

ECONOMIC DEVELOPMENT INCENTIVES ACT

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Economic Development Incentives Act.

Highlighted Provisions:

This bill:

- ▶ expands the purposes of the Economic Development Incentives Act to include providing economic incentives for creating, improving, developing, or expanding utility infrastructure;
- ▶ expands the definition of a "new commercial project" that can qualify for economic incentives to include an economic development opportunity involving natural resource recovery or processing services and agricultural services;
- ▶ enacts definitions applicable under the act;
- ▶ expands the zoning designations that can qualify an area to be created as an economic development zone to include an area zoned agricultural;
- ▶ authorizes the Governor's Office of Economic Development to authorize or commit up to 50% of new state revenues from a new commercial project to pay for capital costs associated with the development of a qualified utility expansion;
- ▶ modifies provisions relating to qualifications for an economic development tax credit; and
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63M-1-2402**, as enacted by Laws of Utah 2008, Chapter 372

35 **63M-1-2403**, as last amended by Laws of Utah 2010, Chapters 104 and 164

36 **63M-1-2404**, as last amended by Laws of Utah 2010, Chapter 164

37 **63M-1-2405**, as last amended by Laws of Utah 2010, Chapters 104, 164 and last
38 amended by Coordination Clause, Laws of Utah 2010, Chapter 164

39 **63M-1-2408**, as last amended by Laws of Utah 2010, Chapters 164, 323, and 391



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

42 Section 1. Section **63M-1-2402** is amended to read:

43 **63M-1-2402. Findings.**

44 (1) The Legislature finds that:

45 (a) to foster and develop industry in Utah is a public purpose necessary to assure
46 adequate employment for, and the welfare of, Utah's citizens and the growth of the state's
47 economy;

48 (b) Utah loses prospective high paying jobs, new economic growth, and corresponding
49 incremental new state and local revenues to competing states because of a wide variety of
50 competing economic incentives offered by those states; and

51 (c) economic development initiatives and interests of state and local economic
52 development officials should be aligned and united in the creation of higher paying jobs that
53 will lift the wage levels of the communities in which those jobs will be created.

54 (2) This part is enacted to:

55 (a) address the loss of prospective high paying jobs, the loss of new economic growth,
56 and the corresponding loss of incremental new state and local revenues by providing tax credits
57 to attract new commercial projects in economic development zones in the state; ~~and~~

58 (b) provide economic incentives for the creation, improvement, development, or

59 expansion of utility infrastructure to serve expanding or new economic development within the
60 state; and

61 [~~(b)~~] (c) provide a cooperative and unified working relationship between state and local
62 economic development efforts.

63 Section 2. Section **63M-1-2403** is amended to read:

64 **63M-1-2403. Definitions.**

65 As used in this part:

66 (1) "Business entity" means a person that enters into an agreement with the office to
67 initiate a new commercial project in Utah that will qualify the person to receive a tax credit
68 under Section 59-7-614.2 or 59-10-1107.

69 (2) "Community development and renewal agency" is as defined in Section 17C-1-102.

70 (3) "Development zone" means an economic development zone created under Section
71 63M-1-2404.

72 (4) "High paying jobs" means:

73 (a) with respect to a business entity, the annual wages of employment positions in a
74 business entity that compare favorably against the average wage of a community in which the
75 employment positions will exist;

76 (b) with respect to a county, the annual wages of employment positions in a new
77 commercial project within the county that compare favorably against the average wage of the
78 county in which the employment positions will exist; or

79 (c) with respect to a city or town, the annual wages of employment positions in a new
80 commercial project within the city or town that compare favorably against the average wages of
81 the city or town in which the employment positions will exist.

82 (5) "Local government entity" means a county, city, or town that enters into an
83 agreement with the office to have a new commercial project that:

84 (a) is initiated within the county's, city's, or town's boundaries; and

85 (b) qualifies the county, city, or town to receive a tax credit under Section 59-7-614.2.

86 (6) (a) "New commercial project" means an economic development opportunity that
87 involves new or expanded industrial, manufacturing, distribution, natural resource recovery or
88 processing, agricultural, or business services in [~~Utah~~] the state.

89 (b) "New commercial project" does not include retail business.

90 (7) "New incremental jobs" means employment positions that are:
91 (a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and
92 (b) (i) with respect to a business entity, created in addition to the baseline count of
93 employment positions that existed within the business entity before the new commercial
94 project;
95 (ii) with respect to a county, created as a result of a new commercial project with
96 respect to which the county or a community development and renewal agency seeks to claim a
97 tax credit under Section 59-7-614.2; or
98 (iii) with respect to a city or town, created as a result of a new commercial project with
99 respect to which the city, town, or a community development and renewal agency seeks to
100 claim a tax credit under Section 59-7-614.2.
101 (8) "New state revenues" means:
102 (a) with respect to a business entity:
103 (i) incremental new state sales and use tax revenues that a business entity pays under
104 Title 59, Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a
105 development zone;
106 (ii) incremental new state tax revenues, if any, that a business entity pays as a result of
107 a new commercial project in a development zone under:
108 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
109 (B) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
110 Information;
111 (C) Title 59, Chapter 10, Part 2, Trusts and Estates;
112 (D) Title 59, Chapter 10, Part 4, Withholding of Tax; or
113 (E) a combination of Subsections (8)(a)(ii)(A) through (D);
114 (iii) incremental new state tax revenues paid as individual income taxes under Title 59,
115 Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by
116 employees of a new or expanded industrial, manufacturing, distribution, or business service
117 within a new commercial project as evidenced by payroll records that indicate the amount of
118 employee income taxes withheld and transmitted to the State Tax Commission by the new or
119 expanded industrial, manufacturing, distribution, or business service within the new
120 commercial project; or

- 121 (iv) a combination of Subsections (8)(a)(i) through (iii); or
122 (b) with respect to a local government entity:
- 123 (i) incremental new state sales and use tax revenues that are collected under Title 59,
124 Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a development
125 zone;
- 126 (ii) incremental new state tax revenues, if any, that are collected as a result of a new
127 commercial project in a development zone under:
- 128 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
129 (B) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
130 Information;
131 (C) Title 59, Chapter 10, Part 2, Trusts and Estates;
132 (D) Title 59, Chapter 10, Part 4, Withholding of Tax; or
133 (E) a combination of Subsections (8)(b)(ii)(A) through (D);
- 134 (iii) incremental new state tax revenues paid as individual income taxes under Title 59,
135 Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by
136 employees of a new or expanded industrial, manufacturing, distribution, or business service
137 within a new commercial project as evidenced by payroll records that indicate the amount of
138 employee income taxes withheld and transmitted to the State Tax Commission by the new or
139 expanded industrial, manufacturing, distribution, or business service within the new
140 commercial project; or
- 141 (iv) a combination of Subsections (8)(b)(i) through (iii).
- 142 (9) "Office" means the Governor's Office of Economic Development.
- 143 (10) "Qualified utility expansion" means the creation, improvement, development, or
144 expansion:
- 145 (a) of existing utility infrastructure;
146 (b) that is paid for or provided by a business entity;
147 (c) to serve a new commercial project; and
148 (d) that has a total cost of over \$1,000,000.
- 149 [~~10~~] (11) "Significant capital investment" means an amount of at least \$10,000,000 to
150 purchase a capital asset or a fixed asset:
- 151 (a) with the primary purpose of the investment to increase a business entity's rate at

152 which it produces goods based on output per unit of labor;

153 (b) that represents an expansion of existing Utah operations; and

154 (c) that maintains or increases the business entity's existing Utah work force.

155 [~~(11)~~] (12) "Tax credit" means an economic development tax credit created by Section
156 59-7-614.2 or 59-10-1107.

157 [~~(12)~~] (13) "Tax credit amount" means the amount the office lists as a tax credit on a
158 tax credit certificate for a taxable year.

159 [~~(13)~~] (14) "Tax credit certificate" means a certificate issued by the office that:

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

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

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

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

167 (15) "Utility infrastructure" includes electrical, natural gas, rail, telecommunications,
168 water system, and sewer facilities.

169 Section 3. Section **63M-1-2404** is amended to read:

170 **63M-1-2404. Creation of economic development zones -- Tax credits --**
171 **Assignment of tax credit.**

172 (1) The office, with advice from the board, may create an economic development zone
173 in the state that satisfies all of the following requirements:

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

176 (b) the request to create a development zone has been forwarded to the office after first
177 being approved by an appropriate local government entity; and

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

180 (2) (a) By following the procedures and requirements of Title 63G, Chapter 3, Utah
181 Administrative Rulemaking Act, the office shall make rules establishing the conditions that a
182 business entity or local government entity shall meet to qualify for a tax credit under this part.

183 (b) The office shall ensure that the conditions described in Subsection (2)(a) include
184 the following requirements:

185 (i) the new commercial project must be within the development zone;

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

188 (iii) the new commercial project brings new incremental jobs to [~~Utah~~] the state;

189 (iv) the new commercial project includes significant capital investment, a qualified
190 utility expansion, the creation of high paying jobs, or significant purchases from [~~Utah~~]

191 vendors and providers in the state, or any combination of these [~~three~~] economic factors;

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

193 (vi) (A) a business entity or local government entity qualifying for the tax credit meets
194 the requirements of Section 63M-1-2405; or

195 (B) a community development and renewal agency to which a local government entity
196 assigns a tax credit under this section meets the requirements of Section 63M-1-2405.

197 (3) (a) Subject to the other provisions of this Subsection (3), the office, with advice
198 from the board, may enter into an agreement with a business entity or local government entity
199 authorizing a tax credit to the business entity or local government entity if the business entity or
200 local government entity meets the standards established under Subsection (2).

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

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

207 (c) The office may authorize or commit to authorize a tax credit of up to 50% of new
208 state revenues from a new commercial project to pay for project costs attributable to capital
209 expenditures used to develop a qualified utility expansion, for a term sufficient to recover those
210 costs, but not to exceed the life of the new commercial project or 20 years, whichever is
211 shorter.

212 [~~(c)~~] (d) The office may not authorize or commit to authorize a tax credit if that tax
213 credit exceeds:

214 (i) 50% of the new state revenues from the new commercial project in any given year;
215 or

216 (ii) 30% of the new state revenues from the new commercial project over the life of a
217 new commercial project or 20 years, whichever is less.

218 (d) (i) A local government entity may by resolution assign a tax credit that the office
219 authorizes to the local government entity to a community development and renewal agency.

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

222 (iii) If a local government entity assigns a tax credit to a community development and
223 renewal agency:

224 (A) the agreement described in this section shall:

225 (I) be among the office, the local government entity, and the community development
226 and renewal agency; and

227 (II) establish:

228 (Aa) the obligations of the local government entity and the community development
229 and renewal agency; and

230 (Bb) the extent to which any of the local government entity's obligations are transferred
231 to the community development and renewal agency;

232 (B) the community development and renewal agency shall retain records as described
233 in Subsection (4)(d); and

234 (C) a tax credit certificate issued in accordance with Section [~~63M-1-2406~~]
235 63M-1-2405 shall list the community development and renewal agency as the name of the
236 applicant.

237 (4) Subject to Subsection (3), the office shall ensure that the agreement described in
238 Subsection (3):

239 (a) details the requirements that the business entity or local government entity shall
240 meet to qualify for a tax credit under this part;

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

244 (c) establishes the length of time the business entity or local government entity may

245 claim a tax credit;

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

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

251 Section 4. Section **63M-1-2405** is amended to read:

252 **63M-1-2405. Qualifications for tax credit -- Procedure.**

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

255 (2) A business entity or local government entity seeking to receive a tax credit shall
256 provide the office with:

257 (a) an application for a tax credit certificate;

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

260 (ii) for a local government entity, documentation of the new state revenues from the
261 new commercial project within the local government entity that were paid during the preceding
262 calendar year;

263 (c) if a local government entity seeks to assign the tax credit to a community
264 development and renewal agency in accordance with Section 63M-1-2404, a statement
265 providing the name and taxpayer identification number of the community development and
266 renewal agency to which the local government entity seeks to assign the tax credit;

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

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

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

276 (B) if the new state revenues collected as a result of a new commercial project are
277 attributable in whole or in part to a new [~~or expanded industrial, manufacturing, distribution, or~~
278 ~~business service within a new~~] commercial project within the local government, a document
279 signed by an authorized representative of each person involved in creating the new [~~or~~
280 ~~expanded industrial, manufacturing, distribution, or business service~~] commercial project that:

281 (I) expressly directs and authorizes the State Tax Commission to disclose the person's
282 returns [~~of that new or expanded industrial, manufacturing, distribution, or business service~~]
283 and other information that would otherwise be subject to confidentiality under Section
284 59-1-403 or Section 6103, Internal Revenue Code, to the office; and

285 (II) lists the person's taxpayer identification number [~~of that new or expanded~~
286 ~~industrial, manufacturing, distribution, or business service~~]; or

287 (iii) with respect to a local government entity that seeks to assign the tax credit to a
288 community development and renewal agency:

289 (A) a document signed by the members of the governing body of the community
290 development and renewal agency that expressly directs and authorizes the State Tax
291 Commission to disclose the returns of the community development and renewal agency and
292 other information that would otherwise be subject to confidentiality under Section 59-1-403 or
293 Section 6103, Internal Revenue Code, to the office; and

294 (B) if the new state revenues collected as a result of a new commercial project are
295 attributable in whole or in part to [~~a new or expanded industrial, manufacturing, distribution, or~~
296 ~~business service within~~] a new commercial project within the community development and
297 renewal agency, a document signed by an authorized representative of each person involved in
298 creating the new [~~or expanded industrial, manufacturing, distribution, or business service~~]
299 commercial project that:

300 (I) expressly directs and authorizes the State Tax Commission to disclose the [~~returns~~
301 ~~of that new or expanded industrial, manufacturing, distribution, or business service and~~]
302 person's returns and other information that would otherwise be subject to confidentiality under
303 Section 59-1-403 or Section 6103, Internal Revenue Code, to the office; and

304 (II) lists the person's taxpayer identification number [~~of that new or expanded~~
305 ~~industrial, manufacturing, distribution, or business service~~]; and

306 (e) for a business entity only, documentation that the business entity has satisfied the

307 performance benchmarks outlined in the agreement described in Subsection 63M-1-2404(3)(a),
308 including:

309 (i) significant capital investment;

310 (ii) a qualified utility expansion;

311 [~~(ii)~~] (iii) the creation of high paying jobs;

312 [~~(iii)~~] (iv) significant purchases from [~~Utah~~] vendors and providers in the state; or

313 [~~(iv)~~] (v) any combination of Subsections (2)(e)(i), (ii), [~~and~~] (iii), and (iv).

314 (3) (a) The office shall submit the documents described in Subsection (2)(d) to the
315 State Tax Commission.

316 (b) Upon receipt of a document described in Subsection (2)(d), the State Tax
317 Commission shall provide the office with the returns and other information requested by the
318 office that the State Tax Commission is directed or authorized to provide to the office in
319 accordance with Subsection (2)(d).

320 (4) If, after review of the returns and other information provided by the State Tax
321 Commission, the office determines that the returns and other information are inadequate to
322 provide a reasonable justification for authorizing a tax credit, the office shall either:

323 (a) deny the tax credit; or

324 (b) inform the business entity or local government entity that the returns or other
325 information were inadequate and ask the business entity or local government entity to submit
326 new documentation.

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

331 (a) determine the amount of the tax credit to be granted to the business entity, local
332 government entity, or if the local government entity assigns the tax credit in accordance with
333 Section 63M-1-2404, to the community development and renewal agency to which the local
334 government entity assigns the tax credit;

335 (b) issue a tax credit certificate to the business entity, local government entity, or if the
336 local government entity assigns the tax credit in accordance with Section 63M-1-2404, to the
337 community development and renewal agency to which the local government entity assigns the

338 tax credit; and

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

340 (6) A business entity, local government entity, or community development and renewal
341 agency may not claim a tax credit unless the business entity, local government entity, or
342 community development and renewal agency has a tax credit certificate issued by the office.

343 (7) (a) A business entity, local government entity, or community development and
344 renewal agency may claim a tax credit in the amount listed on the tax credit certificate on its
345 tax return.

346 (b) A business entity, local government entity, or community development and renewal
347 agency that claims a tax credit under this section shall retain the tax credit certificate in
348 accordance with Section 59-7-614.2 or 59-10-1107.

349 Section 5. Section **63M-1-2408** is amended to read:

350 **63M-1-2408. Transition clause -- Renegotiation of agreements -- Payment of**
351 **partial rebates.**

352 (1) As used in this section, "partial rebate" means an agreement between the office and
353 a business entity under which the state agrees to pay back to the business entity a portion of
354 new state revenues generated by a business entity's new commercial project.

355 (2) (a) Unless modified or renegotiated as provided in Subsection (2)(b), the Division
356 of Finance shall make partial rebate payments due under agreements entered into by the office
357 before May 5, 2008 as provided in this section.

358 (b) By January 1, 2009, the office shall:

359 (i) contact each business entity with whom the office entered into an agreement under
360 former Section 63-38f-1304 or 63-38f-1704; and

361 (ii) subject to the limits established in Subsection 63M-1-2404(3)~~(c)~~(d), seek to
362 modify those agreements for the sole purpose of providing the incentives in the form of tax
363 credits under this part rather than partial rebates.

364 (c) The office shall:

365 (i) for each modified agreement granting tax credits, follow the procedures and
366 requirements of Section 63M-1-2405; and

367 (ii) for each agreement that still requires the state to pay partial rebates to the business
368 entity, follow the procedures and requirements of this section.

369 (3) (a) There is created a restricted account in the General Fund known as the
370 Economic Incentive Restricted Account.

371 (b) The account shall consist of money transferred into the account by the Division of
372 Finance from the General Fund as provided in this section.

373 (c) The Division of Finance shall make payments from the account as required by this
374 section.

375 (4) (a) Each business entity seeking a partial rebate shall follow the procedures and
376 requirements of this Subsection (4) to obtain a partial rebate.

377 (b) Within 90 days of the end of each calendar year, a business entity seeking a partial
378 rebate shall:

379 (i) provide the office with documentation of the new state revenues that the business
380 entity generated during the preceding calendar year; and

381 (ii) ensure that the documentation includes:

382 (A) the types of taxes and corresponding amounts of taxes paid directly to the State
383 Tax Commission; and

384 (B) the sales taxes paid to Utah vendors and suppliers that were indirectly paid to the
385 State Tax Commission.

386 (c) The office shall:

387 (i) audit or review the documentation for accuracy;

388 (ii) based upon its analysis of the documentation, determine the amount of partial
389 rebates that the business entity earned under the agreement; and

390 (iii) submit to the Division of Finance:

391 (A) a request for payment of partial rebates to the business entity;

392 (B) the name and address of the payee; and

393 (C) any other information requested by the Division of Finance.

394 (5) Upon receipt of a request for payment of partial rebates from the office, the
395 Division of Finance shall:

396 (a) transfer from the General Fund to the restricted account the amount contained in the
397 request for payment of partial rebates after reducing the amount transferred by any
398 unencumbered balances in the restricted account; and

399 (b) notwithstanding Subsections 51-5-3(23)(b) and 63J-1-104(3)(c), after receiving a

400 request for payment of partial rebates and making the transfer required by Subsection (5)(a),
401 the Division of Finance shall pay the partial rebates from the account.

Legislative Review Note
as of 1-9-13 3:05 PM

Office of Legislative Research and General Counsel