

RURAL ECONOMIC DEVELOPMENT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

► modifies provisions related to the authorization of a tax credit by the Governor's Office of Economic Development for a new commercial project initiated within the boundary of a county of the third, fourth, fifth, or sixth class;

► modifies the definition of "new commercial project," "high paying job," and "significant capital investment," for a new commercial project initiated within the boundary of a county of the third, fourth, fifth, or sixth class; and

► makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



28 **63N-2-104**, as last amended by Laws of Utah 2018, Chapter 281

29 **63N-2-105**, as last amended by Laws of Utah 2016, Chapter 350



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

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

33 **63N-1-102. Definitions.**

34 As used in this title:

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

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

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

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

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

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

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

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

53 (7) "High paying job" means a newly created full-time employee position where the
54 aggregate average annual gross wage of the employment position, not including health care or
55 other paid or unpaid benefits, is:

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

58 (b) at least 100% of the average wage of the county in which the employment position

59 exists for an employment position related to a project described in Chapter 2, Part 1, Economic
 60 Development Tax Increment Financing, and initiated within the boundary of a county of the
 61 third, fourth, fifth, or sixth class.

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

63 (a) did not exist within a business entity in the state before the beginning of a project
 64 related to the business entity; and

65 (b) is created in addition to the number of baseline jobs that existed within a business
 66 entity.

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

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

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

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

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

75 (c) Title 59, Chapter 10, Part 2, Trusts and Estates;

76 (d) Title 59, Chapter 10, Part 4, Withholding of Tax; and

77 (e) Title 59, Chapter 12, Sales and Use Tax Act.

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

79 **63N-2-103. Definitions.**

80 As used in this part:

81 (1) "Authority" means:

82 (a) the Utah Inland Port Authority, created in Section [11-58-201](#); or

83 (b) the Military Installation Development Authority, created in Section [63H-1-201](#).

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

85 (a) the Utah Inland Port Authority, created in Section [11-58-201](#); or

86 (b) the Military Installation Development Authority, created in Section [63H-1-201](#).

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

90 (4) "Community reinvestment agency" has the same meaning as that term is defined in
91 Section 17C-1-102.

92 (5) "Development zone" means an economic development zone created under Section
93 63N-2-104.

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

96 (a) is initiated within:

97 (i) the boundary of the county, city, or town; or

98 (ii) an authority project area; and

99 (b) qualifies the county, city, town, or authority to receive a tax credit under Section
100 59-7-614.2.

101 (7) (a) "New commercial project" means an economic development opportunity that
102 involves new or expanded industrial, mining, agricultural, manufacturing, distribution, or
103 business services in Utah.

104 (b) "New commercial project" [~~does not include~~] includes retail business only if
105 initiated within the boundary of a county of the third, fourth, fifth, or sixth class.

106 (8) "Significant capital investment" means, for a new commercial project initiated
107 within the boundary of a county of the first or second class, an amount of at least \$10,000,000
108 or, for a new commercial project initiated within the boundary of a county of the third, fourth,
109 fifth, or sixth class, an amount of at least \$500,000 to purchase capital or fixed assets, which
110 may include real property, personal property, and other fixtures related to a new commercial
111 project:

112 (a) that represents an expansion of existing operations in the state; or

113 (b) that maintains or increases the business entity's existing work force in the state.

114 (9) "Tax credit" means an economic development tax credit created by Section
115 59-7-614.2 or 59-10-1107.

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

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

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

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

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

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

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

127 **63N-2-104. Creation of economic development zones -- Tax credits -- Assignment**
128 **of tax credit.**

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

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

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

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

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

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

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

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

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

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

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

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

152 requirements of Section 63N-2-105.

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

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

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

163 (c) (i) Except as provided in Subsection (3)(c)[(ii)](iii), the office may not authorize or
164 commit to authorize a tax credit, for a new commercial project that is initiated within the
165 boundary of a county of the first or second class, that exceeds:

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

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

170 (ii) Except as provided in Subsection (3)(c)(iii), the office may not authorize or commit
171 to authorize a tax credit, for a new commercial project initiated within the boundary of a county
172 of the third, fourth, fifth, or sixth class, that exceeds 50% of new state revenues from the new
173 commercial project over the lesser of the life of a new commercial project or 20 years.

174 [(ii)] (iii) If the eligible business entity makes capital expenditures in the state of
175 \$1,500,000,000 or more associated with a new commercial project, the office may:

176 (A) authorize or commit to authorize a tax credit not exceeding 60% of new state
177 revenues over the lesser of the life of the project or 20 years, if the other requirements of this
178 part are met;

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

181 (C) offer an incentive under this Subsection (3)(c)[(ii)](iii) or modify an existing
182 incentive previously granted under Subsection (3)(c)(i) or (ii) that is based on the baseline

183 measurements described in Subsection (3)(c)[~~(ii)~~](iii)(B), except that the incentive may not
184 authorize or commit to authorize a tax credit of more than 60% of new state revenues in any
185 one year.

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

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

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

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

194 (B) establish the obligations of the local government entity and the community
195 reinvestment agency; and

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

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

200 (A) the community reinvestment agency shall retain records as described in Subsection
201 (4)(d); and

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

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

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

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

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

212 (d) requires the business entity or local government entity to retain records supporting a
213 claim for a tax credit for at least four years after the business entity or local government entity

214 claims a tax credit under this part; and

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

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

218 **63N-2-105. Qualifications for tax credit -- Procedure.**

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

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

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

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

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

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

231 (d) if a local government entity seeks to assign the tax credit to a community
232 reinvestment agency as described in Section **63N-2-104**, a statement providing the name and
233 taxpayer identification number of the community reinvestment agency to which the local
234 government entity seeks to assign the tax credit;

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

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

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

244 (B) if the new state revenues collected as a result of a new commercial project are

245 attributable in whole or in part to a new or expanded industrial, mining, agricultural,
246 manufacturing, distribution, retail, or business service within a new commercial project within
247 the area of the local government entity, a document signed by an authorized representative of
248 the new or expanded industrial, mining, agricultural, manufacturing, distribution, retail, or
249 business service that:

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

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

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

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

263 (B) if the new state revenues collected as a result of a new commercial project are
264 attributable in whole or in part to a new or expanded industrial, mining, agricultural,
265 manufacturing, distribution, retail, or business service within a new commercial project within
266 the community reinvestment agency, a document signed by an authorized representative of the
267 new or expanded industrial, mining, agricultural, manufacturing, distribution, retail, or business
268 service that:

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

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

275 (f) for a business entity only, documentation that the business entity has satisfied the

276 performance benchmarks outlined in the written agreement described in Subsection
277 63N-2-104(3)(a), including:

- 278 (i) the creation of new incremental jobs that are also high paying jobs;
- 279 (ii) significant capital investment;
- 280 (iii) significant purchases from Utah vendors and providers; or
- 281 (iv) a combination of these benchmarks.

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

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

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

- 292 (a) (i) deny the tax credit; or
- 293 (ii) terminate the agreement described in Subsection 63N-2-104(3)(a) for failure to
294 meet the performance standards established in the agreement; or

295 (b) inform the business entity or local government entity that the returns or other
296 information were inadequate and ask the business entity or local government entity to submit
297 new documentation.

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

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

306 (b) issue a tax credit certificate to the business entity, local government entity, or if the

307 local government entity assigns the tax credit as described in Section 63N-2-104, to the
308 community reinvestment agency to which the local government entity assigns the tax credit;
309 and

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

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

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

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