

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

Chapter 2, Grant Programs, expires on May 16, 2010.

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.

Chapter 2, Grant Programs, was repealed and adopted as new rules by R.2005 d.143, effective May 16, 2005.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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

12A:2-1.1	Applicability and scope
12A:2-1.2	Definitions
12A:2-1.3	Eligibility criteria
12A:2-1.4	Restrictions on eligibility
12A:2-1.5	Requests for applications
12A:2-1.6	Application submission requirements
12A:2-1.7	Review of application
12A:2-1.8	Determination of grant amount
12A:2-1.9	Bonus award
12A:2-1.10	Project agreement
12A:2-1.11	Tax credit applicable; when effective; when reduced
12A:2-1.12	Undertaking the project
12A:2-1.13	Reporting requirements and annual reports
12A:2-1.14	Events of default
12A:2-1.15	Remedies
12A:2-1.16	Appeals
12A:2-1.17	Severability

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 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 relocation 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.

“Construction contract” means, for purposes of undertaking the project, any contract for the acquisition, construction, improvement or installation of those portions of the project subject to sales tax or installation of eligible property. For purposes of this definition, the term “installation” means installation by a contractor, which involves access to pipes or wires within walls or any other alteration or modification of the project, but shall not include the delivery, locating, relocating, moving, assembling or setting up of eligible property by the provider of such property for the business’s employees or any installation of such eligible property (including, but not limited to, machinery, apparatus and equipment) if such installation is made pursuant to a purchase contract by the provider of such property.

“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 construction, renovation or expansion of facilities at the approved site as described in the project description in the application and the agreement that will become the business’s new 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).

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.

(b) The business applying to the program shall submit the following non-refundable application fee, with payment in the form of a check, payable to the "New Jersey Commerce, Economic Growth and Tourism Commission":

1. If the full-time jobs to be retained and relocated for the project equal or exceed 500, the application fee is \$1,000;
2. If the full-time jobs to be retained and relocated for the project are 250-499, the application fee is \$750.00.

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 commencing construction or acquisition of 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 relocation of the retained full-time jobs; and
2. Tax credits being available in the fiscal year in which the applicant certifies to (f)1 above.

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 or the aggregate annual limit, is subject to the restrictions and limitations on the grant set forth at N.J.A.C. 12A:2-1.4, and considers 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.