

1 **ADMINISTRATIVE RULEMAKING AUTHORITY**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Howard A. Stephenson**

6 House Sponsor: David Ure

7

8 **LONG TITLE**

9 **General Description:**

10 This bill provides rulemaking authority to the Governor's Office of Economic
11 Development and to the executive director of the Department of Administrative
12 Services.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides administrative rulemaking authority to the Governor's Office of Economic
16 Development that is substantially similar to rulemaking authority held by the
17 previous Department of Community and Economic Development; and
18 ▶ reinstates prior administrative rulemaking authority to the executive director of the
19 Department of Administrative Services.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **63-38f-303**, as last amended by Chapter 48 and renumbered and amended by Chapter
27 148, Laws of Utah 2005



- 28 **63-38f-416**, as renumbered and amended by Chapter 148, Laws of Utah 2005
- 29 **63-38f-1111**, as renumbered and amended by Chapter 148, Laws of Utah 2005
- 30 **63-38f-1206**, as last amended by Chapter 48 and renumbered and amended by Chapter
- 31 148, Laws of Utah 2005
- 32 **63-38f-1211**, as renumbered and amended by Chapter 148, Laws of Utah 2005
- 33 **63-38f-1304**, as renumbered and amended by Chapter 148, Laws of Utah 2005
- 34 **63-38f-1305**, as renumbered and amended by Chapter 148, Laws of Utah 2005
- 35 **63-38f-1307**, as last amended by Chapter 48 and renumbered and amended by Chapter
- 36 148, Laws of Utah 2005
- 37 **63-38f-1604**, as renumbered and amended by Chapter 148, Laws of Utah 2005

38 ENACTS:

- 39 **63-38f-501.5**, Utah Code Annotated 1953
- 40 **63A-1-105.5**, Utah Code Annotated 1953



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

43 Section 1. Section **63-38f-303** is amended to read:

44 **63-38f-303. Board duties and powers.**

45 (1) The board shall:

46 (a) promote and encourage the economic, commercial, financial, industrial,

47 agricultural, and civic welfare of the state;

48 (b) do all lawful acts for the development, attraction, and retention of businesses,

49 industries, and commerce within the state;

50 (c) promote and encourage the expansion and retention of businesses, industries, and

51 commerce located in the state;

52 (d) support the efforts of local government and regional nonprofit economic

53 development organizations to encourage expansion or retention of businesses, industries, and

54 commerce located in the state;

55 (e) do other acts not specifically enumerated in this chapter, if the acts are for the

56 betterment of the economy of the state;

57 (f) work in conjunction with companies and individuals located or doing business

58 within the state to secure favorable rates, fares, tolls, charges, and classification for

59 transportation of persons or property by:

60 (i) railroad;

61 (ii) motor carrier; or

62 (iii) other common carriers;

63 (g) recommend policies, priorities, and objectives to the office regarding the assistance,
64 retention, or recruitment of business, industries, and commerce in the state; and

65 (h) recommend how any money or program administered by the office or its divisions
66 for the assistance, retention, or recruitment of businesses, industries, and commerce in the state
67 shall be administered, so that the money or program is equitably available to all areas of the
68 state unless federal or state law requires or authorizes the geographic location of a recipient of
69 the money or program to be considered in the distribution of the money or administration of the
70 program.

71 (2) The board may[;]:

72 (a) in furtherance of the authority granted under Subsection (1)(f), appear as a party
73 litigant on behalf of individuals or companies located or doing business within the state in
74 proceedings before regulatory commissions of the state, other states, or the federal government
75 having jurisdiction over such matters[-]; and

76 (b) make, amend, or repeal rules for the conduct of its business consistent with this part
77 and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

78 Section 2. Section **63-38f-416** is amended to read:

79 **63-38f-416. Technology-based service contracts within enterprise zones.**

80 (1) For purposes of this section:

81 (a) "Smart site enterprise" means a technology-based entity located within an enterprise
82 zone that is eligible to receive financial support under the office's smart site program.

83 (b) "Smart site program" means a program of the office dedicated to the development
84 of technology-based industry in rural Utah in which services that might otherwise be performed
85 by state agencies are outsourced to a smart site enterprise.

86 (c) "State agency" means the:

87 (i) Department of Commerce;

88 (ii) Department of Workforce Services;

89 (iii) Department of Transportation;

- 90 (iv) Department of Health;
- 91 (v) Department of Administrative Services;
- 92 (vi) Department of Public Safety;
- 93 (vii) Utah State Tax Commission; and
- 94 (viii) Governor's Office of Economic Development.

95 (d) "Technology-based contract" means a contract between a state agency and a smart
96 site enterprise for the smart site enterprise to provide the following services:

- 97 (i) software development and computer programming;
- 98 (ii) website design;
- 99 (iii) systems integration;
- 100 (iv) AutoCad/GIS mapping;
- 101 (v) help desk support, customer relationship management, and telephone or Internet
102 surveys;
- 103 (vi) computer graphics, animation, or illustration;
- 104 (vii) medical billing, coding, transcription, and related medical informatics services;
- 105 (viii) data entry, data conversion, and imaging;
- 106 (ix) information technology training and e-learning;
- 107 (x) network development, management, service, and support;
- 108 (xi) telecommunications technologies;
- 109 (xii) database development and applications;
- 110 (xiii) multimedia and digital technologies, including DVD;
- 111 (xiv) technical writing;
- 112 (xv) insurance and benefits administration;
- 113 (xvi) data warehousing and storage or web hosting;
- 114 (xvii) billing services; and
- 115 (xviii) information technology consulting.

116 (2) The office has the following responsibilities for the smart site program authorized
117 under this section:

- 118 (a) to provide market incentives identified in Subsection (4) to eligible state agencies
119 and provide technical assistance as appropriate;
- 120 (b) to administer funding and initiate interagency transfers consistent with the

121 provisions of this section;

122 (c) to provide state agencies with a listing of smart site enterprises; [~~and~~]

123 (d) to designate a smart site program director and notify state agencies of the
124 designation[-]; and

125 (e) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
126 make rules necessary to administer this section.

127 (3) A state agency has the following responsibilities if participating in the smart site
128 program offered under this section:

129 (a) to enter into a memorandum of understanding with the office indicating the steps
130 the agency shall take to encourage smart site enterprises to submit bids for technology-based
131 contracts; and

132 (b) to submit to the office by no later than July 30, an accounting of all
133 technology-based contracts awarded to smart site enterprises by the agency in the prior fiscal
134 year.

135 (4) (a) A state agency is eligible for an interagency transfer from the office for up to
136 10% of all technology-based contracts awarded to a smart site enterprise under the office's
137 smart site program.

138 (b) The office shall determine the amount of the interagency transfer as follows:

139 (i) if the total number of requests for interagency transfers under the program does not
140 exceed the legislative appropriation for the fiscal year, each eligible agency shall receive a full
141 10% transfer; or

142 (ii) if the total number of requests for interagency transfers under the program exceeds
143 the appropriation for the fiscal year, the office shall prorate the amount of each transfer based
144 on the respective percentage of all technology-based contracts submitted to the office by all
145 eligible state agencies.

146 (c) (i) After determining the amount of each agency's interagency transfer as required
147 under Subsection (4)(b), the office shall transfer the amount to each agency's budget.

148 (ii) The office shall make the transfer no later than August 15 to supplement the
149 agency's budget for the fiscal year beginning just prior to the interagency transfer.

150 (iii) An agency may use the interagency transfer it receives under this Subsection (4)(c)
151 for any purpose related to the agency's mission or its duties and responsibilities, including the

152 payment of incentives and award bonuses for participating in the smart site program.

153 (d) Funding for the interagency transfer under Subsection (4)(c) shall come from the
154 prior fiscal year appropriation to the office.

155 (e) The appropriation to fund this section is nonlapsing to provide for the distribution
156 process outlined in this Subsection (4).

157 Section 3. Section **63-38f-501.5** is enacted to read:

158 **63-38f-501.5. Rulemaking authority.**

159 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and for
160 purposes of this section, the office shall make rules:

161 (1) to determine what constitutes:

162 (a) substantial new employment;

163 (b) new capital development; and

164 (c) a project; and

165 (2) to establish a formula for determining the allocated cap amount for each business
166 applicant.

167 Section 4. Section **63-38f-1111** is amended to read:

168 **63-38f-1111. Annual report.**

169 (1) A county or municipality designated as a recycling market development zone shall
170 report by no later than July 31 of each year to the office regarding the economic activity that
171 has occurred in the zone following the designation.

172 (2) [~~The office shall prescribe~~] In accordance with Title 63, Chapter 46a, Utah
173 Administrative Rulemaking Act, the office may make rules providing for the form and content
174 of the annual reports.

175 Section 5. Section **63-38f-1206** is amended to read:

176 **63-38f-1206. Board duties and powers.**

177 (1) The board shall:

178 (a) establish criteria and procedures for the allocation and issuance of contingent tax
179 credits to designated investors by means of certificates issued by the board, provided that a
180 contingent tax credit may not be issued unless the Utah fund of funds:

181 (i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from
182 the state to the Utah fund of funds; and

- 183 (ii) agrees to repay the loan upon terms and conditions established by the board;
- 184 (b) establish criteria and procedures for assessing the likelihood of future certificate
185 redemptions by designated investors, including:
- 186 (i) criteria and procedures for evaluating the value of investments made by the Utah
187 fund of funds; and
- 188 (ii) the returns from the Utah fund of funds;
- 189 (c) establish criteria and procedures for registering and redeeming contingent tax
190 credits by designated investors holding certificates issued by the board;
- 191 (d) establish a target rate of return or range of returns on venture capital investments of
192 the Utah fund of funds;
- 193 (e) establish criteria and procedures governing commitments obtained by the board
194 from designated purchasers including:
- 195 (i) entering into commitments with designated purchasers; and
- 196 (ii) drawing on commitments to redeem certificates from designated investors; [~~and~~]
- 197 (f) have power to:
- 198 (i) expend funds;
- 199 (ii) invest funds;
- 200 (iii) enter into contracts;
- 201 (iv) insure against loss; and
- 202 (v) perform any other act necessary to carry out its purpose[-]; and
- 203 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
204 and in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 205 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the
206 Legislative Management Committee:
- 207 (i) whenever made, modified, or repealed; and
- 208 (ii) in each even-numbered year.
- 209 (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review
210 Committee from reviewing and taking appropriate action on any rule made, amended, or
211 repealed by the board.
- 212 [~~(2)~~] (3) (a) The criteria and procedures established by the board for the allocation and
213 issuance of contingent tax credits shall:

214 (i) include the contingencies that must be met for a certificate and its related tax credits
215 to be:

- 216 (A) issued by the board;
 - 217 (B) transferred by a designated investor; and
 - 218 (C) redeemed by a designated investor in order to receive a contingent tax credit; and
- 219 (ii) tie the contingencies for redemption of certificates to the targeted rates of return
220 and scheduled redemptions of equity interests purchased by designated investors in the Utah
221 fund of funds.

222 (b) The board may not issue contingent tax credits under this part prior to July 1, 2004.

223 [~~3~~] (4) (a) The board may charge a placement fee to the Utah fund of funds for the
224 issuance of a certificate and related contingent tax credit to a designated investor.

225 (b) The fee shall:

- 226 (i) be charged only to pay for reasonable and necessary costs of the board; and
- 227 (ii) not exceed .5% of the equity investment of the designated investor.

228 [~~4~~] (5) The board's criteria and procedures for redeeming certificates:

229 (a) shall give priority to the redemption amount from the available funds in the
230 redemption reserve; and

231 (b) to the extent there are insufficient funds in the redemption reserve to redeem
232 certificates, shall grant the board the option to redeem certificates:

- 233 (i) by certifying a contingent tax credit to the designated investor; or
- 234 (ii) by making demand on designated purchasers consistent with the requirements of
235 Section 63-38f-1221.

236 [~~5~~] (6) (a) The board shall, in consultation with the corporation, publish an annual
237 report of the activities conducted by the Utah fund of funds, and present the report to the
238 governor and the Executive Appropriations Committee of the Legislature.

239 (b) The annual report shall:

- 240 (i) include a copy of the audit of the Utah fund of funds and a valuation of the assets of
241 the Utah fund of funds;
- 242 (ii) review the progress of the investment fund allocation manager in implementing its
243 investment plan; and
- 244 (iii) describe any redemption or transfer of a certificate issued under this part.

245 (c) The annual report may not identify any specific designated investor who has
246 redeemed or transferred a certificate.

247 (d) (i) Beginning July 1, 2006, and thereafter every two years, the board shall publish a
248 progress report which shall evaluate the progress of the state in accomplishing the purposes
249 stated in Section 63-38f-1202.

250 (ii) The board shall give a copy of the report to the Legislature.

251 Section 6. Section **63-38f-1211** is amended to read:

252 **63-38f-1211. Management fee -- Additional financial assistance.**

253 (1) The corporation may charge a management fee on assets under management in the
254 Utah fund of funds.

255 (2) The fee shall:

256 (a) be in addition to any fee charged to the Utah fund of funds by the venture capital
257 investment fund allocation manager selected by the corporation; and

258 (b) be charged only to pay for reasonable and necessary costs of the corporation.

259 (3) The corporation may apply for and, when qualified, receive financial assistance
260 from the Industrial Assistance Fund under Title [9] 63, Chapter [2] 38f, Part [~~12~~] 9, Industrial
261 Assistance Fund, and under rules made by the Board of Business and Economic Development
262 in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to help
263 establish the program authorized under this part.

264 Section 7. Section **63-38f-1304** is amended to read:

265 **63-38f-1304. Development incentives.**

266 (1) The office, with advice from the board, may enter into agreements providing for
267 partial rebates of new state revenues generated by new commercial projects to companies or
268 individuals that create new economic growth within the development zone.

269 (2) In no event may the partial rebates be in excess of 50% of the new state revenues in
270 any given year.

271 (3) (a) The partial rebates may not exceed 30% of the new state revenues generated
272 over the life of a new commercial project.

273 (b) For purposes of this part, the life of a new commercial project is limited to 20
274 years.

275 (4) Partial rebates are subject to any other limitations adopted by board rule made in

276 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

277 Section 8. Section **63-38f-1305** is amended to read:

278 **63-38f-1305. Qualifications for credits and rebates.**

279 The office shall set standards to qualify for partial rebates under this part, subject to the
280 following:

281 (1) no partial rebates may be paid prior to verification, by the office, of the new state
282 revenues upon which the tax rebate is based;

283 (2) partial rebates can only be paid on projects that are within the development zone;

284 (3) partial rebates can only be paid on projects that bring new, incremental jobs to the
285 state;

286 (4) qualifying projects must involve direct investment within the geographic
287 boundaries of the development zone;

288 (5) only aerospace and aviation industry projects, as defined by board rule made in
289 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, are eligible for
290 partial rebates; and

291 (6) in order to claim payments representing partial rebates of new state revenues, a
292 person must:

293 (a) enter into an office-approved agreement with the office and affirm by contractual
294 agreement to keep supporting records for at least four years after final payment of partial
295 rebates under this part;

296 (b) submit to audits for verification of the amounts claimed; and

297 (c) comply with other conditions as are required by the office.

298 Section 9. Section **63-38f-1307** is amended to read:

299 **63-38f-1307. Office's authority.**

300 (1) The office, with the advice of the board and within the limitations of this part, may
301 determine:

302 (a) the structure and amount of any partial rebates offered under this part;

303 (b) the economic impacts and job creation necessary to qualify for the incentive; and

304 (c) the other terms and conditions of any agreement entered into under this part.

305 (2) In reviewing claims for partial rebates of new state revenues, the office may accept:

306 (a) as the amount of employee income taxes paid, the amount of employee income

307 taxes withheld and transmitted to the Utah State Tax Commission as evidenced by payroll
308 records rather than adjusting for the difference between taxes withheld and taxes actually paid
309 through filing by employees' annual income tax statements; and

310 (b) as the amount of company income taxes paid, the amount of corporate franchise
311 and income taxes estimated and transmitted to the Utah State Tax Commission as evidenced by
312 quarterly payment records rather than adjusting for the difference between estimated taxes paid
313 quarterly and taxes actually paid through the filing of the corporation's annual income tax
314 statement.

315 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
316 board may make, amend, and repeal rules regarding the development zone and partial rebates
317 offered within it, provided the rules are consistent with state and federal law.

318 Section 10. Section **63-38f-1604** is amended to read:

319 **63-38f-1604. Duties.**

320 (1) The program shall:

321 (a) provide, in conjunction with the Rural Coordinating Committee, staff support to the
322 Governor's Rural Partnership board;

323 (b) facilitate within the department implementation of the strategic plan prepared under
324 Subsection 63C-10-103(2);

325 (c) work to enhance the capacity of the office to address rural economic development,
326 planning, and leadership training challenges and opportunities by establishing partnerships and
327 positive working relationships with appropriate public and private sector entities, individuals,
328 and institutions;

329 (d) work with the Rural Coordinating Committee to coordinate and focus available
330 resources in ways that address the economic development, planning, and leadership training
331 challenges and priorities in rural Utah; and

332 (e) in accordance with economic development and planning policies set by state
333 government, coordinate relations between:

334 (i) the state;

335 (ii) rural governments;

336 (iii) other public and private groups engaged in rural economic planning and
337 development; and

338 (iv) federal agencies.

339 (2) (a) The program may:

340 (i) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

341 make rules necessary to carry out the duties of the office:

342 [(†)] (ii) accept gifts, grants, devises, and property, in cash or in kind, for the benefit of

343 rural Utah citizens; and

344 [(†)] (iii) use those gifts, grants, devises, and property received under Subsection

345 (2)(a)[(†)](ii) for the use and benefit of rural citizens within the state.

346 (b) All resources received under Subsection (2)(a)[(†)](ii) shall be deposited in the

347 General Fund as dedicated credits to be used as directed in Subsection (2)(a)[(†)](iii).

348 (c) All funding for the benefit of rural Utah as defined in this section is nonlapsing.

349 Section 11. Section **63A-1-105.5** is enacted to read:

350 **63A-1-105.5. Rulemaking authority of executive director.**

351 The executive director shall, upon the recommendation of the appropriate division

352 directors, make rules consistent with state and federal law, and in accordance with Title 63,

353 Chapter 46a, Utah Administrative Rulemaking Act, governing:

354 (1) administrative services; and

355 (2) the provision and use of administrative services furnished to state agencies and

356 institutions.

Legislative Review Note
as of 1-17-06 3:04 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Legislative Committee Note
as of 01-19-06 9:38 AM

The Administrative Rules Review Committee recommended this bill.