

## 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Chapter 2, Grant Programs, was repealed and adopted as new rules by R.2005 d.143, effective May 16, 2005.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 adjusted
12A:2-1.12	New business location for 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 of 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.

“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.  
See: 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”.

### 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;