously approved by the Division and to provide sufficient funds for further subsidies.

(b) The Board of Public Utilities may suspend the Program with respect to new applicants in the event that funds are exhausted or the anticipated demand for subsidies exceeds available funds.

(c) Upon notification of an award, the applicant shall have 120 days to obtain all State, Federal or local permit approvals or petition the Division for an extension with full explanation for the request.

14:31-1.4 Requests for applications

The Division shall make available Business Energy Improvement Program applications on request, until the Program is suspended pursuant to N.J.A.C. 14:31-1.3. Application requests may be addressed to the Secretary, Board of Public Utilities, Two Gateway Center, Newark, N.J. 07102.

Amended by R.1995 d.68, effective February 6, 1995.
See: 26 N.J.R. 4482(c), 27 N.J.R. 503(a).

14:31-1.5 Submission requirements

(a) Each program application submitted to the Division for interest subsidies, revolving loan funds, or grants shall include the following information:

1. Name and address of the applicant;
2. A precise description of each energy conservation renovation, energy conserving construction, alternative

energy production facility or demonstration programs for which the application is made;

3. For all projects, except demonstration programs, the following information shall be submitted:

i. A reasonable construction bid, including itemization of the component costs. The construction bid shall be accompanied by the following:

(1) A sworn statement by the bidder, or an officer or partner of the bidder, indicating that the bidder is not, at the time of the construction bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders; and

(2) A certification that, where applicable, the bidder is in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 et seq. and the rules and regulations promulgated pursuant thereto;

ii. Engineering calculations and energy savings or avoided costs calculations for each project; and

iii. The simple payback period for each energy conservation renovation or energy conserving construction.

4. Such additional information as may be required by the Division to provide a complete and accurate description of the project.

(b) All calculations with respect to information contained in the application and any supporting documents shall be based on the energy estimating methods of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc. ("ASHRAE"), including all revisions and updates adopted by ASHRAE. Copies of the document may be obtained from ASHRAE, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

14:31-1.6 Interest subsidies

(a) Eligibility for interest subsidies will be limited to:

1. Businesses meeting the Small Business Administration definition of small business contained in 13 C.F.R. Part 121.2 (49 F.R. 5030-37);

2. Qualified Urban Enterprise Zone businesses as defined in P.L. 1983 c.303;

3. Multi-family buildings of five or more units, condominiums, and cooperatives;

4. Private non-profit institutions, but not including facilities which are used for worship or in which the sanctuary area directly benefits from the improvement;

5. Family-owned farms;

6. Municipal facilities.

(b) For the purpose of calculating possible subsidy, the Division will participate in projects where the maximum

principal amount, interest term and simple payback are as follows:

1. For energy conservation renovations and alternative energy production facilities: the principal not to exceed the lesser of the actual project cost or \$500,000, the term shall not exceed the lesser of the lender loan term or the estimated time for payback of the project; and a simple payback of 10 years or less.

2. For resource recovery facilities: the principal not to exceed the lesser of the actual project cost or \$2,000,000; the term not to exceed the lesser of the lender loan term or the estimated time for payback of the project; and a simple payback of 20 years or less.

(c) Applicants shall supply a copy of their loan application of loan commitment from the lending institution with supporting documentation specifying principal, interest and penalties with respect to all projects.

(d) Applicants shall execute an agreement with the Division to establish the conditions associated with the interest subsidy loan, and shall include among others:

1. The loan term;
2. The rate of interest which can be fixed or floating;
3. That the loan is amortized according to a predetermined monthly schedule;
4. That the loan does not obligate or render the Division liable to pay, at any time, any amount of principal, interest, interest accruals or penalties, for any reason, including but not limited to:
 - i. The default or late payment of the eligible loan by the applicant;
 - ii. Failure to pay, withholding of payment or seeking the return of the interest subsidy by the Division;
5. That the loan was or will be reviewed and approved by the lender in accordance with standard procedures; and
6. That the Division does not guarantee the approval by lenders of loans or that the Division will not participate in any manner in any aspect of the lender's loan review process.

14:31-1.7 Revolving loan funds

(a) Eligibility will be limited to private non-profit institutions, family owned farms, individually owned or closely held companies, and municipal facilities.

(b) Eligible applicants with an annual energy bill in excess of \$150,000 which have been denied energy conservation project funding by an Energy Service Company (ESCO), and/or have been denied energy conservation project funding by a lending institution shall supply proof of that denial.

(c) Revolving loan funds shall be at zero interest or low interest to eligible applicants where the maximum principal amount term, and simple payback are as follows:

1. For energy conservation renovations or alternative energy production facilities:

- i. \$200,000 in principal;
- ii. The loan term not to exceed the lesser of 10 years, or twice the estimated payback in years; and
- iii. A simple payback of 10 years or less.

2. For resource recovery facilities:

- i. \$3,000,000 in principal;
- ii. The loan term not to exceed the lesser of 20 years, or twice the estimated payback in years; and
- iii. A simple payback of 20 years or less.

(d) Repayment of Revolving Loans shall be based on a percentage of the annual energy cost savings or avoid energy costs with a balloon payment, if any, due at the end of the term.

(e) Applicants shall execute an agreement with the Division to establish the terms and conditions associated with the loan.

14:31-1.8 Incremental grants

Eligibility for new construction projects and/or major renovations will be limited to resource recovery facilities, district heating and cooling systems or qualified Urban Enterprise Zone Business Applicants.

14:31-1.9 Matching grant

(a) Eligibility for matching grants shall be limited to family owned farms.

(b) The Division's percentage of match will be based on the farm operation income in relation to the median farm operation income of the farm location and will not exceed 80 percent of the cost of the project.

(c) Energy conservation projects or alternative energy projects with a maximum simple payback of 10 years will be eligible.

(d) The maximum grant amount will be \$100,000.

14:31-1.10 Demonstration program fund

(a) Eligibility for demonstration program funds is limited to nonprofit organizations, educational institutions, colleges, universities.

(b) The Division may, at its discretion, allot funds in the form of grants up to a maximum of \$200,000 per project for demonstration programs.

14:31-1.11 Grant agreement

All applicants shall execute an agreement with the Division to establish the terms and conditions associated with the grant. No charges for indirect costs will be allowable charges under the grant.

14:31-1.12 Application and review procedures

(a) Applicants shall submit to the Division a completed Business Energy Improvement Program application. The application shall bear either a legible (non-metered) postmark or a date stamp from the Division's Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. 14:31-1.3.

(b) The Division shall conduct a review of the applications, commencing with the application bearing the earliest submission date. The Division may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Division shall review the applications to determine whether:

1. The application is made on behalf of an eligible applicant;
2. The application covers energy conservation renovations, energy conserving construction or alternative energy production facilities, or Demonstration Programs;
3. The application is complete as to form (required documentation is present and complete);
4. The application is complete as to the submission requirements of N.J.A.C. 14:31-1.5;
5. The engineering calculations and other technical matters with respect to the energy conservation renovations, energy conserving construction, alternative energy production facilities, or Demonstration Programs are accurate and correct;
6. The energy conservation renovations or energy conserving construction are appropriate.
7. For energy conserving construction, evidence that capital expenditures are sufficient to cover the construction cost estimate provided under N.J.A.C. 14:31-1.5(a)3.

(c) Upon completion of the review of an application pursuant to (b) above, the Division shall notify the applicant in writing whether the application has been approved, approved with modification, or denied. Subsidies, revolving loan funds or grants shall be extended to applicants in the order that applications are approved.

1. In the event that an application is approved, an agreement shall be executed with the Division to establish the terms and conditions associated with subsidies, revolving loan funds or grants.

2. In the event that an application is approved with modification, the Division shall:

- i. Indicate preliminarily in writing, the terms under which a subsidy, revolving loan or grant will be extended to the applicant, and the amount of the subsidy, revolving loan or grant.

3. In the event that an application is denied, the applicant shall be ineligible to receive a subsidy for the particular energy conservation renovations, energy conserving construction, alternative energy production facilities or Demonstration Programs included in the application and shall not be permitted to submit another application for the same project under the same program.

Amended by R.1995 d.68, effective February 6, 1995.
See: 26 N.J.R. 4482(c), 27 N.J.R. 503(a).

14:31-1.13 Payment of subsidies

(a) The Division shall pay subsidies directly to an approved applicant or, where applicable, to a lending institution in the name of an approved applicant.

(b) The Division will pay the entire subsidy in a single discounted lump-sum payment when the project is installed and inspected. The discount rate shall be no lower than six percent. The total value of the subsidy will be the same as if the prepaid subsidy were invested at the negotiable discount rate compounded semi-annually over the term of the subsidy.

14:31-1.14 Revolving loan funds

(a) The applicant shall be solely responsible and liable for repayment of the principal, and any interest, interest accruals, or penalties which may be assessed or result from the loan.

(b) Revolving loan funds shall be secured by property liens where applicable until loan repayment is completed.

(c) Where the project scope necessitates, the services of an interim lender may be engaged as an experienced construction lender to assume responsibility for monitoring the construction phase and timely completion of the project, to minimize non-performance risk, and monitor costs to preclude cost overruns. When an interim lender is not used, the Division will make advances to the applicant, based upon construction cost estimates, to initiate the project, make payments during the project, and a final payment upon acceptance of the completed project.

(d) Repayment of principal by the applicant shall be made from the value of energy savings that accrue as a result of the energy conservation measure implemented with the borrowed money;

(e) An annual accounting, on an agreed calendar or fiscal year basis, shall be made for reconciliation of energy savings or avoided costs realized and loan repayment due; and

(f) Repayment of the loan shall commence six months after the project is operational, and on an annual basis thereafter, with repayment not to exceed a maximum of 10 years, or 20 years for a resource recovery project.

14:31-1.15 Grant funds

(a) For incremental grants, the Division will make a single lump sum payment when the project is installed and inspected.

(b) For matching grants, the Division will make advances to the applicant, based upon construction cost estimates, to initiate the project, make payments during the project, and a final payment upon acceptance of the completed project. Grantees must demonstrate that their matching funds are being spent at the same rate as their spending of Division funds.

(c) For demonstration program grants, the Division will reimburse grantees based on an approved line item budget for eligible expenses incurred. Requests for payment shall not be made more than once per calendar quarter.

14:31-1.16 Monitoring

(a) The Division shall monitor all work related to energy conservation renovations, energy conserving construction or alternative energy production facilities that are the subject of a subsidy, revolving loan, or grant agreement by the Division.

(b) Monitoring shall include, but not be limited to, reviewing plans, specifications, other documents and information, and conducting on-site inspections to assess the progress and completion of work as well as the final disposition of equipment being replaced under the program.

(c) The applicant shall comply promptly with all requests by the Division to conduct monitoring activities; for example, supply periodic fuel consumption figures to validate energy savings, as required.

(d) Authorization from the applicant to the Division for the direct receipt of utility bill information may be required for monitoring purposes. Where exercised, confidentiality will be maintained; utility data shall be treated as proprietary information.

14:31-1.17 Rescission and withholding of funds

(a) The Division, in addition to any other rights or remedies available pursuant to law, may withhold or rescind payment of a subsidy, revolving loan, or grant or any portion thereof for good cause. Such withholding or rescission shall terminate the obligation of the Division to make further payments of funds to the applicant. The term "good cause" shall include, but not be limited to, the following:

1. Failure to comply with the requirements of this subchapter, or other applicable State laws or rules;

2. Failure to comply with any condition or requirement of the subsidy agreement;

3. Submission of false or misleading information, or failing to submit relevant information to the Division;

4. Non-payment or failure to make timely repayment of an eligible loan, or declaration by the lender that the applicant is in default of an eligible loan;

5. Insolvency, bankruptcy or other condition affecting the financial integrity of the applicant;

6. Use of the subsidy for any purpose other than as specified in the agreement;

7. Inability or failure to install the energy conservation renovations, energy conserving construction, alternative energy production facility, or conduct the Demonstration Program, in a timely manner, absent force majeure or other exigent circumstances;

8. Failure to provide documentation with respect to the installation of energy conservation renovations, energy conserving construction, the building of an alternative energy production facility, or the conduct of the Demonstration Program; and

9. Modification of the terms of the eligible loan without express written consent of the Division.

(b) Subsidies, revolving loans, or grants shall be withheld or rescinded according to the following procedures:

1. The Division shall give written notice to the applicant of its intent to withhold or rescind a subsidy in whole or in part;

2. Prior to the withholding or rescission of the subsidy the Division shall afford the applicant a period of 30 days, commencing on the date of written notice, to consult the Division in the matter, and cure the issues forcing rescission. The Division may, thereafter, withhold or rescind the subsidy in whole or in part. The withholding or rescission determination shall be in writing and shall be effective on the date such action is taken. The determination will be provided to the applicant; and

3. The determination to withhold or rescind a subsidy, revolving loan, or grant shall be solely within the discretion of the Division and is not subject to further review by the Division.

(c) In the event that a subsidy, revolving loan, or grant is withheld or rescinded by the Division, the applicant shall refund immediately the total amount of funds paid by the Division as of the date of rescission or withholding.

(d) The Division shall return all rescinded monies to the Business Energy Improvement Program.

14:31-1.18 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a

court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.