

Senator Derrin R. Owens proposes the following substitute bill:

RURAL ECONOMIC DEVELOPMENT TAX INCREMENT

FINANCING

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Derrin R. Owens

LONG TITLE

General Description:

This bill modifies provisions related to economic development tax increment financing.

Highlighted Provisions:

This bill:

- ▶ defines terms, including modifying the definitions of "new commercial project," "high paying job," and "significant capital investment," related to new commercial projects located in rural areas of the state;
- ▶ modifies provisions related to the authorization of tax credits by the Governor's Office of Economic Development for new commercial projects located in rural areas of the state;
- ▶ modifies the types of new commercial projects that may qualify for tax credits authorized by the Governor's Office of Economic Development; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **63N-1-102**, as last amended by Laws of Utah 2019, Chapter 465

29 **63N-2-103**, as last amended by Laws of Utah 2019, Chapters 399, 465, 498 and last
30 amended by Coordination Clause, Laws of Utah 2019, Chapter 465

31 **63N-2-104**, as last amended by Laws of Utah 2018, Chapter 281

32 **63N-2-105**, as last amended by Laws of Utah 2016, Chapter 350



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **63N-1-102** is amended to read:

36 **63N-1-102. Definitions.**

37 As used in this title:

38 (1) "Baseline jobs" means the number of full-time employee positions that existed
39 within a business entity in the state before the date on which a project related to the business
40 entity is approved by the office or by the board.

41 (2) "Baseline state revenue" means the amount of state tax revenue collected from a
42 business entity or the employees of a business entity during the year before the date on which a
43 project related to the business entity is approved by the office or by the board.

44 (3) "Board" means the Board of Business and Economic Development created in
45 Section **63N-1-401**.

46 (4) "Council" means the Governor's Economic Development Coordinating Council
47 created in Section **63N-1-501**.

48 (5) "Executive director" means the executive director of the office.

49 (6) "Full-time employee" means an employment position that is filled by an employee
50 who works at least 30 hours per week and:

51 (a) may include an employment position filled by more than one employee, if each
52 employee who works less than 30 hours per week is provided benefits comparable to a
53 full-time employee; and

54 (b) may not include an employment position that is shifted from one jurisdiction in the
55 state to another jurisdiction in the state.

56 (7) "High paying job" means a newly created full-time employee position where the

57 aggregate average annual gross wage of the employment position, not including health care or
58 other paid or unpaid benefits, is:

59 (a) at least 110% of the average wage of the county in which the employment position
60 exists[-]; or

61 (b) for an employment position related to a project described in Chapter 2, Part 1,
62 Economic Development Tax Increment Financing, and that is located within the boundary of a
63 county of the third, fourth, fifth, or sixth class, or located within a municipality in a county of
64 the second class and where the municipality has a population of 10,000 or less:

65 (i) at least 100% of the average wage of the county in which the employment position
66 exists; or

67 (ii) an amount determined by rule made by the office in accordance with Title 63G,
68 Chapter 3, Utah Administrative Rulemaking Act, if the office determines the project is in a
69 county experiencing economic distress.

70 (8) (a) "Incremental job" means a full-time employment position in the state that:

71 ~~(a)~~ (i) did not exist within a business entity in the state before the beginning of a
72 project related to the business entity; and

73 ~~(b)~~ (ii) is created in addition to the number of baseline jobs that existed within a
74 business entity.

75 (b) "Incremental job" includes a full-time employment position where the employee is
76 hired:

77 (i) directly by a business entity; or

78 (ii) by a professional employer organization, as defined in Section 31A-40-102, on
79 behalf of a business entity.

80 (9) "New state revenue" means the state revenue collected from a business entity or a
81 business entity's employees during a calendar year minus the baseline state revenue calculation.

82 (10) "Office" or "GOED" means the Governor's Office of Economic Development.

83 (11) "State revenue" means state tax liability paid by a business entity or a business
84 entity's employees under any combination of the following provisions:

85 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

86 (b) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
87 Information;

- 88 (c) Title 59, Chapter 10, Part 2, Trusts and Estates;
- 89 (d) Title 59, Chapter 10, Part 4, Withholding of Tax; and
- 90 (e) Title 59, Chapter 12, Sales and Use Tax Act.

91 Section 2. Section **63N-2-103** is amended to read:

92 **63N-2-103. Definitions.**

93 As used in this part:

94 (1) "Authority" means:

- 95 (a) the Utah Inland Port Authority, created in Section [11-58-201](#); or
- 96 (b) the Military Installation Development Authority, created in Section [63H-1-201](#).

97 (2) "Authority project area" means a project area of:

- 98 (a) the Utah Inland Port Authority, created in Section [11-58-201](#); or
- 99 (b) the Military Installation Development Authority, created in Section [63H-1-201](#).

100 (3) (a) "Business entity" means a person that enters into an agreement with the office to
101 initiate a new commercial project in Utah that will qualify the person to receive a tax credit
102 under Section [59-7-614.2](#) or [59-10-1107](#).

103 (b) With respect to a tax credit authorized by the office in accordance with Subsection
104 [63N-2-104\(3\)\(c\)\(ii\)](#), "business entity" includes a nonprofit entity.

105 (4) "Community reinvestment agency" has the same meaning as that term is defined in
106 Section [17C-1-102](#).

107 (5) "Development zone" means an economic development zone created under Section
108 [63N-2-104](#).

109 (6) "Local government entity" means a county, city, town, or authority that enters into
110 an agreement with the office to have a new commercial project that:

111 (a) is ~~initiated~~ located within:

- 112 (i) the boundary of the county, city, or town; or
- 113 (ii) an authority project area; and

114 (b) qualifies the county, city, town, or authority to receive a tax credit under Section
115 [59-7-614.2](#).

116 (7) (a) "New commercial project" means an economic development opportunity that
117 involves new or expanded industrial, manufacturing, distribution, or business services in Utah.

118 (b) "New commercial project" includes an economic development opportunity that

119 involves new or expanded agricultural or mining business services in Utah if the new
120 commercial project is located within a:

121 (i) county of the third, fourth, fifth, or sixth class; or

122 (ii) municipality that has a population of 10,000 or less and the municipality is in a
123 county of the second class.

124 ~~[(b)] (c) "New commercial project" does not include retail business.~~

125 ~~[(8) "Significant capital investment" means an amount of at least \$10,000,000 to~~
126 ~~purchase capital or fixed assets, which may include real property, personal property, and other~~
127 ~~fixtures related to a new commercial project:]~~

128 ~~[(a) that represents an expansion of existing operations in the state; or]~~

129 ~~[(b) that maintains or increases the business entity's existing work force in the state.]~~

130 (8) "Significant capital investment" means an investment in capital or fixed assets in
131 the following amounts, which may include real property, personal property, and other fixtures
132 related to a new commercial project that represents an expansion of existing operations in the
133 state or that increases the business entity's existing workforce in the state:

134 (a) except as described in Subsection (8)(b), an amount of at least \$10,000,000 for a
135 new commercial project located within the boundary of a county of the first or second class;

136 (b) an amount of at least \$500,000 for a new commercial project located within the
137 boundary of a county of the third or fourth class, or located within a municipality in a county of
138 the second class and where the municipality has a population of 10,000 or less;

139 (c) an amount of at least \$250,000 for a new commercial project located within the
140 boundary of a county of the fifth or sixth class; or

141 (d) an amount determined by rule made by the office in accordance with 63G, Chapter
142 3, Utah Administrative Rulemaking Act.

143 (9) "Tax credit" means an economic development tax credit created by Section
144 59-7-614.2 or 59-10-1107.

145 (10) "Tax credit amount" means the amount the office lists as a tax credit on a tax
146 credit certificate for a taxable year.

147 (11) "Tax credit certificate" means a certificate issued by the office that:

148 (a) lists the name of the business entity, local government entity, or community
149 development and renewal agency to which the office authorizes a tax credit;

150 (b) lists the business entity's, local government entity's, or community development and
151 renewal agency's taxpayer identification number;

152 (c) lists the amount of tax credit that the office authorizes the business entity, local
153 government entity, or community development and renewal agency for the taxable year; and

154 (d) may include other information as determined by the office.

155 Section 3. Section **63N-2-104** is amended to read:

156 **63N-2-104. Creation of economic development zones -- Tax credits -- Assignment**
157 **of tax credit.**

158 (1) The office, with advice from the board, may create an economic development zone
159 in the state if the following requirements are satisfied:

160 (a) the area is zoned agricultural, commercial, industrial, manufacturing, business park,
161 research park, or other appropriate business related use in a community-approved master plan;

162 (b) the request to create a development zone has first been approved by an appropriate
163 local government entity; and

164 (c) local incentives have been or will be committed to be provided within the area.

165 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
166 the office shall make rules establishing the requirements for a business entity or local
167 government entity to qualify for a tax credit for a new commercial project in a development
168 zone under this part.

169 (b) The office shall ensure that the requirements described in Subsection (2)(a) include
170 the following:

171 (i) the new commercial project is within the development zone;

172 (ii) the new commercial project includes direct investment within the geographic
173 boundaries of the development zone;

174 (iii) the new commercial project brings new incremental jobs to Utah;

175 (iv) the new commercial project includes the creation of high paying jobs in the state,
176 significant capital investment in the state, or significant purchases from vendors, contractors, or
177 service providers in the state, or a combination of these three economic factors;

178 (v) the new commercial project generates new state revenues; and

179 (vi) a business entity, a local government entity, or a community reinvestment agency
180 to which a local government entity assigns a tax credit under this section meets the

181 requirements of Section [63N-2-105](#).

182 (3) (a) The office, after consultation with the board, may enter into a written agreement
183 with a business entity or local government entity authorizing a tax credit to the business entity
184 or local government entity if the business entity or local government entity meets the
185 requirements described in this section.

186 (b) (i) With respect to a new commercial project, the office may authorize a tax credit
187 to a business entity or a local government entity, but not both.

188 (ii) In determining whether to authorize a tax credit with respect to a new commercial
189 project to a business entity or a local government entity, the office shall authorize the tax credit
190 in a manner that the office determines will result in providing the most effective incentive for
191 the new commercial project.

192 (c) (i) Except as provided in Subsection [~~(3)(c)(ii);~~] (3)(c)(ii)(A), for a new commercial
193 project that is located within the boundary of a county of the first or second class, the office
194 may not authorize or commit to authorize a tax credit that exceeds:

195 (A) 50% of the new state revenues from the new commercial project in any given year;
196 or

197 (B) 30% of the new state revenues from the new commercial project over the lesser of
198 the life of a new commercial project or 20 years.

199 (ii) If the office authorizes or commits to authorize a tax credit for a new commercial
200 project located within the boundary of:

201 (A) a municipality with a population of 10,000 or less located within a county of the
202 second class and that is experiencing economic hardship as determined by the office, the office
203 shall authorize a tax credit of up to 50% of new state revenues from the new commercial
204 project over the lesser of the life of the new commercial project or 20 years;

205 (B) a county of the third class, the office shall authorize a tax credit of up to 50% of
206 new state revenues from the new commercial project over the lesser of the life of the new
207 commercial project or 20 years; and

208 (C) a county of the fourth, fifth, or sixth class, the office shall authorize a tax credit of
209 50% of new state revenues from the new commercial project over the lesser of the life of the
210 new commercial project or 20 years.

211 (iii) Notwithstanding any other provisions of this section, the office may not authorize

212 a tax credit under this section for a new commercial project:

213 (A) to a business entity that has claimed a High Cost Infrastructure Development Tax
214 Credit described in Section 63M-4-603 related to the same new commercial project; or

215 (B) in an amount more than the amount of the capital investment in the new
216 commercial project.

217 ~~[(ii) If the eligible business entity makes capital expenditures in the state of~~
218 ~~\$1,500,000,000 or more associated with a new commercial project, the office may:]~~

219 ~~[(A) authorize or commit to authorize a tax credit not exceeding 60% of new state~~
220 ~~revenues over the lesser of the life of the project or 20 years, if the other requirements of this~~
221 ~~part are met;]~~

222 ~~[(B) establish the year that state revenues and incremental jobs baseline data are~~
223 ~~measured for purposes of an incentive under this Subsection (3)(c)(ii); and]~~

224 ~~[(C) offer an incentive under this Subsection (3)(c)(ii) or modify an existing incentive~~
225 ~~previously granted under Subsection (3)(c)(i) that is based on the baseline measurements~~
226 ~~described in Subsection (3)(c)(ii)(B), except that the incentive may not authorize or commit to~~
227 ~~authorize a tax credit of more than 60% of new state revenues in any one year.]~~

228 (d) (i) A local government entity may by resolution assign a tax credit authorized by
229 the office to a community reinvestment agency.

230 (ii) The local government entity shall provide a copy of the resolution described in
231 Subsection (3)(d)(i) to the office.

232 (iii) If a local government entity assigns a tax credit to a community reinvestment
233 agency, the written agreement described in Subsection (3)(a) shall:

234 (A) be between the office, the local government entity, and the community
235 reinvestment agency;

236 (B) establish the obligations of the local government entity and the community
237 reinvestment agency; and

238 (C) establish the extent to which any of the local government entity's obligations are
239 transferred to the community reinvestment agency.

240 (iv) If a local government entity assigns a tax credit to a community reinvestment
241 agency:

242 (A) the community reinvestment agency shall retain records as described in Subsection

243 (4)(d); and

244 (B) a tax credit certificate issued in accordance with Section 63N-2-105 shall list the
245 community reinvestment agency as the named applicant.

246 (4) The office shall ensure that the written agreement described in Subsection (3):

247 (a) specifies the requirements that the business entity or local government entity shall
248 meet to qualify for a tax credit under this part;

249 (b) specifies the maximum amount of tax credit that the business entity or local
250 government entity may be authorized for a taxable year and over the life of the new commercial
251 project;

252 (c) establishes the length of time the business entity or local government entity may
253 claim a tax credit;

254 (d) requires the business entity or local government entity to retain records supporting a
255 claim for a tax credit for at least four years after the business entity or local government entity
256 claims a tax credit under this part; and

257 (e) requires the business entity or local government entity to submit to audits for
258 verification of the tax credit claimed.

259 Section 4. Section 63N-2-105 is amended to read:

260 **63N-2-105. Qualifications for tax credit -- Procedure.**

261 (1) The office shall certify a business entity's or local government entity's eligibility for
262 a tax credit as provided in this part.

263 (2) A business entity or local government entity seeking to receive a tax credit as
264 provided in this part shall provide the office with:

265 (a) an application for a tax credit certificate, including a certification, by an officer of
266 the business entity, of any signature on the application;

267 (b) (i) for a business entity, documentation of the new state revenues from the business
268 entity's new commercial project that were paid during the preceding calendar year; or

269 (ii) for a local government entity, documentation of the new state revenues from the
270 new commercial project within the area of the local government entity that were paid during
271 the preceding calendar year;

272 (c) known or expected detriments to the state or existing businesses in the state;

273 (d) if a local government entity seeks to assign the tax credit to a community

274 reinvestment agency as described in Section 63N-2-104, a statement providing the name and
275 taxpayer identification number of the community reinvestment agency to which the local
276 government entity seeks to assign the tax credit;

277 (e) (i) with respect to a business entity, a document that expressly directs and
278 authorizes the State Tax Commission to disclose to the office the business entity's returns and
279 other information that would otherwise be subject to confidentiality under Section 59-1-403 or
280 Section 6103, Internal Revenue Code;

281 (ii) with respect to a local government entity that seeks to claim the tax credit:

282 (A) a document that expressly directs and authorizes the State Tax Commission to
283 disclose to the office the local government entity's returns and other information that would
284 otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal
285 Revenue Code; and

286 (B) if the new state revenues collected as a result of a new commercial project are
287 attributable in whole or in part to a new or expanded industrial, manufacturing, mining,
288 agricultural, distribution, or business service within a new commercial project within the area
289 of the local government entity, a document signed by an authorized representative of the new
290 or expanded industrial, manufacturing, mining, agricultural, distribution, or business service
291 that:

292 (I) expressly directs and authorizes the State Tax Commission to disclose to the office
293 the returns of the new or expanded industrial, manufacturing, distribution, or business service
294 and other information that would otherwise be subject to confidentiality under Section
295 59-1-403 or Section 6103, Internal Revenue Code; and

296 (II) lists the taxpayer identification number of the new or expanded industrial,
297 manufacturing, mining, agricultural, distribution, or business service; or

298 (iii) with respect to a local government entity that seeks to assign the tax credit to a
299 community reinvestment agency:

300 (A) a document signed by the members of the governing body of the community
301 reinvestment agency that expressly directs and authorizes the State Tax Commission to
302 disclose to the office the returns of the community reinvestment agency and other information
303 that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103,
304 Internal Revenue Code; and

305 (B) if the new state revenues collected as a result of a new commercial project are
306 attributable in whole or in part to a new or expanded industrial, manufacturing, mining,
307 agricultural, distribution, or business service within a new commercial project within the
308 community reinvestment agency, a document signed by an authorized representative of the new
309 or expanded industrial, manufacturing, mining, agricultural, distribution, or business service
310 that:

311 (I) expressly directs and authorizes the State Tax Commission to disclose to the office
312 the returns of the new or expanded industrial, manufacturing, mining, agricultural, distribution,
313 or business service and other information that would otherwise be subject to confidentiality
314 under Section 59-1-403 or Section 6103, Internal Revenue Code; and

315 (II) lists the taxpayer identification number of the new or expanded industrial,
316 manufacturing, mining, agricultural, distribution, or business service; and

317 (f) for a business entity only, documentation that the business entity has satisfied the
318 performance benchmarks outlined in the written agreement described in Subsection
319 63N-2-104(3)(a), including:

320 (i) the creation of new incremental jobs that are also high paying jobs;

321 (ii) significant capital investment;

322 (iii) significant purchases from Utah vendors and providers; or

323 (iv) a combination of these benchmarks.

324 (3) (a) The office shall submit the documents described in Subsection (2)(e) to the
325 State Tax Commission.

326 (b) Upon receipt of a document described in Subsection (2)(e), the State Tax
327 Commission shall provide the office with the returns and other information requested by the
328 office that the State Tax Commission is directed or authorized to provide to the office in
329 accordance with Subsection (2)(e).

330 (4) If, after review of the returns and other information provided by the State Tax
331 Commission, or after review of the ongoing performance of the business entity or local
332 government entity, the office determines that the returns and other information are inadequate
333 to provide a reasonable justification for authorizing or continuing a tax credit, the office shall:

334 (a) (i) deny the tax credit; or

335 (ii) terminate the agreement described in Subsection 63N-2-104(3)(a) for failure to

336 meet the performance standards established in the agreement; or

337 (b) inform the business entity or local government entity that the returns or other
338 information were inadequate and ask the business entity or local government entity to submit
339 new documentation.

340 (5) If after review of the returns and other information provided by the State Tax
341 Commission, the office determines that the returns and other information provided by the
342 business entity or local government entity provide reasonable justification for authorizing a tax
343 credit, the office shall, based upon the returns and other information:

344 (a) determine the amount of the tax credit to be granted to the business entity, local
345 government entity, or if the local government entity assigns the tax credit as described in
346 Section 63N-2-104, to the community reinvestment agency to which the local government
347 entity assigns the tax credit;

348 (b) issue a tax credit certificate to the business entity, local government entity, or if the
349 local government entity assigns the tax credit as described in Section 63N-2-104, to the
350 community reinvestment agency to which the local government entity assigns the tax credit;
351 and

352 (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

353 (6) A business entity, local government entity, or community reinvestment agency may
354 not claim a tax credit unless the business entity, local government entity, or community
355 reinvestment agency has a tax credit certificate issued by the office.

356 (7) (a) A business entity, local government entity, or community reinvestment agency
357 may claim a tax credit in the amount listed on the tax credit certificate on its tax return.

358 (b) A business entity, local government entity, or community reinvestment agency that
359 claims a tax credit under this section shall retain the tax credit certificate in accordance with
360 Section 59-7-614.2 or 59-10-1107.