

COUNTY REVOLVING LOAN FUND AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill authorizes a refundable tax credit for revolving loan funds administered by a local government entity.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes a refundable tax credit for revolving loan funds administered by a local government entity used to finance small businesses;
- ▶ allows the Governor's Office of Economic Development to authorize certain local government entities to claim the refundable tax credit;
- ▶ establishes requirements for qualifying for the refundable tax credit;
- ▶ establishes the process for applying for and receiving the refundable tax credit;
- ▶ describes reporting requirements associated with the refundable tax credit; and
- ▶ provides a sunset date.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **63I-1-263**, as last amended by Laws of Utah 2017, Chapters 23, 47, 95, 166, 205, 469,
29 and 470

30 ENACTS:

31 **59-7-623**, Utah Code Annotated 1953

32 **63N-2-901**, Utah Code Annotated 1953

33 **63N-2-902**, Utah Code Annotated 1953

34 **63N-2-903**, Utah Code Annotated 1953

35 **63N-2-904**, Utah Code Annotated 1953

36 **63N-2-905**, Utah Code Annotated 1953

37 **63N-2-906**, Utah Code Annotated 1953

38 **63N-2-907**, Utah Code Annotated 1953

39

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

41 Section 1. Section **59-7-623** is enacted to read:

42 **59-7-623. Refundable economic development tax credit.**

43 (1) As used in this section:

44 (a) "Local government entity" means the same as that term is defined in Section
45 63N-2-902.

46 (b) "New commercial project" means the same as that term is defined in Section
47 63N-2-902.

48 (c) "New incremental jobs" means the same as that term is defined in Section
49 63N-2-902.

50 (d) "New state revenues" means the same as that term is defined in Section 63N-2-902.

51 (e) "Office" means the Governor's Office of Economic Development.

52 (2) Subject to the other provisions of this section, a local government entity may claim
53 a refundable tax credit for a revolving loan fund as provided in this section.

54 (3) The tax credit under this section is the amount listed as the tax credit amount on the
55 tax credit certificate that the office issues to the local government entity for the taxable year.

56 (4) (a) In accordance with any rules prescribed by the commission under Subsection
57 (4)(b), the commission shall make a refund to a local government entity that claims a tax credit
58 under this section.

59 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
60 commission may make rules providing the procedures for making a refund to a local
61 government entity as required by Subsection (4)(a).

62 (5) (a) In accordance with Section 59-7-159, the Revenue and Taxation Interim
63 Committee shall study the tax credit allowed by this section and make recommendations
64 concerning whether the tax credit should be continued, modified, or repealed.

65 (b) Except as provided in Subsection (5)(c), for purposes of the study required by this
66 Subsection (5), the office shall provide the following information, if available to the office, to
67 the Revenue and Taxation Interim Committee by electronic means:

68 (i) the amount of tax credit that the office grants to each local government entity for
69 each calendar year;

70 (ii) the criteria that the office uses in granting a tax credit;

71 (iii) the new state revenues generated as a result of each new commercial project within
72 a local government entity for each calendar year;

73 (iv) estimates for each of the next three calendar years of the following:

74 (A) the amount of tax credits that the office will grant;

75 (B) the amount of new state revenues that will be generated; and

76 (C) the number of new incremental jobs within the state that will be generated;

77 (v) the information contained in the office's latest reports under Sections 63N-2-906
78 and 63N-2-907; and

79 (vi) any other information that the Revenue and Taxation Interim Committee requests.

80 (c) The Revenue and Taxation Interim Committee shall ensure that the
81 recommendations described in Subsection (5)(a) include an evaluation of:

82 (i) the cost of the tax credit to the state;

83 (ii) the purpose and effectiveness of the tax credit; and

84 (iii) the extent to which the state benefits from the tax credit.

85 Section 2. Section **63I-1-263** is amended to read:

86 **63I-1-263. Repeal dates, Titles 63A to 63N.**

87 (1) Subsection **63A-5-104**(4)(h) is repealed on July 1, 2024.

88 (2) Section **63A-5-603**, State Facility Energy Efficiency Fund, is repealed July 1, 2023.

89 (3) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July

90 1, 2018.

91 (4) Title 63C, Chapter 4b, Commission for the Stewardship of Public Lands, is
92 repealed November 30, 2019.

93 (5) Title 63C, Chapter 16, Prison Development Commission Act, is repealed July 1,
94 2020.

95 (6) Title 63C, Chapter 17, Point of the Mountain Development Commission Act, is
96 repealed July 1, 2021.

97 (7) Title 63C, Chapter 18, Mental Health Crisis Line Commission, is repealed July 1,
98 2018.

99 (8) Title 63G, Chapter 21, Agreements to Provide State Services, is repealed July 1,
100 2023.

101 (9) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
102 2020.

103 (10) Title 63H, Chapter 8, Utah Housing Corporation Act, is repealed July 1, 2026.

104 (11) On July 1, 2025:

105 (a) in Subsection 17-27a-404(3)(c)(ii), the language that states "the Resource
106 Development Coordinating Committee," is repealed;

107 (b) Subsection 23-14-21(2)(c) is amended to read "(c) provide notification of proposed
108 sites for the transplant of species to local government officials having jurisdiction over areas
109 that may be affected by a transplant.";

110 (c) in Subsection 23-14-21(3), the language that states "and the Resource Development
111 Coordinating Committee" is repealed;

112 (d) in Subsection 23-21-2.3(1), the language that states "the Resource Development
113 Coordinating Committee created in Section 63J-4-501 and" is repealed;

114 (e) in Subsection 23-21-2.3(2), the language that states "the Resource Development
115 Coordinating Committee and" is repealed;

116 (f) Subsection 63J-4-102(1) is repealed and the remaining subsections are renumbered
117 accordingly;

118 (g) Subsections 63J-4-401(5)(a) and (c) are repealed;

119 (h) Subsection 63J-4-401(5)(b) is renumbered to Subsection 63J-4-401(5)(a) and the
120 word "and" is inserted immediately after the semicolon;

- 121 (i) Subsection 63J-4-401(5)(d) is renumbered to Subsection 63J-4-401(5)(b);
- 122 (j) Sections 63J-4-501, 63J-4-502, 63J-4-503, 63J-4-504, and 63J-4-505 are repealed;
- 123 and
- 124 (k) Subsection 63J-4-603(1)(e)(iv) is repealed and the remaining subsections are
- 125 renumbered accordingly.
- 126 (12) (a) Subsection 63J-1-602.4(15) is repealed July 1, 2022.
- 127 (b) When repealing Subsection 63J-1-602.4(15), the Office of Legislative Research and
- 128 General Counsel shall, in addition to the office's authority under Subsection 36-12-12(3), make
- 129 necessary changes to subsection numbering and cross references.
- 130 (13) The Crime Victim Reparations and Assistance Board, created in Section
- 131 63M-7-504, is repealed July 1, 2027.
- 132 (14) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1, 2027.
- 133 (15) Title 63N, Chapter 2, Part 2, Enterprise Zone Act, is repealed July 1, 2018.
- 134 (16) (a) Title 63N, Chapter 2, Part 4, Recycling Market Development Zone Act, is
- 135 repealed January 1, 2021.
- 136 (b) Subject to Subsection (16)(c), Sections 59-7-610 and 59-10-1007 regarding tax
- 137 credits for certain persons in recycling market development zones, are repealed for taxable
- 138 years beginning on or after January 1, 2021.
- 139 (c) A person may not claim a tax credit under Section 59-7-610 or 59-10-1007:
- 140 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
- 141 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or
- 142 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
- 143 the expenditure is made on or after January 1, 2021.
- 144 (d) Notwithstanding Subsections (16)(b) and (c), a person may carry forward a tax
- 145 credit in accordance with Section 59-7-610 or 59-10-1007 if:
- 146 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and
- 147 (ii) (A) for the purchase price of machinery or equipment described in Section
- 148 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31,
- 149 2020; or
- 150 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
- 151 expenditure is made on or before December 31, 2020.

152 (17) Section 63N-2-512 is repealed on July 1, 2021.

153 (18) (a) Title 63N, Chapter 2, Part 6, Utah Small Business Jobs Act, is repealed
154 January 1, 2021.

155 (b) Section 59-9-107 regarding tax credits against premium taxes is repealed for
156 calendar years beginning on or after January 1, 2021.

157 (c) Notwithstanding Subsection (18)(b), an entity may carry forward a tax credit in
158 accordance with Section 59-9-107 if:

159 (i) the person is entitled to a tax credit under Section 59-9-107 on or before December
160 31, 2020; and

161 (ii) the qualified equity investment that is the basis of the tax credit is certified under
162 Section 63N-2-603 on or before December 31, 2023.

163 (19) Title 63N, Chapter 2, Part 9, Revolving Loan Fund Tax Increment Financing, is
164 repealed January 1, 2024.

165 [~~19~~] (20) Title 63N, Chapter 9, Part 2, Outdoor Recreational Infrastructure Grant
166 Program, is repealed January 1, 2023.

167 [~~20~~] (21) Title 63N, Chapter 12, Part 3, Utah Broadband Outreach Center, is repealed
168 July 1, 2018.

169 [~~21~~] (22) Title 63N, Chapter 12, Part 4, Career and Technical Education Board, is
170 repealed July 1, 2018.

171 Section 3. Section 63N-2-901 is enacted to read:

Part 9. Revolving Loan Fund Tax Increment Financing

63N-2-901. Title.

This part is known as "Revolving Loan Fund Tax Increment Financing."

175 Section 4. Section 63N-2-902 is enacted to read:

63N-2-902. Definitions.

As used in this part:

178 (1) "Business entity" means a sole proprietorship, partnership, association, joint
179 venture, corporation, firm, trust, foundation, or other organization or entity carried on for the
180 purpose of gain or economic profit.

181 (2) "High paying job" means a new incremental job in a new commercial project within
182 the county where the annual gross wage, not including health care or other paid or unpaid

183 benefits, is at least 110% of the average wage of the county in which the employment position
184 will exist.

185 (3) "Local government entity" means a county that enters into an agreement with the
186 office to receive a tax credit under Section 59-7-623.

187 (4) (a) "New commercial project" means the creation or expansion of a small business
188 entity:

189 (i) in a targeted industry;

190 (ii) within a local government entity; and

191 (iii) financed entirely or in part by a loan from a revolving loan fund administered by a
192 local government entity.

193 (b) "New commercial project" does not include the creation or expansion of a small
194 business entity primarily engaged in retail sales.

195 (5) (a) "New incremental jobs" means full-time employment positions that are filled by
196 employees who work at least 30 hours per week and that are created as part of a new
197 commercial project and are in addition to the baseline count of employment positions that
198 existed within a small business entity before the new commercial project.

199 (b) "New incremental jobs" may include full-time equivalent positions that are filled by
200 more than one employee, if each employee who works less than 30 hours per week is provided
201 benefits comparable to a full-time employee.

202 (c) "New incremental jobs" does not include jobs that are shifted from one jurisdiction
203 in the state to another jurisdiction in the state.

204 (6) "New state revenues" means:

205 (a) incremental new state sales and use tax revenues that a small business entity pays
206 under Title 59, Chapter 12, Sales and Use Tax Act, that would not have been paid but for a new
207 commercial project;

208 (b) incremental new state tax revenues that a small business entity pays that would not
209 have been paid but for a new commercial project under:

210 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

211 (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
212 Information;

213 (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;

- 214 (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or
215 (v) a combination of Subsections (6)(b)(i) through (iv);
216 (c) incremental new state tax revenues paid as individual income taxes under Title 59,
217 Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by
218 employees filling new incremental jobs within a new commercial project as evidenced by
219 payroll records that indicate the amount of employee income taxes withheld and transmitted to
220 the State Tax Commission by the small business entity; or
221 (d) a combination of Subsections (6)(a) through (c).
222 (7) "Small business entity" means a business entity with fewer than 50 employees.
223 (8) "Targeted industry" means an industry or group of industries targeted by the board
224 under Section [63N-3-111](#), for economic development in the state.
225 (9) "Tax credit" means a revolving loan fund tax credit created by Section [59-7-623](#).
226 (10) "Tax credit amount" means the amount the office lists as a tax credit on a tax
227 credit certificate for a taxable year.
228 (11) "Tax credit certificate" means a certificate issued by the office that:
229 (a) lists the name of the local government entity to which the office authorizes a tax
230 credit;
231 (b) lists the local government entity's taxpayer identification number;
232 (c) lists the amount of tax credit that the office authorizes the local government entity
233 for the taxable year; and
234 (d) may include other information as determined by the office.
235 Section 5. Section **63N-2-903** is enacted to read:
236 **63N-2-903. Tax credits -- Assignment of tax credit.**
237 (1) The office, after consultation with the board, may enter into a written agreement
238 with a local government entity authorizing a tax credit to the local government entity for one or
239 more new commercial projects if the local government entity meets the requirements described
240 in this part.
241 (2) The office shall ensure that the written agreement described in Subsection (1):
242 (a) specifies the requirements that the local government entity shall meet to qualify for
243 a tax credit under this part;
244 (b) specifies the new commercial project or projects for which the tax credit is

245 authorized;

246 (c) specifies the total amount of tax credit that the local government entity may be
247 authorized under the agreement;

248 (d) specifies the maximum amount of tax credit that the local government entity may
249 be authorized for a taxable year;

250 (e) establishes the length of time the local government entity may claim a tax credit;

251 (f) establishes the baseline count of employment positions that existed within a small
252 business entity prior to each new commercial project specified in Subsection (2)(b);

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

256 (h) requires the local government entity to submit to audits for verification of the tax
257 credit claimed.

258 (3) The office may not authorize or commit to authorize a tax credit that exceeds:

259 (a) 50% of the new state revenues from all new commercial projects included in the
260 agreement described in Subsection (1) in any given year; or

261 (b) 30% of the new state revenues from all new commercial projects included in the
262 agreement described in Subsection (1) over five years.

263 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
264 the office shall make rules establishing the requirements for the office to authorize a tax credit
265 to a local government entity for one or more new commercial projects under this part.

266 (b) The office shall ensure that the requirements described in Subsection (4)(a) include
267 that each new commercial project:

268 (i) brings new incremental jobs to the local government entity;

269 (ii) includes the creation of high paying jobs in the local government entity; and

270 (iii) generates new state revenues.

271 Section 6. Section **63N-2-904** is enacted to read:

272 **63N-2-904. Qualifications for tax credit -- Procedure.**

273 (1) The office shall certify a local government entity's eligibility for a tax credit under
274 this part.

275 (2) A local government entity seeking to receive a tax credit under this part shall

276 provide the office with an application for a tax credit certificate that includes:

277 (a) documentation of the new state revenues that were paid during the preceding
278 calendar year from each new commercial project included in the agreement described in
279 Subsection 63N-2-903(1), including documentation demonstrating that the new state revenues
280 would not have been paid but for the new commercial project;

281 (b) known or expected detriments to the state or existing businesses in the state from
282 each new commercial project included in the agreement described in Subsection 63N-2-903(1);

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

287 (ii) a document signed by an authorized representative of each small business entity
288 that carried out a new commercial project included in the agreement described in Subsection
289 63N-2-903(1) that:

290 (A) expressly directs and authorizes the State Tax Commission to disclose to the office
291 the returns of the small business entity and other information that would otherwise be subject
292 to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code; and

293 (B) lists the taxpayer identification number of the small business entity; and

294 (d) documentation that each new commercial project has satisfied the performance
295 benchmarks outlined in the written agreement described in Subsection 63N-2-903(1), including
296 the creation of new incremental jobs that are also high paying jobs.

297 (3) (a) The office shall submit the documents described in Subsection (2)(c) to the
298 State Tax Commission.

299 (b) Upon receipt of a document described in Subsection (2)(c), the State Tax
300 Commission shall provide the office with the returns and other information requested by the
301 office that the State Tax Commission is directed or authorized to provide to the office in
302 accordance with Subsection (2)(c).

303 (4) If, after review of the returns and other information provided by the State Tax
304 Commission and the local government entity, the office determines that the returns and other
305 information are inadequate to provide a reasonable justification for authorizing or continuing a
306 tax credit, the office shall:

- 307 (a) deny the tax credit;
- 308 (b) terminate the agreement described in Subsection 63N-2-903(1) for failure to meet
- 309 the performance standards established in the agreement; or
- 310 (c) inform the local government entity that the returns or other information were
- 311 inadequate and ask the local government entity to submit new documentation.
- 312 (5) If, after review of the returns and other information provided by the State Tax
- 313 Commission, the office determines that the returns and other information provided by the local
- 314 government entity provide reasonable justification for authorizing a tax credit, the office shall,
- 315 based upon the returns and other information:
- 316 (a) determine the amount of the tax credit to be granted to the local government entity;
- 317 (b) issue a tax credit certificate to the local government entity; and
- 318 (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.
- 319 (6) A local government entity may not claim a tax credit unless the local government
- 320 entity has a tax credit certificate issued by the office.
- 321 (7) (a) A local government entity may claim a tax credit in the amount listed on the tax
- 322 credit certificate.
- 323 (b) A local government entity that claims a tax credit under this section shall retain the
- 324 tax credit certificate in accordance with Section 59-7-623.
- 325 Section 7. Section **63N-2-905** is enacted to read:
- 326 **63N-2-905. Expenditure of amounts received by a local government entity as a tax**
- 327 **credit.**
- 328 A local government entity may expend amounts the local government entity receives as
- 329 a tax credit under Section 59-7-623:
- 330 (1) to support a revolving loan fund for small business enterprises administered by the
- 331 local government entity;
- 332 (2) to make loans from a revolving loan fund for small business enterprises
- 333 administered by the local government entity; or
- 334 (3) to capitalize a loan loss reserve for a revolving loan fund for small business
- 335 enterprises administered by the local government entity.
- 336 Section 8. Section **63N-2-906** is enacted to read:
- 337 **63N-2-906. Reports -- Audit and study of tax credits.**

338 (1) The office shall include the following information in the annual written report
339 described in Section 63N-1-301:

340 (a) the number of new incremental jobs and high paying jobs created as part of each
341 new commercial project under this part;

342 (b) the maximum amount of tax credit commitments made by the office and the period
343 of time over which tax credits will be paid for each new commercial project under this part;

344 (c) the actual amount of tax credit granted by the office and the period of time over
345 which tax credits will be paid for each new commercial project under this part;

346 (d) the economic impact on the state from new state revenues and the provision of tax
347 credits under this part;

348 (e) the estimated costs and economic benefits of the tax credit commitments made by
349 the office; and

350 (f) the actual costs and economic benefits of the tax credit commitments made by the
351 office.

352 (2) (a) On or before September 1, 2023, the office shall:

353 (i) conduct an audit of the tax credits allowed under this part;

354 (ii) study the tax credits allowed under this part; and

355 (iii) make recommendations concerning whether the tax credits should be continued,
356 modified, or repealed.

357 (b) The audit shall include an evaluation of:

358 (i) the cost of the tax credits;

359 (ii) the purposes and effectiveness of the tax credits;

360 (iii) the extent to which the state benefits from the tax credits; and

361 (iv) the state's return on investment under this part measured by new state revenues,
362 compared with the costs of tax credits provided and GOED's expenses in administering this
363 part.

364 (c) The office shall provide the results of the audit described in this Subsection (2):

365 (i) in the written annual report described in Subsection (1); and

366 (ii) as part of the review described in Section 59-7-159.

367 Section 9. Section 63N-2-907 is enacted to read:

368 **63N-2-907. Reports of new state revenues, partial rebates, and tax credits.**

369 (1) Before October 1 of each year, the office shall submit a report to the Governor's
370 Office of Management and Budget, the Office of the Legislative Fiscal Analyst, and the
371 Division of Finance identifying:

372 (a) (i) the total estimated amount of new state revenues created from new commercial
373 projects under this part;

374 (ii) the estimated amount of new state revenues from new commercial projects under
375 this part that will be generated from:

376 (A) sales tax;

377 (B) income tax; and

378 (C) corporate franchise and income tax; and

379 (iii) the minimum number of new incremental jobs and high paying jobs that will be
380 created before any tax credit is awarded; and

381 (b) the total estimated amount of tax credits that the office projects that local
382 government entities will qualify to claim under this part.

383 (2) At the reasonable request of the Governor's Office of Management and Budget, the
384 Office of the Legislative Fiscal Analyst, or the Division of Finance, the office shall provide
385 additional information about the tax credit, new incremental jobs and high paying jobs, costs,
386 and economic benefits related to this part, if the information is part of a public record as
387 defined in Section [63G-2-103](#).

Legislative Review Note
Office of Legislative Research and General Counsel