

CHAPTER 2

GRANT PROGRAMS

Authority

P.L. 2004, c.65, §§ 1-17 and 19-23.

Source and Effective Date

R.2005 d.143, effective May 16, 2005.
See: 37 N.J.R. 237(a), 37 N.J.R. 1739(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 2, Grant Programs, expires on November 12, 2010. See: 42 N.J.R. 1495(b).

Chapter Historical Note

Chapter 2, Grant Programs, was adopted as R.1997 d.25, effective January 6, 1997. See: 28 N.J.R. 3508(a), 29 N.J.R. 145(a). Chapter 2, Grant Programs, expired on July 5, 2002.

Chapter 2, Grant Programs, was adopted as new rules by R.2002 d.286, effective September 3, 2002. See: 34 N.J.R. 373(a), 34 N.J.R. 3091(a).

Chapter 2, Grant Programs, was repealed and adopted as new rules by R.2005 d.143, effective May 16, 2005. See: Source and Effective Date.

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SUBCHAPTER 1. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

12A:2-1.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Commerce, Economic Growth and Tourism Commission (the "Commission") to implement P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 §§ 1 through 16 (the "Act"). The Act provides several incentive programs aimed at retaining in New Jersey the full-time jobs of businesses already active in this State. The Act established a business retention and relocation assistance grant program ("BRRAG Program")

or "Program"), a tax credit certificate transfer program, a sales and use tax exemption program, and an energy sales tax exemption program (for businesses located in New Jersey urban enterprise zones). The BRRAG Program is hereby established as a Program under the jurisdiction of the Commission and shall be administered by the Chief Executive Officer and Secretary of the Commission. The purpose of the Program is to encourage economic development and to preserve jobs that currently exist in New Jersey, but which are in danger of being relocated to premises outside of the State. To implement that purpose, and to the extent that funding for the Program is available, the Program may provide grants of tax credits but in no case shall the amount of an individual grant of tax credits exceed the limitations set forth in this subchapter and further specified in the project agreement of an applicant for a grant of tax credits.

12A:2-1.2 Definitions

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

"Act" means the Business Retention and Relocation Assistance Act, P.L. 2004, c.65.

"Advanced computing" means a technology used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

"Advanced computing company" means a person with a headquarters or a base of operations located in New Jersey and engaged in the research, development, production, or provision of advanced computing for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

"Advanced materials company" means a person with headquarters or base of operations located in New Jersey and engaged in the research, development, production, or provision of advanced materials for the purpose of developing or providing products or processes for specific commercial or public purposes.

"Agreement" or "project agreement" means an agreement between a business and the Commission that sets the forecasted schedule for completion and occupancy of the project, the date the commitment duration shall commence, the amount of the applicable grant of tax credits, and other such provisions which further the purposes of P.L. 1996, c.25, as amended by P.L. 2004 c.65 §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123.).

“Biotechnology” means the continually expanding body of fundamental knowledge about the functioning of biological systems from the macro level to the molecular and sub-atomic levels, as well as novel products, services, technologies and sub-technologies developed as a result of insights gained from research advances which add to that body of fundamental knowledge.

“Biotechnology company” means a person with a headquarters or a base of operations located in New Jersey and engaged in the research, development, production, or provision or biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes, or a person with a headquarters or a base of operations located in New Jersey and engaged in providing services or products necessary for such research, development, production, or provision.

“Board of Directors” means the Board of Directors for the New Jersey Commerce, Economic Growth and Tourism Commission.

“Business” means an employer located in this State that has operated continuously in the State, in whole or in part, in its current form or as a predecessor entity for at least 10 years prior to filing an application to the program and which is subject to the provisions of N.J.S.A. 43:21-1 et seq. and may include a sole proprietorship, a partnership, or a corporation that has made an election under Subchapter S of Chapter One of Subtitle A of the Internal Revenue Code of 1986, or any other business entity through which income flows as a distributive share to its owners, limited liability company, nonprofit corporation, or any other form of business organization located either within or outside the State, such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder. For purposes of identifying full-time employees in eligible positions and retained State tax revenue, any such employees hired by or taxes paid by a professional employer organization (PEO) with which the business has entered into an employee leasing agreement shall be allocable to the business.

“Business employment incentive program grant” or “BEIP grant” means the grant made to a business by the New Jersey Economic Development Authority pursuant to the provisions of P.L. 1996, c.26 (N.J.S.A. 34:1B-124 et al).

“Business retention or relocation grant of tax credits” or “grant of tax credits” means a grant which consists of the value of corporation business tax credits against the liability imposed pursuant to section 5 of P.L. 1945, c.162 (N.J.S.A. 54:10A-5) or credits against the taxes imposed on insurers pursuant to P.L. 1945, c.132 (N.J.S.A. 54:18A-1 et seq.), section 1 of P.L. 1950, c.231 (N.J.S.A. 17:32-15), and N.J.S.A. 17B:23-5, provided to fund a portion of retention and reloca-

tion costs pursuant to P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

“Commission” means the New Jersey Commerce, Economic Growth and Tourism Commission established pursuant to N.J.S.A. 52:27C-61 et seq.

“Commitment duration” means five years from the date specified in the project agreement entered into pursuant to section 5 of P.L. 1996, c.25 (N.J.S.A. 34:1B-116), as amended by P.L. 2004, c.65, and pursuant to this subchapter.

“Designated industry” means a business engaged in the field of biotechnology, pharmaceuticals, manufacturing, financial services or transportation and logistics, advanced computing, advanced materials, electronic device technology, environmental technology or medical device technology.

“Designated urban center” means an urban center designated in the State Development and Redevelopment Plan adopted by the State Planning Commission, pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-200).

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

“Electronic device technology” means a technology involving microelectronics, semiconductors, electronic equipment, and instrumentation, radio frequency, microwave, and millimeter electronics, and optical and optic-related electrical devices, or data and digital communications and imaging devices.

“Electronic device technology company” means a person with a headquarters or a base of operations located in New Jersey and engaged in the research, development, production, or provision of electronic device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

“Eligible position” means a full-time position retained by a business in this State for which a business provides employee health benefits under a group health plan as defined under section 14 of P.L. 1997, c.146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of Title 17B of the New Jersey Statutes.

“Fiscal year” means the State fiscal year of July 1 to June 30.

“Full-time employee” means a person who is employed for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., and who is determined by the Secretary to be employed in a permanent position according

to criteria as the Secretary may prescribe. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include a child, grandchild, parent, or spouse of an individual who has direct or indirect ownership of at least five percent of the profits, capital, or value of the business.

"Headquarters" of a business means the single location that serves as the national administrative center of the business or the worldwide administrative center of a key division of the business, at which the primary office of the chief executive officer or chief operating officer of the business or the key division of the business, as well as the offices of the management officials responsible for key business-wide functions such as finance, legal, marketing, and human resources, are located.

"High-technology business" means an advanced computing company, advanced materials company, electronic device technology company, environmental technology company or medical device technology company.

"Manufacturing facility" means a business location at which more than 50 percent of the business personal property that is housed in the facility is eligible for the sales tax exemption pursuant to subsection a. of section 25 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.13) for machinery, apparatus or equipment used in the production of tangible personal property.

"Medical device technology" means a technology involving any medical equipment or product (other than a pharmaceutical product) that has therapeutic value, diagnostic value, or both, and is regulated by the Federal Food and Drug Administration.

"Medical device technology company" means a person with a headquarters or a base of operations located in New Jersey and engaged in the research, development, production, or provision of medical device technology for the purpose of developing or providing products or processes for specific commercial or public purposes.

"New business location" means the premises that the business has either purchased or built or for which the business has entered into a purchase agreement or a written lease for a period of no less than eight years from the date of relocation. A new business location may also include the premises from which the business moves on a temporary basis due to the rehabilitation of permanent premises that also qualifies as reconstruction as "reconstruction" is defined in the Uniform Construction Code, N.J.A.C. 5:23-6.3. In that case, the move to the permanent premises will trigger availability of the grant of tax credits.

"Point-of-final purchase retail facility" means a business wherein the normal and customary method of patronizing the business conducted at the facility requires the retail customer to travel to the location to purchase the goods or services of

that business. "Point-of-final purchase retail facilities" shall not include catalog distribution centers for the purposes of this program.

"Program" means the Business Retention and Relocation Assistance Grant Program created pursuant to P.L. 1996, c.25, as substantially amended by P.L. 2004, c.65 §§ 1 through 16 (N.J.S.A. 34:1B-112 through 123), and provided in this subchapter.

"Project" means the relocation of retained full-time jobs at the approved site as improved by the new business location. In the event that the new business location will be at more than one location, the business may evidence that the application is for a single project through factors showing interrelatedness such as the same business event driving the relocation, moves timed together, and full-time jobs relocated from the same business location.

"Research and development facility" means a business location at which more than 50 percent of the business personal property that is purchased for the facility is eligible for the sales tax exemption pursuant to section 26 of P.L. 1980, c.105 (N.J.S.A. 54:32B-8.14) for property used in research and development.

"Retained full-time job" means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a relocation by the business, is at risk of being lost to another state or country. For the purposes of determining a number of retained full-time jobs, the eligible positions of the members of a "controlled group of corporations" as defined pursuant to section 1563 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 1563, shall be considered the eligible positions of a single employer. A retained full-time job is one that will not be included in the calculation of a BEIP grant subsequent to being moved to the approved project site, under the agreement. The number of retained full-time jobs shall mean the business's number of permanent full-time jobs as referred to in the project description in the application and the agreement, which exist as of the effective date of the agreement.

"Retained State tax revenue" means either State tax revenue received in the most recently completed State tax period or State tax revenue projected to be received from the business by the State.

"Secretary" means the Chief Executive Officer and Secretary of the New Jersey Commerce, Economic Growth and Tourism Commission.

"Total allowable relocation costs" means \$1,500 times the number of retained full-time jobs. "Total allowable relocation costs" does not include the amount of any bonus award authorized pursuant to section 5 of P.L. 2004, c.65 (N.J.S.A. 34:1B-115.1).

Amended by R. 2006 d.197, effective May 15, 2006.
Sec: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Substituted ". For" for "for" in definition "Business"; and added the last sentence in definition "Project".

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Deleted definition "Construction contract; and rewrote definition "Project".

Amended by R.2008 d.53, effective March 3, 2008.

See: 39 N.J.R. 4385(a), 40 N.J.R. 1355(a).

In definition "Business", inserted ", such as a group of organizations under common control as defined in Section 414(b) or (c) of the Internal Revenue Code of 1986 and Federal Treasury regulations thereunder".

12A:2-1.3 Eligibility criteria

(a) To qualify for the program, a business shall:

1. Enter into a project agreement with the Commission to undertake a project to:

- i. Relocate a minimum of 250 retained full-time jobs from one or more locations within this State to a new business location or locations in this State; and
- ii. Maintain the retained full-time jobs pursuant to the project agreement for the commitment duration.

(b) A project that consists solely of point-of-final-purchase retail facilities shall not be eligible for a grant of tax credits.

1. If a project consists of both point-of-final-purchase retail facilities and non-retail facilities, only the portion of the retained full-time jobs housed in the project consisting of non-retail facilities shall be eligible for a grant of tax credits.

2. If a warehouse facility is part of a point-of-final-purchase retail facility and supplies only that facility, the retained full-time jobs housed in the warehouse facility shall not be eligible for a grant of tax credits.

(c) A business shall demonstrate that the receipt of assistance pursuant to this program will be a material factor in the business' decision not to relocate outside of New Jersey; except a business that relocates 1,500 or more retained full-time jobs covered by a project agreement from outside of a designated urban center to one or more new locations within a designated urban center shall not be required to make such a demonstration if the business applies for a grant of tax credits within six months of signing its lease or purchase agreement.

(d) A business shall provide evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of an application under this program.

12A:2-1.4 Restrictions on eligibility

(a) A business that is receiving a Business Employment Incentive Program grant shall not be eligible to receive a grant of tax credits under this program with respect to a job that is included in the calculation of a BEIP grant pursuant to P.L. 1996, c.26 subsequent to being moved to the approved project site.

(b) A business that is receiving any other grant by operation of State law shall be eligible to receive a grant of tax credits under this program except as follows:

1. A business that is receiving another State grant shall not be eligible to receive assistance with respect to any job that is currently the subject of any other State grant, except for grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.).

2. A business shall not receive an amount as a grant of tax credits pursuant to this program which, when combined with such other grants, exceeds 80 percent of the projected State tax revenues from the retained full-time jobs covered by the project agreement of an applicant for a grant of tax credits, except upon the approval of the State Treasurer.

3. Amounts received as grants from the Office of Customized Training pursuant to the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.), shall be excluded from the calculation of the total amount permitted under (b)2 above.

(c) A business that is in default with any other program administered by the State of New Jersey shall not be eligible to receive a grant of tax credits under this program.

12A:2-1.5 Requests for applications

All application requests shall be made to the Secretary/CEO New Jersey Commerce, Economic Growth and Tourism Commission, 20 West State Street, PO Box 820, Trenton, New Jersey, 08625, on forms and/or in a manner prescribed by the Commission.

12A:2-1.6 Application submission requirements

(a) Each application to the Commission shall include the following information in an application format prescribed by the Commission:

1. Business information shall include the following:

- i. The name of the business;
- ii. The address of the business;
- iii. The type of business;
- iv. Principal products and services;
- v. The contact person for this application;
- vi. The New Jersey tax identification number;
- vii. The Federal tax identification number;
- viii. The total number of employees in New Jersey;

ix. The total number of years of operation in New Jersey including evidence that the business or a predecessor entity has been operating, in whole or in part, in this State for at least 10 years prior to the filing of the application;

x. Certification that the business applying for this program is not in default with any other program administered by the State of New Jersey;

xi. Unless excepted under N.J.A.C. 12A:2-1.3(c), certification that the availability of financial assistance from the State as provided in this program at the site proposed for approval is a material factor in the business' decision not to relocate outside of New Jersey, and instead, to undertake the project and to relocate the full-time jobs relating to the project in the State;

xii. Indication of whether the business has applied for other State tax benefits, including, but not limited to, the programs authorized under P.L. 2004, c.65; and

xiii. Any other necessary and relevant information as determined by the Secretary for a specific application.

2. Project information shall include the following:

i. An overall description of the proposed project;

ii. The current location(s) (address(es)) and number of employees for each site that is subject to this application;

iii. The location(s) employees will be relocated from and identify the location(s) employees will be relocated to as per this application. Include number of employees for all sites;

iv. A description of the quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;

v. A description of any capital investments made by the business at the new business location;

vi. Identification of the site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200) or if the site is outside the jurisdiction of the State Plan, evidence of approval under the applicable comprehensive management plan;

vii. A project schedule that identifies projected move dates for each site;

viii. A schedule of short-term and long-term employment projections of the business in the State based upon the relocation;

ix. The terms of any lease agreements or details of the purchase or building of the new business location;

x. An estimate of the projected retained State tax revenues resulting from the relocation. "State tax revenue" includes all taxes which for the business are due and paid to the State, including, but not limited to, the payroll withholding taxes. This term does not include

that portion of taxes for which it is simply a registered collection agent;

xi. An analysis that indicates that the expected grant of tax credits will not exceed the retained State tax revenue from the business' most recently completed State tax period and that the expected grant of tax credits will not exceed 80 percent of the projected tax revenues from the retained full-time jobs covered by the project agreement;

xii. A description of the type of contribution the business can make to the long-term growth of the State's economy and a description of the potential impact on the State's economy if the jobs are not retained;

xiii. Unless excepted under N.J.A.C. 12A:2-1.3(c), evidence of alternative relocation plans, such as an analysis of the cost effectiveness of remaining in this State versus relocation under the alternative plans; and

xiv. Any other necessary and relevant information as determined by the Secretary for a specific application.

3. The employee information shall include the following:

i. A written certification that the employees that are the subject of this application are full-time employees and receive health care benefits;

ii. The number of employees at the project site that will be included in a BEIP grant calculation and the New Jersey Economic Development Authority BEIP project identification number;

iii. Evidence that the New Jersey Economic Development Authority has been notified of the applicant's potential relocation to another site within New Jersey, if the applicant is a BEIP grantee;

iv. A certification that the business will maintain 95 percent of the retained full-time jobs for at least the first two years of the commitment duration, and will maintain a minimum of 90 percent of the retained full-time jobs for the remainder of the commitment duration; and

v. Any other necessary and relevant information as determined by the Secretary for a specific application.

Amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Deleted (b).

12A:2-1.7 Review of application

(a) Applicants shall submit to the Secretary a completed BRRAG Program application at least 45 days prior to moving to the new business location; provided, however, a business relocating 1,500 or more retained full-time jobs to one or more new locations within a designated urban center shall, if relocating to a leased location, submit an application within six months of executing its lease. The application shall bear

either a legible post-mark date or a date-received stamp from the Commission.

(b) The Commission shall conduct a review of the applications commencing with the application bearing the earliest submission date, including those applications submitted to the Commission prior to May 16, 2005. The Commission may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Commission shall review, and provide a recommendation to the Secretary regarding, the applications to determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Adequately provides information for the subject application.

(c) The Secretary, after receipt and consideration of the recommendation from the Board of Directors, shall approve, approve with modifications, or deny an application in the program.

(d) When the Board of Directors recommends to either approve or deny a request, the minutes of the meeting at which such action occurs are submitted to the Governor for review and become effective 10 working days of the Governor's receipt of the minutes unless earlier approval or vetoed.

(e) Upon completion of the review of an application pursuant to (b) above, the Secretary shall notify the applicant whether the application has been approved, approved with modifications, or denied.

(f) If the application has been approved or approved with modification pursuant to (d) and (e) above, the Secretary shall notify the Director of the terms and conditions of the project agreement. Any approval or approval with modification shall be subject to:

1. Completion of the project; and
2. Tax credits being available in the fiscal year in which the applicant certifies to (f)1 above.

Amended by R. 2006 d.197, effective May 15, 2006.
See: 37 N.J.R. 3024(a), 38 N.J.R. 2165(b).

Substituted "moving to" for "commencing construction or acquisition of" in the first sentence of (a).

Amended by R.2006 d.322, effective September 5, 2006.
See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (f)1, deleted "and relocation of the retained full-time jobs" following "project".

12A:2-1.8 Determination of grant amount

(a) Any business relocating 500 or more full-time employees that is approved for a grant of tax credits, shall receive a grant equal to the total allowable relocation costs, plus any applicable bonus award, up to the aggregate annual limit of

\$20,000,000, and subject to the restrictions and limitations on the grant set forth at N.J.A.C. 12A:2-1.4.

(b) Any business that is relocating between 250 and 499 full-time employees approved for a grant of tax credits, shall receive a grant in an amount determined by the Secretary that shall not exceed the total allowable relocation costs, up to the aggregate annual limit, and is subject to the restrictions and limitations on the grant set forth at N.J.A.C. 12A:2-1.4. In determining the amount of any grant, the Secretary shall consider the following factors:

1. The number of full-time jobs retained;
2. The quality of the full-time jobs retained, including, but not limited to, the salaries and benefits provided to retained full-time employees;
3. Any capital investments made by the business at the new business location;
4. The nature of the business' operations, including, but not limited to whether the business is a designated industry;
5. The potential impact on the State if the business were to relocate to another state;
6. The site of the new business location and its consistency with the smart growth goals, strategies and policies of the State Development and Redevelopment Plan established pursuant to section 5 of P.L. 1985, c.398 (N.J.S.A. 52:18A-200);
7. Whether positions average at least 1.5 times the minimum hourly wage during the commitment duration; and
8. The duration and extent of past operations by the business in New Jersey and any other information indicating the business' level of commitment to the State and the likelihood that the business will continue to operate in this State in the future.
9. Any other necessary and relevant information as determined by the Secretary for a specific application.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In the introductory paragraph of (b), substituted " , up to" for "or", inserted "and" following "annual limit,"; deleted " , and considers the following factors:" following "12A:2-1.4"; and added last sentence.

12A:2-1.9 Bonus award

(a) In addition to any grant of tax credits determined pursuant to section 7 of P.L. 2004, c.65 (N.J.S.A. 34:1B-115.3), a bonus award equivalent to 50 percent of the amount of the original grant of tax credits shall be made to any business that relocates more than 2,000 full-time employees covered by the project agreement from one or more locations outside of a designated urban center into a designated urban center, provided as follows:

1. All other applicable requirements of the program are satisfied; and

2. No grant of tax credits shall be awarded pursuant to this section for any job that is moved from its current location in an urban enterprise zone designated pursuant to the New Jersey Urban Enterprise Zones Act, P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.) to a location that is not within an urban enterprise zone.

(b) Notwithstanding (a)2 above, if the move from the urban enterprise zone is to a facility already owned or leased by the same business and that business already employs at least the same number of persons as those being relocated from the urban enterprise zone, a grant of tax credits may still be awarded pursuant to this section.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (b), substituted "section" for "subchapter".

12A:2-1.10 Project agreement

(a) All applicants shall execute a project agreement with the Secretary to establish the terms and the conditions of the grant of tax credits. The Secretary may provide whatever assistance the Secretary deems appropriate in the preparation of an application for approval of a project and may issue grants of tax credits pursuant to the project agreement entered between the Secretary and the business with an approved project at the Secretary's discretion subject to the provisions of P.L. 1996, c.25 (N.J.S.A. 34:1B-112 et seq.), as amended by P.L. 2004, c.65.

(b) The project agreement shall include, but not be limited to, the following terms or conditions as determined by the Secretary:

1. Terms establishing the starting date, or event that will determine the starting date and ending date, of the commitment duration;

2. An agreement by the applicant that the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

3. Unless excepted under N.J.A.C. 12A:2-1.3(e)1, certifications by the business, including the following: eligibility for the program and participation in the program as a material factor in the business' decision not to relocate outside of New Jersey and to relocate the project in the State;

4. Requirements for undertaking the project;

5. Requirements on maintaining the existence of the business and not relocating the project;

6. Representations that the business is in good standing, the project complies with all applicable law, and specifically, that the project does not violate any environmental law;

7. Indemnification and insurance requirements;

8. Limitations on the grant of tax credits;

9. Default and remedies; and

10. Reporting requirements.

(c) The project agreement shall further provide that no tax credits shall be issued as a grant of tax credits under the program in any year until the State Treasurer has certified that the amount of retained State tax revenue received in the most recently completed State tax periods by the Director from the business equals or exceeds the amount of the grant of tax credits.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

In (c), substituted "The" for "In the case of a business relocating between 250 and 499 full-time employees, the" at the beginning.

12A:2-1.11 Tax credit applicable; when effective; when adjusted

(a) A tax credit issued pursuant to this program may be applied against liability arising in the tax period in which the tax credit is issued and the tax period next following, and shall expire thereafter. While some or all of the tax credit may not be used after the aforementioned tax periods, in the event that a liability arises against the business for the tax period in which the tax credit was issued or the following tax period, any unused grant of tax credit may be used to offset such liability.

(b) Provided that the applicant has previously executed the project agreement, within six months of relocation of the retained employees, the applicant shall submit a certification to the Secretary that it has relocated the retained employees. To the extent that the number of employees is less than the number indicated on its application, the award of tax credits shall be adjusted accordingly and the project agreement shall be amended to so reflect the reduction.

(c) Upon receipt of the certification referenced in (b) above, for a project that covers 500 or more full-time employees, the Secretary shall allocate a grant of tax credits to the applicant. The Secretary shall notify the Director of the terms and conditions of the project agreement and the Director shall issue the appropriate tax credit certificate(s).

(d) For a project that covers a business relocating between 250 and 499 full-time employees, a grant of tax credits shall not be issued until the end of the fiscal year in which the certification referenced in (b) above is received.

(e) The total value of the grants of tax credits issued pursuant to this program shall not exceed an aggregate annual limit of \$20,000,000 for any fiscal year. If the sum of the amount of tax credits issued pursuant to (c) above in a fiscal year, plus the amount of tax credits approved pursuant to (d) above, exceeds the \$20,000,000 aggregate annual limit, the Secretary shall reduce the award to each business receiving a

grant of tax credits pursuant to (d) above on a pro rata basis to the grant amounts determined in accordance with N.J.A.C. 12A:2-1.8(b) to the extent necessary to comply with the aggregate annual limit.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Section was "Tax credit applicable; when effective; when reduced". In (c), substituted "500 or more" for "over 500"; and in (e), substituted "(c)" for "(c) or (d)" preceding "above in a fiscal year", and substituted "(d)" for "(c) or (d)" preceding "above, exceeds".

12A:2-1.12 New business location for the project

(a) Once the project agreement is fully executed by the business and the Commission, the business shall complete the project and seek a temporary certificate of occupancy and such other permits and approvals as may be required for the new business location in a timely manner, as further described in the project agreement.

(b) The business shall design, acquire, install, and operate the new business location in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) related to zoning, building safety, and environmental quality.

(c) The business shall not use any hazardous substance on, from, or affecting the new business location in any manner which violates any environmental law, and shall keep or cause the new business location to be kept free of hazardous substances, except as provided in applicable environmental law.

(d) To the extent that the business (not an unaffiliated third party) has undertaken the construction of the new business location, the business shall comply with the Commission's prevailing wage requirements (N.J.S.A. 52:27C-73.1 and implementing rules at N.J.A.C. 12A:2A-3) in the performance of construction contracts.

(e) The Commission encourages a business constructing a new business location to comply with the Commission's set-aside program goals and targets set forth at N.J.A.C. 12A:10 and Executive Order No. 71 (October 2, 2003).

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Section was "Undertaking the project". In (a), inserted "for the new business location"; in (b) and (c), substituted "new business location" for "project" throughout; rewrote (d); and added (e).

12A:2-1.13 Reporting requirements and annual reports

(a) If requested by the Secretary, a business which is awarded a grant of tax credits under this program shall submit a copy of the State tax return for the business showing business income or activity, appropriate to its form of ownership.

(b) As determined by the Secretary, a business which is awarded a grant of tax credits under this program shall submit annually, no later than March 1st of each year, commencing the year following the calendar year in which the business

was approved for the grant of tax credits and for the remainder of the commitment duration, an annual report listing the full-time employees in eligible positions employed at the location or locations approved for the grant of tax credits, to the Secretary.

(c) Failure to submit a copy of its annual report or submission of the annual report without the information required above, may result in the forfeiture of any grant of tax credits to be received by the business and the recapture of any tax credits issued to the business unless the Secretary determines that there are extenuating circumstances excusing the business from the timely filing required.

(d) The project agreement may provide for additional reporting requirements.

12A:2-1.14 Fees

(a) A non-refundable application fee of \$1,000 shall accompany every application for assistance.

(b) A non-refundable commitment fee of two percent of the assistance not to exceed \$75,000 shall be charged with the acceptance by an applicant of the assistance.

(c) A non-refundable fee of \$750.00 shall be paid for each request for any administrative changes, additions or modifications to the grant; and a non-refundable fee of \$1,500 shall be paid for any major changes, additions or modifications to the grant, such as those requiring extensive staff time and Board approval.

New Rule, R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.14, Events of default, recodified to N.J.A.C. 12A:2-1.15.

12A:2-1.15 Events of default

(a) The occurrence of any one or more of the following events (whether such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "event of default" under the project agreement:

1. The business fails to strictly observe or comply with the limitations and conditions of the use of the grant of tax credits as set forth in this subchapter, the tax credit certificate and the project agreement;
2. Any representation or warranty made by the business in its application or in the project agreement that is false, misleading, or inaccurate in any material respect;
3. Failure to comply with any condition or requirement of the project agreement;
4. The business reduces or relocates the retained full-time jobs above the percentages certified under N.J.A.C.

12A:2-1.6(a)3iv (greater than five percent during the first two years of the commitment duration greater than 10 percent during the remainder of the commitment duration); or

5. The business fails to serve or perform in any other material respect any other term, covenant or condition of the business under the project agreement and this subchapter and such failure shall have continued for 30 days after the earlier of delivery to the business of written notice thereof from the Secretary or the business's actual or constructive knowledge of such failure; provided, however, that if such failure is capable of cure, but cannot be cured by the payment of money or by diligent efforts within such 30 day period, but diligent efforts are properly commenced within the cure period and business is diligently pursuing, and shall continue to pursue diligently, remedy of such failure, the cure period shall be extended for an additional period of time, not to exceed an additional 45 days and in no case to extend beyond the expiration of the project agreement. Violations of the "events of default" provision of the project agreement shall be cause for immediate termination of the tax credit certificate as provided by law and repayment of State tax.

Amended by R.2006 d.322, effective September 5, 2006.

See: 37 N.J.R. 4176(a), 38 N.J.R. 3618(a).

Rewrote (a)4.

Recodified from N.J.A.C. 12A:2-1.14 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.15, Remedies, recodified to N.J.A.C. 12A:2-1.16.

12A:2-1.16 Remedies

(a) Upon the occurrence of any event of default as described in N.J.A.C. 12A:2-1.15 and the project agreement, the Secretary may, so long as such event of default is continuing, do one or more of the following as the Secretary in his or her sole discretion shall determine, without limiting any other right or remedy the Secretary or the Division of Taxation may have on account of such event of default:

1. The Secretary may require the surrender by the business to the Secretary of the tax credit certificate for suspension or cancellation; and/or

2. The Secretary may exercise any other right or remedy that may be available under applicable law or under the project agreement, including, without limitation:

i. Recapturing all (for example, if a business ceases operations and leaves the State prior to the end of the commitment duration) or a portion of the grant of tax credits by notifying the Director, who shall issue a recapture assessment which shall be based upon the proportionate value of the grant of tax credits that corresponds to the amount and period of noncompliance;

ii. Recovering damages for loss of a bargain for any default during the commitment duration;

iii. Terminating the project agreement; or

iv. Proceeding by appropriate court action (legal or equitable) to enforce the terms of the project agreement.

(b) The rights and remedies of the Secretary under this subchapter and the project agreement shall be cumulative and shall not exclude any other rights and remedies of the Secretary or the Division of Taxation allowed by law with respect to any event of default under this subchapter of the project agreement.

Recodified from N.J.A.C. 12A:2-1.15 and amended by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

In the introductory paragraph of (a), updated the N.J.A.C. reference. Former N.J.A.C. 12A:2-1.16, Appeals, recodified to N.J.A.C. 12A:2-1.17.

12A:2-1.17 Appeals

(a) The procedure for an appeal of the Secretary's action on an application to the program shall be as follows. An applicant may appeal the Secretary's action on an application to the program by submitting in writing to the Commission, within 30 days from the date of the Secretary's action, an explanation as to how the applicant has met the program criteria. Only the information that clarifies the application filed shall be reconsidered. In the event the application is reconsidered as eligible for the program, such application shall be presented for action at the next available Board of Directors' meeting.

(b) In general, appeals arising from decisions of the Secretary may be requested in writing, and an opportunity given for an informal hearing on the papers, in person or via telephone with Commission staff. Such written request for any informal hearing must be made within 30 days of the receipt of the Secretary's decision.

(c) In the event of an adverse decision after an informal hearing under (b) above, or if a business determines not to seek an informal hearing, and providing further, that the dispute or controversy is a contested case, as defined in N.J.S.A. 52:14B-2(b), a business may request, within 45 days of the written decision resulting from the informal hearing or the determination of the Secretary if any informal hearing is not sought, a formal hearing.

(d) Upon filing of the initial pleading in a contested case, the Secretary may either retain the matter for hearing directly or transmit the matter for hearing before the Office of Administrative Law. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Every determination of a dispute or controversy arising from this subchapter by the Commission, constituting final agency action by the Secretary, shall be embodied in a written decision that shall set forth findings of fact and conclusions of

law pursuant to the applicable rules of the Office of Administrative Law.

Recodified from N.J.A.C. 12A:2-1.16 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).

Former N.J.A.C. 12A:2-1.17, Severability, recodified to N.J.A.C. 12A:2-1.18.

12A:2-1.18 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.

Recodified from N.J.A.C. 12A:2-1.17 by R.2010 d.178, effective August 16, 2010.

See: 42 N.J.R. 904(a), 42 N.J.R. 1900(b).