Title 63M. Governor's Programs

Chapter 1
Governor's Office of Economic Development

Part 1
General Provisions

63M-1-101 Title.
(1) This title is known as "Governor's Programs."
(2) This chapter is known as the "Governor's Office of Economic Development."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-102 Definitions.
As used in this chapter:
(1) "Board" means the Board of Business and Economic Development.
(2) "Director" means the director of the office.
(3) "Office" means the Governor's Office of Economic Development.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2
Organization and Duties of the Governor's Office of Economic Development

63M-1-201 Creation of office.
(1) There is created the Governor's Office of Economic Development.
(2) The office shall:
(a) be responsible for economic development within the state;
(b) perform economic development planning for the state;
(c) administer and coordinate all state or federal grant programs which are, or become available, for economic development;
(d) administer any other programs over which the office is given administrative supervision by the governor;
(e) submit an annual written report as described in Section 63M-1-206; and
(f) perform any other duties as provided by the Legislature.
(3) The office may solicit and accept contributions of money, services, and facilities from any other source, public or private, but may not use the money for publicizing the exclusive interest of the donor.
(4) Money received under Subsection (3) shall be deposited in the General Fund as dedicated credits of the office.
(5)
(a) The office is recognized as an issuing authority as defined in Subsection 63M-1-3002(7), entitled to issue bonds from the Small Issue Bond Account created in Subsection 63M-1-3006(1)(c) as a part of the state's private activity bond volume cap authorized by the Internal Revenue Code of 1986 and computed under Section 146 of the code.

(b) To promote and encourage the issuance of bonds from the Small Issue Bond Account for manufacturing projects, the office may:
(i) develop campaigns and materials that inform qualified small manufacturing businesses about the existence of the program and the application process;
(ii) assist small businesses in applying for and qualifying for these bonds; or
(iii) develop strategies to lower the cost to small businesses of applying for and qualifying for these bonds, including making arrangements with financial advisors, underwriters, bond counsel, and other professionals involved in the issuance process to provide their services at a reduced rate when the division can provide them with a high volume of applicants or issues.

Amended by Chapter 371, 2014 General Session

63M-1-202 Director of office -- Appointment -- Removal -- Compensation.
(1) The office shall be administered, directed, controlled, organized, and managed by a director appointed by the governor.
(2) The director serves at the pleasure of the governor.
(3) The salary of the director shall be established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-203 Powers and duties of director.
(1) The director, with the approval of the governor, may:
(a) by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, seek federal grants, loans, or participation in federal programs;
(b) enter into lawful contracts or agreements with other states, any chamber of commerce organization, any service club, and a private entity pursuant to Section 63M-1-2610; and
(c) annually prepare and submit to the governor a budget of the office's financial requirements.
(2) If any federal program requires the expenditure of state funds as a condition to participation by the state in any fund, property, or service, with the governor's approval, the director shall expend whatever funds are necessary out of the money provided by the Legislature for the use of the office.

Amended by Chapter 352, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-204 Organization of office -- Jurisdiction of director.
(1) Unless otherwise expressly provided by statute, the director may organize the office in any fashion considered appropriate, including the appointment of deputy directors of the office.
(2) The director may make consolidations of personnel and service functions to effectuate efficiency and economy within the office.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-205 Interface with Public Service Commission.
(1) The director or the director's designee shall:

(a) become generally informed of significant rate cases and policy proceedings before the Public Service Commission; and
(b) monitor and study the potential economic development impact of these proceedings before the Public Service Commission.
(2) In the discretion of the director or the director's designee, the office may appear in any proceeding before the Public Service Commission to testify, advise, or present argument regarding the economic development impact of any matter that is the subject of the proceeding.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-206 Annual report -- Content -- Format.
(1) The office shall prepare and submit to the governor and the Legislature, by October 1 of each year, an annual written report of the operations, activities, programs, and services of the office, including the divisions, sections, boards, commissions, councils, and committees established under this chapter, for the preceding fiscal year.
(2) For each operation, activity, program, or service provided by the office, the annual report shall include:
(a) a description of the operation, activity, program, or service;
(b) data selected and used by the office to measure progress, performance, and scope of the operation, activity, program, or service, including summary data;
(c) budget data, including the amount and source of funding, expenses, and allocation of full-time employees for the operation, activity, program, or service;
(d) historical data from previous years for comparison with data reported under Subsections (2)(b) and (c);
(e) goals, challenges, and achievements related to the operation, activity, program, or service;
(f) relevant federal and state statutory references and requirements;
(g) contact information of officials knowledgeable and responsible for each operation, activity, program, or service; and
(h) other information determined by the office that:
(i) may be needed, useful, or of historical significance; or
(ii) promotes accountability and transparency for each operation, activity, program, or service with the public and elected officials.
(3) The annual report shall be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature.
(4) The office shall:
(a) submit the annual report in accordance with Section 68-3-14; and
(b) make the annual report, and previous annual reports, accessible to the public by placing a link to the reports on the office's website.

Enacted by Chapter 371, 2014 General Session

Part 3
Board of Business and Economic Development

63M-1-301 Board of Business and Economic Development.

There is created within the office the Board of Business and Economic Development which shall advise the office.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-302 Members -- Meetings -- Expenses.

(1)
- (a) The board shall consist of 15 members appointed by the governor to four-year terms of office with the consent of the Senate.
- (b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (c) The members may not serve more than two full consecutive terms except where the governor determines that an additional term is in the best interest of the state.

(2) Not more than eight members of the board may be from one political party.

(3) The members shall be representative of all areas of the state.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) Eight members of the board constitute a quorum for conducting board business and exercising board power.

(6) The governor shall select one of the board members as its chair.

(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

63M-1-303 Board duties and powers.

(1) The board shall:
- (a) promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the state;
- (b) do all lawful acts for the development, attraction, and retention of businesses, industries, and commerce within the state;
- (c) promote and encourage the expansion and retention of businesses, industries, and commerce located in the state;
- (d) support the efforts of local government and regional nonprofit economic development organizations to encourage expansion or retention of businesses, industries, and commerce located in the state;
- (e) do other acts not specifically enumerated in this chapter, if the acts are for the betterment of the economy of the state;
- (f) work in conjunction with companies and individuals located or doing business within the state to secure favorable rates, fares, tolls, charges, and classification for transportation of persons or property by:
  - (i) railroad;
  - (ii) motor carrier; or
  - (iii) other common carriers;

(g) recommend policies, priorities, and objectives to the office regarding the assistance, retention, or recruitment of business, industries, and commerce in the state;
(h) recommend how any money or program administered by the office or its divisions for the assistance, retention, or recruitment of businesses, industries, and commerce in the state shall be administered, so that the money or program is equitably available to all areas of the state unless federal or state law requires or authorizes the geographic location of a recipient of the money or program to be considered in the distribution of the money or administration of the program; and
(i) maintain ethical and conflict of interest standards consistent with those imposed on a public officer under Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
(2) The board may:
(a) in furtherance of the authority granted under Subsection (1)(f), appear as a party litigant on behalf of individuals or companies located or doing business within the state in proceedings before regulatory commissions of the state, other states, or the federal government having jurisdiction over such matters; and
(b) make, amend, or repeal rules for the conduct of its business consistent with this part and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 173, 2014 General Session

63M-1-304 Governor's Office of Economic Development -- Powers and duties of office -- Consulting with board on funds or services provided by office.
(1) For the purposes of this section:
(a) "National recruitment" means the recruitment to the state of business, industry, or commerce if, at the time of the recruitment, the business, industry, or commerce is principally located in the United States.
(b) "Private entity" means a private person, corporation, company, or organization.
(2)
(a) The office shall obtain the advice of the board prior to an imposition of or change to a policy, priority, or objective under which the office operates.
(b) Subsection (2)(a) does not apply to the routine administration by the office of funds or services related to assistance, retention, or recruitment of business, industry, or commerce in this state.
(3) The office shall:
(a) be the industrial promotion authority of the state;
(b) promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the state;
(c) do all lawful acts to create, develop, attract, and retain business, industry, and commerce within the state; and
(d) do other acts that enhance the economy of the state.
(4) The office may:
(a) enter into contracts or agreements with, or make grants to, public or private entities, including municipalities, in the furtherance of its duties where the contracts or agreements are not in violation of the Constitution or statutes of the state; and
(b) receive and expend funds available from any source, public or private, in any manner and for any lawful purpose in the best interest of the state in the discharge of their obligations under this part.

(5) The director or the director's designee shall consult with the board at each meeting of the board regarding the administration by the office of funds or services related to assistance, retention, or recruitment of business, industry, or commerce in the state.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 4
Enterprise Zone Act

63M-1-401 Title.

This part is known as the "Enterprise Zone Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-402 Definitions.

As used in this part:

(1) "Business entity" means an entity, sole proprietorship, or individual:
  (a) including a claimant, estate, or trust; and
  (b) under which or by whom business is conducted or transacted.
(2) "Claimant" means a resident or nonresident person that has:
  (a) Utah taxable income as defined in Section 59-7-101; or
  (b) state taxable income under Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information.
(3) "County applicant" means the governing authority of a county that meets the requirements for designation as an enterprise zone under Section 63M-1-404.
(4) "Estate" means a nonresident estate or a resident estate that has state taxable income under Title 59, Chapter 10, Part 2, Trusts and Estates.
(5) "Municipal applicant" means the governing authority of a city or town that meets the requirements for designation as an enterprise zone under Section 63M-1-404.
(6) "New full-time employee position" means a position that has been newly created and then filled by an employee working at least 30 hours per week:
  (a) for a period of not less than six consecutive months; and
  (b) where the period ends in the tax year for which the credit is claimed.
(7) "Nonrefundable tax credit" or "tax credit" means a tax credit that a business entity may:
  (a) claim:
    (i) as provided by statute; and
    (ii) in an amount that does not exceed the business entity's tax liability for a taxable year under:
      (A)Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
      (B)Title 59, Chapter 10, Individual Income Tax Act; and
  (b) carry forward or carry back:
    (i) if allowed by statute; and
    (ii) to the extent that the amount of the tax credit exceeds the business entity's tax liability for a taxable year under:
      (A)Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
      (B)Title 59, Chapter 10, Individual Income Tax Act.

(8) "Tax incentives" or "tax benefits" means the nonrefundable tax credits described in Section 63M-1-413.
(9) "Trust" means a nonresident trust or a resident trust that has state taxable income under Title 59, Chapter 10, Part 2, Trusts and Estates.

Amended by Chapter 84, 2011 General Session

63M-1-403 Powers of the office.

The office shall:
(1) monitor the implementation and operation of this part and conduct a continuing evaluation of the progress made in the enterprise zones;
(2) evaluate an application for designation as an enterprise zone from a county applicant or a municipal applicant and determine if the applicant qualifies for that designation;
(3) provide technical assistance to county applicants and municipal applicants in developing applications for designation as enterprise zones;
(4) assist county applicants and municipal applicants designated as enterprise zones in obtaining assistance from the federal government and agencies of the state;
(5) assist a qualified business entity in obtaining the benefits of an incentive or inducement program authorized by this part; and
(6) as part of the annual written report described in Section 63M-1-206, prepare an annual evaluation based, in part, on data provided by the State Tax Commission that evaluates the effectiveness of the program and any suggestions for legislation.

Amended by Chapter 371, 2014 General Session

63M-1-404 Criteria for designation of enterprise zones -- Application.

(1) A county applicant seeking designation as an enterprise zone shall file an application with the office that, in addition to complying with the other requirements of this part:
  (a) verifies that the county has a population of not more than 50,000; and
  (b) provides clear evidence of the need for development in the county.
(2) A municipal applicant seeking designation as an enterprise zone shall file an application with the office that, in addition to complying with other requirements of this part:
  (a) verifies that the municipality has a population that does not exceed 15,000;
  (b) verifies that the municipality is within a county that has a population of not more than 50,000; and
  (c) provides clear evidence of the need for development in the municipality.
(3) An application filed under Subsection (1) or (2) shall be in a form and in accordance with procedures approved by the office, and shall include the following information:
  (a) a plan developed by the county applicant or municipal applicant that identifies local contributions meeting the requirements of Section 63M-1-405;
  (b) the county applicant or municipal applicant has a development plan that outlines:
    (i) the types of investment and development within the zone that the county applicant or municipal applicant expects to take place if the incentives specified in this part are provided;
    (ii) the specific investment or development reasonably expected to take place;
    (iii) any commitments obtained from businesses;
    (iv) the projected number of jobs that will be created and the anticipated wage level of those jobs;

(v) any proposed emphasis on the type of jobs created, including any affirmative action plans; and
(vi) a copy of the county applicant's or municipal applicant's economic development plan to demonstrate coordination between the zone and overall county or municipal goals;
(c) the county applicant's or municipal applicant's proposed means of assessing the effectiveness of the development plan or other programs within the zone once they have been implemented within the zone;
(d) any additional information required by the office; and
(e) any additional information the county applicant or municipal applicant considers relevant to its designation as an enterprise zone.

Amended by Chapter 358, 2013 General Session

63M-1-405 Qualifying local contributions.
(1) An area may be designated as an enterprise zone only if the county applicant or municipal applicant agrees to make a qualifying local contribution.
(2) The qualifying local contribution may vary depending on available resources, and may include such elements as:
(a) simplified procedures for obtaining permits;
(b) dedication of available government grants;
(c) dedication of training funds;
(d) waiver of business license fees;
(e) infrastructure improvements;
(f) private contributions;
(g) utility rate concessions;
(h) small business incubator programs; or
(i) management assistance programs.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-406 Eligibility review.
(1) The office shall:
(a) review and evaluate the applications submitted under Section 63M-1-404; and
(b) determine whether each county applicant or municipal applicant is eligible for designation as an enterprise zone.
(2)
(a) The office shall designate enterprise zones.
(b) The office shall consider and evaluate an application using the following criteria:
(i) the pervasiveness of poverty, unemployment, and general distress in the proposed zone;
(ii) the extent of chronic abandonment, deterioration, or reduction in value of commercial, industrial, or residential structures in the proposed zone, and the extent of property tax arrearages in the proposed zone;
(iii) the potential for new investment and economic development in the proposed zone;
(iv) the county applicant's or municipal applicant's proposed use of other state and federal development funds or programs to increase the probability of new investment and development occurring;

(v) the extent to which the projected development in the zone will provide employment to residents of the county and particularly individuals who are unemployed or who are economically disadvantaged;
(vi) the degree to which the county applicant's or municipal applicant's application promotes innovative solutions to economic development problems and demonstrates local initiative; and
(vii) other relevant factors that the office specifies in its recommendation.

Amended by Chapter 84, 2011 General Session

63M-1-407 Quarterly consideration.
The office shall consider designating enterprise zones quarterly.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-408 Duration of designation.
Each enterprise zone has a duration of five years, at the end of which the county may reapply for the designation.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-409 Contingent designations.
(1) The office may accept applications for, and may at any time grant, a contingent designation of any county as an enterprise zone for purposes of seeking a designation of the county as a federally designated zone.
(2) This designation does not entitle a business operating in that county to the tax incentives under this part.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-410 Revocation of designations.
(1) The office may revoke the designation of an enterprise zone, if no businesses utilize the tax incentives during any calendar year.
(2) Prior to that action, the office shall conduct a public hearing to determine reasons for inactivity and explore possible alternative actions.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-411 Disqualifying transfers.
Except in counties of the first or second class, tax incentives provided by this part are not available to companies that close or permanently curtail operations in another part of the state in connection with a transfer of any part of its business operations to an enterprise zone, if the closure or permanent curtailment is reasonably expected to diminish employment in that part of the state.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-412 Business entities qualifying for tax incentives.

(1) Except as otherwise provided in Subsection (2), the tax incentives described in this part are available only to a business entity for which at least 51% of the employees employed at facilities of the business entity located in the enterprise zone are individuals who, at the time of employment, reside in:
  (a) the county in which the enterprise zone is located; or
  (b) an enterprise zone that is immediately adjacent and contiguous to the county in which the enterprise zone is located.
(2) Subsection (1) does not apply to a business entity that has no employees.

Amended by Chapter 84, 2011 General Session

63M-1-413 State tax credits.
(1) Subject to the limitations of Subsections (2) through (4), the following nonrefundable tax credits against a tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, are applicable in an enterprise zone:
  (a) a tax credit of $750 may be claimed by a business entity for each new full-time employee position created within the enterprise zone;
  (b) an additional $500 tax credit may be claimed if the new full-time employee position created within the enterprise zone pays at least 125% of:
    (i) the county average monthly nonagricultural payroll wage for the respective industry as determined by the Department of Workforce Services; or
    (ii) if the county average monthly nonagricultural payroll wage is not available for the respective industry, the total average monthly nonagricultural payroll wage in the respective county where the enterprise zone is located;
  (c) an additional tax credit of $750 may be claimed if the new full-time employee position created within the enterprise zone is in a business entity that adds value to agricultural commodities through manufacturing or processing;
  (d) an additional tax credit of $200 may be claimed for two consecutive years for each new full-time employee position created within the enterprise zone that is filled by an employee who is insured under an employer-sponsored health insurance program if the employer pays at least 50% of the premium cost for the year for which the credit is claimed;
  (e) a tax credit of 50% of the value of a cash contribution to a private nonprofit corporation, except that the credit claimed may not exceed $100,000:
    (i) that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;
    (ii) whose primary purpose is community and economic development; and
    (iii) that has been accredited by the Governor's Rural Partnership Board;
  (f) a tax credit of 25% of the first $200,000 spent on rehabilitating a building in the enterprise zone that has been vacant for two years or more; and
  (g) an annual investment tax credit of 10% of the first $250,000 in investment, and 5% of the next $1,000,000 qualifying investment in plant, equipment, or other depreciable property.
(2)
  (a) Subject to the limitations of Subsection (2)(b), a business entity claiming tax credits under Subsections (1)(a) through (d) may claim the tax credits for up to 30 full-time employee positions per taxable year.
  (b) A business entity that received a tax credit for one or more new full-time employee positions under Subsections (1)(a) through (d) in a prior taxable year may claim a tax credit for a new full-time employee position in a subsequent taxable year under Subsections (1)(a) through (d) if:

(i) the business entity has created a new full-time position within the enterprise zone; and
(ii) the total number of full-time employee positions at the business entity at any point during the tax year for which the tax credit is being claimed is greater than the number of full-time employee positions that existed at the business entity at any point during the taxable year immediately preceding the taxable year for which the credit is being claimed.
(c) Construction jobs are not eligible for the tax credits under Subsections (1)(a) through (d).
(3) If the amount of a tax credit under this section exceeds a business entity's tax liability under this chapter for a taxable year, the business entity may carry forward the amount of the tax credit exceeding the liability for a period that does not exceed the next three taxable years.
(4) Tax credits under Subsections (1)(a) through (g) may not be claimed by a business entity primarily engaged in retail trade or by a public utilities business.
(5) A business entity that has no employees:
(a) may not claim tax credits under Subsections (1)(a) through (d); and
(b) may claim tax credits under Subsections (1)(e) through (g).
(6) A business entity may not claim or carry forward a tax credit available under this part for a taxable year during which the business entity has claimed the targeted business income tax credit available under Section 63M-1-504.

Amended by Chapter 259, 2014 General Session

63M-1-414 Annual report.

Each county applicant or municipal applicant designated as an enterprise zone shall annually report to the office regarding the economic activity that has occurred in the zone following the designation.

Amended by Chapter 84, 2011 General Session

63M-1-415 Indian tribes -- Application.

(1) For purposes of this section:
(a) "Indian reservation" is as defined in Section 9-9-210.
(b) "Indian tribe" is as defined in Subsection 9-9-402(6).
(c) "Tribal applicant" means the governing authority of a tribe that meets the requirements for designation as an enterprise zone under Subsection (2).
(2) Indian tribes may apply for designation of an area within an Indian reservation as an enterprise zone.
(3) The tribal applicant shall follow the application procedure for a municipal applicant in this part except for the population requirement in Subsections 63M-1-404(2)(a) and (b).

Amended by Chapter 114, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

Part 5
Targeted Business Income Tax Credits Within an Enterprise Zone

63M-1-501 Definitions.

As used in this part:

(1) "Allocated cap amount" means the total amount of the targeted business income tax credit that a business applicant is allowed to claim for a taxable year that represents a pro rata share of the total amount of $300,000 for each fiscal year allowed under Subsection 63M-1-504(2).
(2) "Business applicant" means a business that:
(a) is a:
(i) claimant;
(ii) estate; or
(iii) trust; and
(b) meets the criteria established in Section 63M-1-503.
(3)
(a) Except as provided in Subsection (3)(b), "claimant" means a resident or nonresident person.
(b) "Claimant" does not include an estate or trust.
(4) "Community investment project" means a project that includes one or more of the following criteria in addition to the normal operations of the business applicant:
(a) substantial new employment;
(b) new capital development; or
(c) a combination of both Subsections (4)(a) and (b).
(5) "Community investment project period" means the total number of years that the office determines a business applicant is eligible for a targeted business income tax credit for each community investment project.
(6) "Enterprise zone" means an area within a county or municipality that has been designated as an enterprise zone by the office under Part 4, Enterprise Zone Act.
(7) "Estate" means a nonresident estate or a resident estate.
(8) "Local zone administrator" means a person:
(a) designated by the governing authority of the county or municipal applicant as the local zone administrator in an enterprise zone application; and
(b) approved by the office as the local zone administrator.
(9) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or trust may claim:
(a) as provided by statute; and
(b) regardless of whether, for the taxable year for which the claimant, estate, or trust claims the tax credit, the claimant, estate, or trust has a tax liability under:
(i)Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
(ii)Title 59, Chapter 10, Individual Income Tax Act.
(10) "Targeted business income tax credit" means a refundable tax credit available under Section 63M-1-504.
(11) "Targeted business income tax credit eligibility form" means a document provided annually to the business applicant by the office that complies with the requirements of Subsection 63M-1-504(8).
(12) "Trust" means a nonresident trust or a resident trust.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-502 Rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and for purposes of this section, the office shall make rules:
(1) to determine what constitutes:
(a) substantial new employment;

(b) new capital development; and
(c) a project; and
(2) to establish a formula for determining the allocated cap amount for each business applicant.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-503 Application for targeted business income tax credits.
(1)
(a) For taxable years beginning on or after January 1, 2002, a business applicant may elect to claim a targeted business income tax credit available under Section 63M-1-504 if the business applicant:
(i) is located in:
(A) an enterprise zone; and
(B) a county with:
(I) a population of less than 25,000; and
(II) an unemployment rate that for six months or more of each calendar year is at least one percentage point higher than the state average;
(ii) meets the requirements of Section 63M-1-412;
(iii) provides:
(A) a community investment project within the enterprise zone; and
(B) a portion of the community investment project during each taxable year for which the business applicant claims the targeted business tax incentive; and
(iv) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is not engaged in the following, as defined by the State Tax Commission by rule:
(A) construction;
(B) retail trade; or
(C) public utility activities.
(b) For a taxable year for which a business applicant claims a targeted business income tax credit available under this part, the business applicant may not claim or carry forward a tax credit available under Section 59-7-610, 59-10-1007, or 63M-1-413.
(2)
(a) A business applicant seeking to claim a targeted business income tax credit under this part shall file an application as provided in Subsection (2)(b) with the local zone administrator by no later than June 1 of the year in which the business applicant is seeking to claim a targeted business income tax credit.
(b) The application described in Subsection (2)(a) shall include:
(i) any documentation required by the local zone administrator to demonstrate that the business applicant meets the requirements of Subsection (1);
(ii) a plan developed by the business applicant that outlines:
(A) if the community investment project includes substantial new employment, the projected number and anticipated wage level of the jobs that the business applicant plans to create as the basis for qualifying for a targeted business income tax credit;
(B) if the community investment project includes new capital development, a description of the capital development the business applicant plans to make as the basis for qualifying for a targeted business income tax credit; and
(C) a description of how the business applicant's plan coordinates with:
(I) the goals of the enterprise zone in which the business applicant is providing a community investment project; and

(II) the overall economic development goals of the county or municipality in which the business applicant is providing a community investment project; and
(iii) any additional information required by the local zone administrator.
(3)
(a) The local zone administrator shall:
(i) evaluate an application filed under Subsection (2); and
(ii) determine whether the business applicant is eligible for a targeted business income tax credit.
(b) If the local zone administrator determines that the business applicant is eligible for a targeted business income tax credit, the local zone administrator shall:
(i) certify that the business applicant is eligible for the targeted business income tax credit;
(ii) structure the targeted business income tax credit for the business applicant in accordance with Section 63M-1-504; and
(iii) monitor a business applicant to ensure compliance with this section.
(4) A local zone administrator shall report to the office by no later than June 30 of each year:
(a)
(i) any application approved by the local zone administrator during the last fiscal year; and
(ii) the information established in Subsections 63M-1-504(4)(a) through (d) for each new business applicant; and
(b)
(i) the status of any existing business applicants that the local zone administrator monitors; and
(ii) any information required by the office to determine the status of an existing business applicant.
(5)
(a) By July 15 of each year, the department shall notify the local zone administrator of the allocated cap amount that each business applicant that the local zone administrator monitors is eligible to claim.
(b) By September 15 of each year, the local zone administrator shall notify, in writing, each business applicant that the local zone administrator monitors of the allocated cap amount determined by the office under Subsection (5)(a) that the business applicant is eligible to claim for a taxable year.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-504 Targeted business income tax credit structure -- Duties of the local zone administrator -- Duties of the State Tax Commission.

(1) For taxable years beginning on or after January 1, 2002, a business applicant that is certified under Subsection 63M-1-503(3) and issued a targeted business tax credit eligibility form by the office under Subsection (8) may claim a refundable tax credit:
(a) against the business applicant's tax liability under:
(i)Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
(ii)Title 59, Chapter 10, Individual Income Tax Act; and
(b) subject to requirements and limitations provided by this part.
(2) The total amount of the targeted business income tax credits allowed under this part for all business applicants may not exceed $300,000 in any fiscal year.
(3)
(a) A targeted business income tax credit allowed under this part for each community investment project provided by a business applicant may not:

(i) be claimed by a business applicant for more than seven consecutive taxable years from the date the business applicant first qualifies for a targeted business income tax credit on the basis of a community investment project;
(ii) be carried forward or carried back;
(iii) exceed $100,000 in total amount for the community investment project period during which the business applicant is eligible to claim a targeted business income tax credit; or
(iv) exceed in any year that the targeted business income tax credit is claimed the lesser of:
(A) 50% of the maximum amount allowed by the local zone administrator; or
(B) the allocated cap amount determined by the office under Subsection 63M-1-503(5).
(b) A business applicant may apply to the local zone administrator to claim a targeted business income tax credit allowed under this part for each community investment project provided by the business applicant as the basis for its eligibility for a targeted business income tax credit.
(4) Subject to other provisions of this section, the local zone administrator shall establish for each business applicant that qualifies for a targeted business income tax credit:
(a) criteria for maintaining eligibility for the targeted business income tax credit that are reasonably related to the community investment project that is the basis for the business applicant's targeted business income tax credit;
(b) the maximum amount of the targeted business income tax credit the business applicant is allowed for the community investment project period;
(c) the time period over which the total amount of the targeted business income tax credit may be claimed;
(d) the maximum amount of the targeted business income tax credit that the business applicant will be allowed to claim each year; and
(e) requirements for a business applicant to report to the local zone administrator specifying:
(i) the frequency of the business applicant's reports to the local zone administrator, which shall be made at least quarterly; and
(ii) the information needed by the local zone administrator to monitor the business applicant's compliance with this Subsection (4) or Section 63M-1-503 that shall be included in the report.
(5) In accordance with Subsection (4)(e), a business applicant allowed a targeted business income tax credit under this part shall report to the local zone administrator.
(6) The amount of a targeted business income tax credit that a business applicant is allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the office or the local zone administrator determines that the business applicant has failed to comply with a requirement of Subsection (3) or Section 63M-1-503.
(7) The office or local zone administrator may audit a business applicant to ensure:
(a) eligibility for a targeted business income tax credit; or
(b) compliance with Subsection (3) or Section 63M-1-503.
(8) The office shall issue a targeted business income tax credit eligibility form in a form jointly developed by the State Tax Commission and the office no later than 30 days after the last day of the business applicant's taxable year showing:
(a) the maximum amount of the targeted business income tax credit that the business applicant is eligible for that taxable year;
(b) any reductions in the maximum amount of the targeted business income tax credit because of failure to comply with a requirement of Subsection (3) or Section 63M-1-503;
(c) the allocated cap amount that the business applicant may claim for that taxable year; and
(d) the actual amount of the targeted business income tax credit that the business applicant may claim for that taxable year.

(9)
(a) A business applicant shall retain the targeted business income tax credit eligibility form provided by the office under this Subsection (9).
(b) The State Tax Commission may audit a business applicant to ensure:
(i) eligibility for a targeted business income tax credit; or
(ii) compliance with Subsection (3) or Section 63M-1-503.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 6
State Advisory Council on Science and Technology

63M-1-601 Purpose.
The purpose of this part is to establish an advisory council on science and technology to assist in the development of programs, communication, and use of science and technology in governmental organizations in the state.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-602 Definition of terms.
As used in this part:
(1) "Adviser" means the state science adviser appointed under this part.
(2) "Council" means the State Advisory Council on Science and Technology created under this part.
(3) "Director" means the governor's director for economic development.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-603 Creation.
There is created the State Advisory Council on Science and Technology within the Governor's Office of Economic Development, which shall perform the functions and duties provided in this part.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-604 Members -- Appointment -- Terms -- Qualifications -- Vacancies -- Chair and vice chair -- Executive secretary -- Executive committee -- Quorum -- Expenses.
(1) The council comprises the following nonvoting members or their designees:
(a) the adviser;
(b) the executive director of the Department of Natural Resources;
(c) the executive director of the Department of Heritage and Arts;
(d) the executive director of the Department of Health;
(e) the executive director of the Department of Environmental Quality;
(f) the commissioner of agriculture and food;
(g) the commissioner of higher education;
(h) the state planning coordinator; and

(i) the executive director of the Department of Transportation.
(2) The governor may appoint other voting members, not to exceed 12.
(3)
(a) Except as required by Subsection (3)(b), as terms of current council members expire, the governor shall appoint each new member or reappointed member to a four-year term.
(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.
(4) The governor shall consider all institutions of higher education in the state in the appointment of council members.
(5) The voting members of the council shall be experienced or knowledgeable in the application of science and technology to business, industry, or public problems and have demonstrated their interest in and ability to contribute to the accomplishment of the purposes of this part.
(6) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(7)
(a) Each year the council shall select from its membership a chair and a vice chair.
(b) The chair and vice chair shall hold office for one year or until a successor is appointed and qualified.
(8) The adviser serves as executive secretary of the council.
(9) An executive committee shall be established consisting of the chair, vice chair, and the adviser.
(10)
(a) In order to conduct business matters of the council at regularly convened meetings, a quorum consisting of a simple majority of the total voting membership of the council is required.
(b) All matters of business affecting public policy require not less than a simple majority of affirmative votes of the total membership.
(11) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 212, 2012 General Session

63M-1-605 Duties and powers.
(1) The council shall:
(a) encourage the use of science and technology in the administration of state and local government;
(b) develop programs whereby state agencies and the several public and private institutions of higher education and technical colleges within the state may assist business and industry in the utilization of science and technology;
(c) further communication between agencies of federal, state, and local government who wish to utilize science and technology;
(d) develop programs of cooperation on matters of science and technology between:
(i) state and local government agencies;
(ii) the several public and private institutions of higher education and technical colleges within the state; and

(iii) business and industry within the state; or
(iv) any combination of these;
(e) provide a means whereby government, business, industry, and higher education may be represented in the formulation and implementation of state policies and programs on matters of science and technology;
(f) review, catalog, and compile the research and development uses by the state universities of the revenue derived from mineral lease funds on state and federal lands;
(g) submit an annual report to the office regarding the expenditure and utilization of these mineral lease funds for inclusion in the office's annual written report described in Section 63M-1-206;
(h) make recommendations to the Legislature on the further uses of these mineral lease funds in order to stimulate research and development directed toward the more effective utilization of the state's natural resources; and
(i) prepare and submit, before November 1, an annual written report to the governor and the Legislature.
(2) The council may:
(a) in accordance with Title 63J, Chapter 5, Federal Funds Procedures Act, apply for, receive, and disburse funds, contributions, or grants from whatever source for the purposes set forth in this part;
(b) employ, compensate, and prescribe the duties and powers of those individuals, subject to the provisions of this part relating to the adviser, necessary to execute the duties and powers of the council; and
(c) enter into contracts for the purposes of this part.

Amended by Chapter 371, 2014 General Session

63M-1-606 Adviser -- Duties and powers.
(1) The adviser shall be appointed by the governor.
(2) The adviser shall be experienced or knowledgeable in the application of science and technology to business, industry, or public problems and shall have demonstrated interest in or ability to contribute to the accomplishment of the purposes of this part.
(3) The adviser shall be compensated pursuant to the wage and salary classification plan for appointed officers of the state currently in effect.
(4)
(a) The adviser shall have those duties and powers the council assigns.
(b) The adviser, with the advice of the council, may enter into contracts and agreements and may incur expenses necessary to fulfill the purposes of this part.
(5) The adviser shall be administratively responsible to the director of the office.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-607 Request for information.
All departments, divisions, boards, commissions, agencies, institutions, and all other instrumentalities of the state shall, upon request of the council, provide the council with any information that these instrumentalities have concerning research in science and technology.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-608 Science education program.

(1)
(a) There is established an informal science and technology education program within the Governor's Office of Economic Development.
(b) The state science advisor shall act as the executive director of the program.
(c) The State Advisory Council on Science and Technology shall advise the program, including:
(i) approving all money expended by the science and technology education program;
(ii) approving all operations of the program; and
(iii) making policies and procedures to govern the program.
(2) The program may:
(a) provide informal science and technology-based education to elementary and secondary students;
(b) expose public education students to college level science and technology disciplines; and
(c) provide other informal promotion of science and technology education in the state.

Amended by Chapter 336, 2013 General Session

Part 7
Technology Commercialization and Innovation Act

63M-1-701 Title.
This part is known as the "Technology Commercialization and Innovation Act."

Amended by Chapter 392, 2011 General Session

63M-1-702 Purpose.
(1)
(a) The Legislature recognizes that the growth of new industry and expansion of existing industry requires a strong technology base, new ideas, concepts, innovations, and prototypes.
(b) Growth in industry frequently results from technological innovation generated by strong research institutions of higher education and by small businesses.
(c) Technical research in Utah's institutions of higher education should be enhanced and expanded, particularly in those areas targeted by the state for economic development.
(d) Most states enhance their research base by direct funding, usually on a matching basis.
(e) The purpose of this part is to catalyze and enhance the growth of these technologies by:
(i) encouraging interdisciplinary research activities in targeted areas;
(ii) facilitating the transition of these technologies out of the higher education environment into industry where the technologies can be used to enhance job creation; and
(iii) supporting the commercialization of technologies developed by small business to enhance job creation.
(f) The Legislature recognizes that one source of funding is to match state funds with federal funds and industrial support to provide and develop new technologies.
(2) The Legislature recommends that the governor consider matching the allocation of economic development funds for the Technology Commercialization and Innovation Program with industry and federal grants.
(3)
(a) The Legislature recommends that the funds be allocated on a competitive basis:

(i) to the various institutions of higher education in the state;
(ii) to companies working in partnership with institutions of higher education to commercialize their technologies; and
(iii) to small businesses that are developing promising technologies.
(b) The funds made available should be used to support:
(i) interdisciplinary research in the Technology Commercialization and Innovation Program in technologies that are considered to have potential for economic development in the state and to help transition these technologies out of institutions of higher education and into industry; and
(ii) small businesses in commercializing their promising technologies that have the potential to increase economic development in the state.

Amended by Chapter 418, 2014 General Session

63M-1-703 Definitions.

As used in this part:
(1) "Business team consultant" means an experienced technology executive, entrepreneur, or business person who:
(a) is recruited by the office through a request for proposal process to work directly with a college or university in the Technology Commercialization and Innovation Program; and
(b) works with the institution to facilitate the transition of its technology into industry by assisting the institution in developing strategies, including spin out strategies when appropriate, and go-to-market plans, and identifying and working with potential customers and partners.
(2) "Direct license" means a written license agreement between a company and a Utah institution of higher education related to technology developed at the institution of higher education with the intent of commercializing the technology or facilitating its transition into industry.
(3) "Institution of higher education" means:
(a) a state institution of higher education as defined in Section 53B-3-102; or
(b) a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.
(4) "Licensee" means:
(a) a company that executes or is in the process of executing a direct license; or
(b) a sublicensee of the technology from a direct license.
(5) "Small business" means a business that:
(a) meets the size standards for the business's industry classification as identified by the United States Small Business Administration in 13 C.F.R. Sec. 121.201;
(b) is organized for profit;
(c) operates primarily within the United States;
(d) has a principal place of business in the state, including a manufacturing or service location; and
(e) is independently owned and operated.
(6) "Technology Commercialization and Innovation Program" means:
(a) a federal- and industry-supported cooperative research and development program based at an institution of higher education; or
(b) a federal- and state-supported program for funding technologically innovative small businesses.

Amended by Chapter 418, 2014 General Session

63M-1-704 Administration -- Grants and loans.

(1) The Governor's Office of Economic Development shall administer this part.

(2)

(a)

(i) The office may award Technology Commercialization and Innovation Program grants or issue loans under this part to an applicant that is:

(A) an institution of higher education;

(B) a licensee; or

(C) a small business.

(ii) If loans are issued under Subsection (2)(a)(i), the Division of Finance may set up a fund or account as necessary for the proper accounting of the loans.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules for a process to determine whether an institution of higher education that receives a grant under this part must return the grant proceeds or a portion of the grant proceeds if the technology that is developed with the grant proceeds is licensed to a licensee that:

(i) does not maintain a manufacturing or service location in the state from which the licensee or a sublicensee exploits the technology; or

(ii) initially maintains a manufacturing or service location in the state from which the licensee or a sublicensee exploits the technology, but within five years after issuance of the license the licensee or sublicensee transfers the manufacturing or service location for the technology to a location out of the state.

(c) A repayment by an institution of higher education of grant proceeds or a portion of the grant proceeds may only come from the proceeds of the license established between the licensee and the institution of higher education.

(d)

(i) An applicant that is a licensee or small business that receives a grant under this part shall return the grant proceeds or a portion of the grant proceeds to the office if the applicant:

(A) does not maintain a manufacturing or service location in the state from which the applicant exploits the technology; or

(B) initially maintains a manufacturing or service location in the state from which the applicant exploits the technology, but within five years after issuance of the grant, the applicant transfers the manufacturing or service location for the technology to an out-of-state location.

(ii) A repayment by an applicant shall be prorated based on the number of full years the applicant operated in the state from the date of the awarded grant.

(iii) A repayment by a licensee that receives a grant may only come from the proceeds of the license to that licensee.

(3)

(a) Funding allocations shall be made by the office with the advice of the board.

(b) Each proposal shall receive the best available outside review.

(4)

(a) In considering each proposal, the office shall weigh technical merit, the level of matching funds from private and federal sources, and the potential for job creation and economic development.

(b) Proposals or consortia that combine and coordinate related research at two or more institutions of higher education shall be encouraged.

(5) The office shall review the activities and progress of grant recipients on a regular basis and, as part of the office's annual written report described in Section 63M-1-206, report on the accomplishments and direction of the Technology Commercialization and Innovation Program.

Amended by Chapter 371, 2014 General Session
Amended by Chapter 418, 2014 General Session
Amended by Chapter 418, 2014 General Session, (Coordination Clause)

63M-1-705 Business team consultants.
(1) The office may enter into work agreements with business team consultants through a request for proposal process to participate in the Technology Commercialization and Innovation Program.
(2) Under a work agreement, a business team consultant shall assist a college or university in facilitating the transition of its technology into industry.

Amended by Chapter 392, 2011 General Session

Part 8
Shared Foreign Sales Corporations

63M-1-801 Creation of shared foreign sales corporations.
The office may create one or more shared foreign sales corporations, qualifying as such under Section 927(g), Internal Revenue Code of 1986, and may name directors or managers of these corporations at its discretion.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-802 Management fees.
(1) All expenses incurred in establishing and maintaining shared foreign sales corporations shall be initially paid for by the office but shall be reimbursed to the office by the participants in each shared foreign sales corporation created under Section 63M-1-801 on a pro rata basis determined by the office.
(2) The office may charge the participants management fees that are reasonable to maintain and manage each of the shared foreign sales corporations.
(3) All money obtained by the office in excess of office expenditures in connection with the management of shared foreign sales corporations may be used at the discretion of the office for the office's other activities in promoting exporting.
(4) The fees collected and the expenditures made shall be reported to the Legislature each year.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 9
Industrial Assistance Fund

63M-1-901 Purpose statement.

The Legislature finds and declares that the fostering and development of industry in Utah is a state public purpose necessary to assure the welfare of its citizens, the growth of its economy, and adequate employment for its citizens.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-902 Definitions.

As used in this part:

(1) "Administrator" means the director or the director's designee.
(2) "Board" means the Board of Business and Economic Development.
(3) "Company creating an economic impediment" means a company that discourages economic development within a reasonable radius of its location because of:
  (a) odors;
  (b) noise;
  (c) pollution;
  (d) health hazards; or
  (e) other activities similar to those described in Subsections (3)(a) through (d).
(4) "Economic opportunities" means unique business situations or community circumstances which lend themselves to the furtherance of the economic interests of the state by providing a catalyst or stimulus to the growth or retention, or both, of commerce and industry in the state, including retention of companies whose relocation outside the state would have a significant detrimental economic impact on the state as a whole, regions of the state, or specific components of the state as determined by the board.
(5) "Economically disadvantaged rural area" means a geographic area designated by the board under Section 63M-1-910.
(6) "Replacement company" means a company locating its business or part of its business in a location vacated by a company creating an economic impediment.
(7) "Restricted Account" means the restricted account known as the Industrial Assistance Account created in Section 63M-1-903.
(8) "Targeted industry" means an industry or group of industries targeted by the board under Section 63M-1-910, for economic development in the state.

Amended by Chapter 245, 2010 General Session
Amended by Chapter 278, 2010 General Session

63M-1-903 Industrial Assistance Account created -- Uses -- Administrator duties -- Costs.

(1) There is created a restricted account within the General Fund known as the "Industrial Assistance Account" of which:
  (a) up to 50% may be used in economically disadvantaged rural areas;
  (b) up to 25% may be used to take timely advantage of economic opportunities as they arise;
  (c) up to 4% may be used to promote business and economic development in rural areas of the state with the Business Expansion and Retention Initiative; and
  (d) up to $3,000,000 may be used for the purpose of incubating technology solutions related to economic and workforce development.
(2) The administrator shall administer:
  (a) the restricted account created under Subsection (1), under the policy direction of the board; and
  (b) the Business Expansion and Retention Initiative for the rural areas of the state.

(3) The administrator may hire appropriate support staff to perform the duties required under this section.
(4) The cost of administering the restricted account shall be paid from money in the restricted account.
(5) Interest accrued from investment of money in the restricted account shall remain in the restricted account.

Amended by Chapter 435, 2014 General Session

63M-1-904 Rural Fast Track Program -- Creation -- Funding -- Qualifications for program participation -- Awards -- Reports.

(1)
(a) There is created the Rural Fast Track Program.
(b) The program is a funded component of the economically disadvantaged rural areas designation in Subsection 63M-1-903(1)(a).
(2) The purpose of the program is to provide an efficient way for small companies in rural areas of the state to receive incentives for creating high paying jobs in those areas of the state.
(3)
(a) Twenty percent of the unencumbered amount in the Industrial Assistance Account created in Subsection 63M-1-903(1) at the beginning of each fiscal year shall be used to fund the program.
(b) The 20% referred to in Subsection (3)(a) is not in addition to but is a part of the up to 50% designation for economically disadvantaged rural areas referred to in Subsection 63M-1-903(1)(a).
(c) If any of the 20% allocation referred to in Subsection (3)(a) has not been used in the program by the end of the third quarter of each fiscal year, that money may be used for any other loan, grant, or assistance program offered through the Industrial Assistance Account during the fiscal year.
(4)
(a) To qualify for participation in the program a company shall:
(i) complete and file with the office an application for participation in the program, signed by an officer of the company;
(ii) be located and conduct its business operations in a county in the state that has:
(A) a population of less than 30,000; and
(B) an average household income of less than $60,000 as reflected in the most recently available data collected and reported by the United States Census Bureau;
(iii) have been in business in the state for at least two years; and
(iv) have at least two employees.
(b)
(i) The office shall verify an applicant's qualifications under Subsection (4)(a).
(ii) The application must be approved by the administrator in order for a company to receive an incentive or other assistance under this section.
(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the administrator may make rules governing:
(i) the content of the application form referred to in Subsection (4)(a)(i);
(ii) who qualifies as an employee under Subsection (4)(a)(iv); and
(iii) the verification procedure referred to in Subsection (4)(b).
(5)

(a) The administrator shall make incentive cash awards to small companies under this section based on the following criteria:
(i) $1,000 for each new incremental job that pays over 110% of the county's average annual wage;
(ii) $1,250 for each incremental job that pays over 115% of the county's average annual wage; and
(iii) $1,500 for each incremental job that pays over 125% of the county's average annual wage.
(b) The administrator shall make a cash award under Subsection (5)(a) when a new incremental job has been in place for at least 12 months.
(c) The creation of a new incremental job by a company is based on the number of employees at the company during the previous 24 months.
(d)
(i) A small company may also apply for grants, loans, or other financial assistance under the program to help develop its business in rural Utah and may receive up to $50,000 under the program if approved by the administrator.
(ii) The board must approve a distribution that exceeds the $50,000 cap under Subsection (5)(d)(i).
(6) The administrator shall make a quarterly report to the board of the awards made by the administrator under this section and submit a report to the office on the awards and their impact on economic development in the state's rural areas for inclusion in the office's annual written report described in Section 63M-1-206.

Amended by Chapter 371, 2014 General Session

63M-1-905 Loans, grants, and assistance -- Repayment -- Earned credits.
(1)
(a) A company that qualifies under Section 63M-1-906 may receive loans, grants, or other financial assistance from the Industrial Assistance Account for expenses related to establishment, relocation, or development of industry in Utah.
(b) A company creating an economic impediment that qualifies under Section 63M-1-908 may in accordance with this part receive loans, grants, or other financial assistance from the restricted account for the expenses of the company creating an economic impediment related to:
(i) relocation to a rural area in Utah of the company creating an economic impediment; and
(ii) the siting of a replacement company.
(c) An entity offering an economic opportunity that qualifies under Section 63M-1-909 may:
(i) receive loans, grants, or other financial assistance from the restricted account for expenses related to the establishment, relocation, retention, or development of industry in the state; and
(ii) include infrastructure or other economic development precursor activities that act as a catalyst and stimulus for economic activity likely to lead to the maintenance or enlargement of the state's tax base.
(2)
(a) Subject to Subsection (2)(b), the administrator has authority to determine the structure, amount, and nature of any loan, grant, or other financial assistance from the restricted account.

(b) Loans made under Subsection (2)(a) shall be structured so the intended repayment or return to the state, including cash or credit, equals at least the amount of the assistance together with an annual interest charge as negotiated by the administrator.

(c) Payments resulting from grants awarded from the restricted account shall be made only after the administrator has determined that the company has satisfied the conditions upon which the payment or earned credit was based.

(3)

(a)

(i) Except as provided in Subsection (3)(b), the administrator may provide for a system of earned credits that may be used to support grant payments or in lieu of cash repayment of a restricted account loan obligation.

(ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors determined by the administrator, including:

(A) the number of Utah jobs created;

(B) the increased economic activity in Utah; or

(C) other events and activities that occur as a result of the restricted account assistance.

(b)

(i) The administrator shall provide for a system of credits to be used to support grant payments or in lieu of cash repayment of a restricted account loan when loans are made to a company creating an economic impediment.

(ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors determined by the administrator, including:

(A) the number of Utah jobs created;

(B) the increased economic activity in Utah; or

(C) other events and activities that occur as a result of the restricted account assistance.

(4)

(a) A cash loan repayment or other cash recovery from a company receiving assistance under this section, including interest, shall be deposited into the restricted account.

(b) The administrator and the Division of Finance shall determine the manner of recognizing and accounting for the earned credits used in lieu of loan repayments or to support grant payments as provided in Subsection (3).

(5)

(a)

(i) At the end of each fiscal year, the Division of Finance shall set aside the balance of the General Fund revenue surplus as defined in Section 63J-1-312 after the transfers of General Fund revenue surplus described in Subsection (5)(b) to the Industrial Assistance Account in an amount equal to any credit that has accrued under this part.

(ii) The set aside under Subsection (5)(a)(i) shall be capped at $50,000,000, at which time no subsequent contributions may be made and any interest accrued above the $50,000,000 cap shall be deposited into the General Fund.

(b) The set aside required by Subsection (5)(a) shall be made after the transfer of surplus General Fund revenue surplus is made:

(i) to the Medicaid Growth Reduction and Budget Stabilization Restricted Account, as provided in Section 63J-1-315;

(ii) to the General Fund Budget Reserve Account, as provided in Section 63J-1-312; and

(iii) to the State Disaster Recovery Restricted Account, as provided in Section 63J-1-314.

(c) These credit amounts may not be used for purposes of the restricted account as provided in this part until appropriated by the Legislature.

Amended by Chapter 211, 2011 General Session
Amended by Chapter 303, 2011 General Session

63M-1-906 Qualification for assistance.

(1) Except as provided in Section 63M-1-908, 63M-1-909, or 63M-1-909.5, the administrator shall determine which industries, companies, and individuals qualify to receive money from the Industrial Assistance Account. Except as provided by Subsection (2), to qualify for financial assistance from the restricted account, an applicant shall:
  (a) demonstrate to the satisfaction of the administrator that the applicant will expend funds in Utah with employees, vendors, subcontractors, or other businesses in an amount proportional with money provided from the restricted account at a minimum ratio of 2 to 1 per year or other more stringent requirements as established from time to time by the board for a minimum period of five years beginning with the date the loan or grant was approved;
  (b) demonstrate to the satisfaction of the administrator the applicant's ability to sustain economic activity in the state sufficient to repay, by means of cash or appropriate credits, the loan provided by the restricted account; and
  (c) satisfy other criteria the administrator considers appropriate.
(2)
  (a) The administrator may exempt an applicant from the requirements of Subsection (1)(a) or (b) if:
    (i) the financial assistance is provided to an applicant for the purpose of locating all or any portion of its operations to an economically disadvantaged rural area;
    (ii) the applicant is part of a targeted industry;
    (iii) the applicant is a quasi-public corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or Title 63E, Chapter 2, Independent Corporations Act, and its operations, as demonstrated to the satisfaction of the administrator, will provide significant economic stimulus to the growth of commerce and industry in the state; or
    (iv) the applicant is an entity offering an economic opportunity under Section 63M-1-909.
  (b) The administrator may not exempt the applicant from the requirement under Subsection 63M-1-905(2)(b) that the loan be structured so that the repayment or return to the state equals at least the amount of the assistance together with an annual interest charge.
(3) The administrator shall:
  (a) for applicants not described in Subsection (2)(a):
    (i) make findings as to whether or not each applicant has satisfied each of the conditions set forth in Subsection (1); and
    (ii) monitor the continued compliance by each applicant with each of the conditions set forth in Subsection (1) for five years;
  (b) for applicants described in Subsection (2)(a), make findings as to whether the economic activities of each applicant has resulted in the creation of new jobs on a per capita basis in the economically disadvantaged rural area or targeted industry in which the applicant is located;
  (c) monitor the compliance by each applicant with the provisions of any contract or agreement entered into between the applicant and the state as provided in Section 63M-1-907; and
  (d) make funding decisions based upon appropriate findings and compliance.

Amended by Chapter 208, 2012 General Session

63M-1-907 Agreements.

The administrator shall enter into agreements with each successful applicant that have specific terms and conditions for each loan or assistance, including:
(1) repayment schedules;
(2) interest rates;
(3) specific economic activity required to qualify for the loan or assistance or for repayment credits;
(4) collateral or security, if any; and
(5) other terms and conditions considered appropriate by the administrator.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-908 Financial assistance to companies that create economic impediments.
(1)
(a) The administrator may provide money from the Industrial Assistance Account to a company creating an economic impediment if that company:
(i) applies to the administrator;
(ii) relocates to a rural area in Utah; and
(iii) meets the qualifications of Subsection (1)(b).
(b) Except as provided by Subsection (2), to qualify for financial assistance from the restricted account, a company creating an economic impediment shall:
(i) demonstrate to the satisfaction of the administrator that the company creating an economic impediment, its replacement company, or in the aggregate the company creating the economic impediment and its replacement company:
(A) will expend funds in Utah with employees, vendors, subcontractors, or other businesses in an amount proportional with money provided from the restricted account at a minimum ratio of 2 to 1 per year or other more stringent requirements as established from time to time by the board for a minimum period of five years beginning with the date the loan or grant was approved; and
(B) can sustain economic activity in the state sufficient to repay, by means of cash or appropriate credits, the loan provided by the restricted account; and
(ii) satisfy other criteria the administrator considers appropriate.
(2)
(a) The administrator may exempt a company creating an economic impediment from the requirements of Subsection (1)(b)(i)(A) if:
(i) the financial assistance is provided to a company creating an economic impediment for the purpose of locating all or any portion of its operations to an economically disadvantaged rural area; or
(ii) its replacement company is part of a targeted industry.
(b) The administrator may not exempt a company creating an economic impediment from the requirement under Subsection 63M-1-905(2)(b) that the loan be structured so that the repayment or return to the state equals at least the amount of the assistance together with an annual interest charge.
(3) The administrator shall:
(a) make findings as to whether or not a company creating an economic impediment, its replacement company, or both, have satisfied each of the conditions set forth in Subsection (1);
(b) monitor the compliance by a company creating an economic impediment, its replacement company, or both, with:
(i) each of the conditions set forth in Subsection (1); and

(ii) any contract or agreement under Section 63M-1-907 entered into between:
(A) the company creating an economic impediment; and
(B) the state; and
(c) make funding decisions based upon appropriate findings and compliance.

Amended by Chapter 278, 2010 General Session

63M-1-909 Financial assistance to entities offering economic opportunities.

(1) Subject to the duties and powers of the board under Section 63M-1-303, the administrator may provide money from the Industrial Assistance Account to an entity offering an economic opportunity if that entity:
(a) applies to the administrator; and
(b) meets the qualifications of Subsection (2).
(2) The applicant shall:
(a) demonstrate to the satisfaction of the administrator the nature of the economic opportunity and the related benefit to the economic well-being of the state by providing evidence documenting the logical and compelling linkage, either direct or indirect, between the expenditure of money necessitated by the economic opportunity and the likelihood that the state's tax base, regions of the state's tax base, or specific components of the state's tax base will not be reduced but will be maintained or enlarged;
(b) demonstrate how the funding request will act in concert with other state, federal, or local agencies to achieve the economic benefit;
(c) demonstrate how the funding request will act in concert with free market principles;
(d) in the case of an economic opportunity that includes the retention of jobs, demonstrate how the potential relocation of jobs outside the state is related to a merger, acquisition, consolidation, or similar business reason other than the applicant simply requesting state assistance to remain in the state;
(e) satisfy other criteria the administrator considers appropriate; and
(f) be either:
(i) an entity whose purpose is to exclusively or substantially promote, develop, or maintain the economic welfare and prosperity of the state as a whole, regions of the state, or specific components of the state, including:
(A) an entity that is a sports development organization under contract with the state for sports development and sporting event attraction and related activities that provide an economic impact or promotional value to the state; or
(B) an entity that implements technology innovation in public schools, including whole-school one-to-one mobile device technology deployment for the purpose of incubating technology solutions related to economic and workforce development.
(ii) a company or individual that does not otherwise qualify under Section 63M-1-906.
(3) Subject to the duties and powers of the board under Section 63M-1-303, the administrator shall:
(a) make findings as to whether an applicant has satisfied each of the conditions set forth in Subsection (2);
(b) establish benchmarks and timeframes in which progress toward the completion of the agreed upon activity is to occur;
(c) monitor compliance by an applicant with any contract or agreement entered into by the applicant and the state as provided by Section 63M-1-907; and
(d) make funding decisions based upon appropriate findings and compliance.

Amended by Chapter 173, 2013 General Session

63M-1-909.5 Selection of educational technology provider to implement whole-school one-to-one mobile device technology deployment plan for schools.

The board shall select an educational technology provider to develop and implement a whole-school one-to-one mobile device technology deployment plan for schools in accordance with the requirements of this part and Section 53A-1-709.

Amended by Chapter 173, 2013 General Session

63M-1-910 Annual policy considerations.

(1) The board shall determine annually which industries or groups of industries shall be targeted industries as defined in Section 63M-1-902.
(2) In designating an economically disadvantaged rural area, the board shall consider the average agricultural and nonagricultural wage, personal income, unemployment, and employment in the area.
(3) In evaluating the economic impact of applications for assistance, the board shall use an econometric cost-benefit model or models adopted by the Governor's Office of Management and Budget.
(4) The board may establish:
  (a) minimum interest rates to be applied to loans granted that reflect a fair social rate of return to the state comparable to prevailing market-based rates such as the prime rate, U.S. Government T-bill rate, or bond coupon rate as paid by the state, adjusted by social indicators such as the rate of unemployment; and
  (b) minimum applicant expense ratios, as long as they are at least equal to those required under Subsection 63M-1-906(1)(a) or 63M-1-908(1)(b)(i)(A).

Amended by Chapter 310, 2013 General Session

Part 10
Biotechnology Regulation

63M-1-1001 Definitions.

As used in this part, "biotechnology" is:
(1) the modification of living organisms by recombinant DNA techniques; and
(2) a means to accomplish, through genetic engineering, the same kinds of modifications accomplished through traditional genetic techniques such as crossbreeding.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1002 Confidential information.

(1) A state agency having access under federal law to biotechnology trade secrets and related confidential information shall manage the trade secrets and related confidential records as protected records under Title 63G, Chapter 2, Government Records Access and Management Act.

(2) The records described in this section may be disclosed under the balancing provisions of Title 63G, Chapter 2, Government Records Access and Management Act, when a determination is made that disclosure is essential for the protection of the public's health or environment.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1003 Preemption of local regulation.

(1) A county, city, town, or other political subdivision may not regulate the technological processes relating to the development and use of biotechnologically created materials and organisms.
(2) This preemption does not affect the powers of a county, city, town, or other political subdivision, including the power to regulate land use, business, industry, construction, and public utilities, to protect the public health or environment, or to provide fire protection and other public safety services.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 11
Recycling Market Development Zone Act

63M-1-1101 Title.

This part is known as the "Recycling Market Development Zone Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1102 Definitions.

As used in this part:

(1) "Composting" means the controlled decay of landscape waste or sewage sludge and organic industrial waste, or a mixture of these, by the action of bacteria, fungi, molds, and other organisms.
(2) "Postconsumer waste material" means any product generated by a business or consumer that has served its intended end use, and that has been separated from solid waste for the purposes of collection, recycling, and disposition and that does not include secondary waste material.
(3)
  (a) "Recovered materials" means waste materials and by-products that have been recovered or diverted from solid waste.
  (b) "Recovered materials" does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
(4)
  (a) "Recycling" means the diversion of materials from the solid waste stream and the beneficial use of the materials and includes a series of activities by which materials that would become or otherwise remain waste are diverted from the waste stream for collection, separation, and processing, and are used as raw materials or feedstocks in lieu of or in addition to virgin materials in the manufacture of goods sold or distributed in commerce or the reuse of the materials as substitutes for goods made from virgin materials.
  (b) "Recycling" does not include burning municipal solid waste for energy recovery.

(5) "Recycling market development zone" or "zone" means an area designated by the office as meeting the requirements of this part.
(6)
(a) "Secondary waste material" means industrial by-products that go to disposal facilities and waste generated after completion of a manufacturing process.
(b) "Secondary waste material" does not include internally generated scrap commonly returned to industrial or manufacturing processes, such as home scrap and mill broke.
(7) "State tax incentives," "tax incentives," or "tax benefits" means the nonrefundable tax credits available under Sections 59-7-608 and 59-10-1007.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1103 Duties of the office.

The office shall:
(1) facilitate recycling development zones through state support of county incentives which encourage development of manufacturing enterprises that use recycling materials currently collected;
(2) evaluate an application from a county or municipality executive authority to be designated as a recycling market development zone and determine if the county or municipality qualifies for that designation;
(3) provide technical assistance to municipalities and counties in developing applications for designation as a recycling market development zone;
(4) assist counties and municipalities designated as recycling market development zones in obtaining assistance from the federal government and agencies of the state;
(5) assist a qualified business in obtaining the benefits of an incentive or inducement program authorized by this part;
(6) monitor the implementation and operation of this part and conduct a continuing evaluation of the progress made in the recycling market development zone; and
(7) include in the annual written report described in Section 63M-1-206, an evaluation of the effectiveness of the program and recommendations for legislation.

Amended by Chapter 371, 2014 General Session

63M-1-1104 Criteria for recycling market development zone -- Application process and fees.

(1) An area may be designated as a recycling market development zone only if:
(a) the county or municipality agrees to make a qualifying local contribution under Section 63M-1-1105; and
(b) the county or municipality provides for postconsumer waste collection for recycling within the county or municipality.
(2) The executive authority of any municipality or county desiring to be designated as a recycling market development zone shall:
(a) obtain the written approval of the municipality or county's legislative body; and
(b) file an application with the office demonstrating the county or municipality meets the requirements of this part.
(3) The application shall be in a form prescribed by the office, and shall include:
(a) a plan developed by the county or municipality that identifies local contributions meeting the requirements of Section 63M-1-1105;
(b) a county or municipality development plan that outlines:

(i) the specific investment or development reasonably expected to take place;
(ii) any commitments obtained from businesses to participate, and in what capacities regarding recycling markets;
(iii) the county's or municipality's economic development plan and demonstration of coordination between the zone and the county or municipality in overall development goals;
(iv) zoning requirements demonstrating that sufficient portions of the proposed zone area are zoned as appropriate for the development of commercial, industrial, or manufacturing businesses;
(v) the county's or municipality's long-term waste management plan and evidence that the zone will be adequately served by the plan; and
(vi) the county or municipality postconsumer waste collection infrastructure;
(c) the county's or municipality's proposed means of assessing the effectiveness of the development plan or other programs implemented within the zone;
(d) state whether within the zone either of the following will be established:
(i) commercial manufacturing or industrial processes that will produce end products that consist of not less than 50% recovered materials, of which not less than 25% is postconsumer waste material; or
(ii) commercial composting;
(e) any additional information required by the office; and
(f) any additional information the county or municipality considers relevant to its designation as a recycling market development zone.
(4) A county or municipality applying for designation as a recycling market development zone shall pay to the office an application fee determined under Section 63J-1-504.

Amended by Chapter 183, 2009 General Session

63M-1-1105 Qualifying local contributions.

Qualifying local contributions to the recycling market development zone may vary depending on available resources, and may include:
(1) simplified procedures for obtaining permits;
(2) dedication of available government grants;
(3) waiver of business license or permit fees;
(4) infrastructure improvements;
(5) private contributions;
(6) utility rate concessions;
(7) suspension or relaxation of locally originated zoning laws or general plans; and
(8) other proposed local contributions as the office finds promote the purposes of this part.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1106 Eligibility review.

(1) The office shall:
(a) review and evaluate an application submitted under Section 63M-1-1104; and
(b) determine whether the municipality or county is eligible for designation as a recycling market development zone.
(2) In designating recycling market development zones, the office shall consider:
(a) whether the current waste management practices and conditions of the county or municipality are favorable to the development of postconsumer waste material markets;

(b) whether the creation of the zone is necessary to assist in attracting private sector recycling investments to the area; and
(c) the amount of available landfill capacity to serve the zone.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1107 Quarterly consideration.
The office shall take action quarterly on any application requesting designation as a recycling market development zone.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1108 Duration of designation.
A recycling market development zone designation ends five years from the date the office designates the area as a recycling market development zone, at the end of which the county or municipality may reapply for the designation.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1109 Revocation of designations.
(1) The office may revoke the designation of a recycling market development zone if no businesses utilize the tax incentives during any calendar year.
(2) Before revocation of the zone, the office shall conduct a public hearing within a reasonable distance of the zone to determine reasons for inactivity and explore possible alternative actions.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1110 Recycling market development zones credit.
For a taxpayer within a recycling market development zone, there are allowed the nonrefundable credits against tax as provided by Sections 59-7-610 and 59-10-1007.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1111 Annual report.
(1) A county or municipality designated as a recycling market development zone shall report by no later than July 31 of each year to the office regarding the economic activity that has occurred in the zone following the designation.
(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules providing for the form and content of the annual reports.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1112 Technology Commercialization and Innovation Program.
In accordance with Part 6, State Advisory Council on Science and Technology, the office may award grants to the Technology Commercialization and Innovation Program, as defined by Section 63M-1-703, to fund development of new technology for recycling if the program funded is a cooperative effort between the Technology Commercialization and Innovation Program and one or more recycling market development zones created under this part.

Amended by Chapter 392, 2011 General Session

Part 12
Utah Venture Capital Enhancement Act

63M-1-1201 Title.

This part is known as the "Utah Venture Capital Enhancement Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1202 Findings -- Purpose.

(1) The Legislature finds that:
- (a) fundamental changes have occurred in national and international financial markets and in the state's financial markets;
- (b) a critical shortage of seed and venture capital resources exists in the state, and that shortage is impairing the growth of commerce in the state;
- (c) a need exists to increase the availability of venture equity capital for emerging, expanding, and restructuring enterprises in Utah, including enterprises in the life sciences, advanced manufacturing, and information technology;
- (d) increased venture equity capital investments in emerging, expanding, and restructuring enterprises in Utah will:
  - (i) create new jobs in the state; and
  - (ii) help to diversify the state's economic base; and
- (e) a well-trained work force is critical for the maintenance and development of Utah's economy.

(2) This part is enacted to:
- (a) mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales;
- (b) retain the private-sector culture of focusing on rate of return in the investing process;
- (c) secure the services of the best managers in the venture capital industry, regardless of location;
- (d) facilitate the organization of the Utah fund of funds to seek private investments and to serve as a catalyst in those investments by offering state incentives for private persons to make investments in the Utah fund of funds;
- (e) enhance the venture capital culture and infrastructure in the state so as to increase venture capital investment within the state and to promote venture capital investing within the state;
- (f) accomplish the purposes referred to in Subsections (2)(a) through (e) in a manner that would maximize the direct economic impact for the state; and
- (g) authorize the issuance and use of contingent tax credits to accomplish the purposes referred to in Subsections (2)(a) through (e) while protecting the interests of the state by limiting the manner in which contingent tax credits are issued, registered, transferred, claimed as an offset to the payment of state income tax, and redeemed.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1203 Definitions.

As used in this part:
(1) "Board" means the Utah Capital Investment Board.
(2) "Certificate" means a contract between the board and a designated investor under which a contingent tax credit is available and issued to the designated investor.
(3)
(a) Except as provided in Subsection (3)(b), "claimant" means a resident or nonresident person.
(b) "Claimant" does not include an estate or trust.
(4) "Commitment" means a written commitment by a designated purchaser to purchase from the board certificates presented to the board for redemption by a designated investor. Each commitment shall state the dollar amount of contingent tax credits that the designated purchaser has committed to purchase from the board.
(5) "Contingent tax credit" means a contingent tax credit issued under this part that is available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, if there are insufficient funds in the redemption reserve and the board has not exercised other options for redemption under Subsection 63M-1-1220(3)(b).
(6) "Corporation" means the Utah Capital Investment Corporation created under Section 63M-1-1207.
(7) "Designated investor" means:
(a) a person who makes a private investment; or
(b) a transferee of a certificate or contingent tax credit.
(8) "Designated purchaser" means:
(a) a person who enters into a written undertaking with the board to purchase a commitment; or
(b) a transferee who assumes the obligations to make the purchase described in the commitment.
(9) "Estate" means a nonresident estate or a resident estate.
(10) "Person" means an individual, partnership, limited liability company, corporation, association, organization, business trust, estate, trust, or any other legal or commercial entity.
(11) "Private investment" means:
(a) an equity interest in the Utah fund of funds; or
(b) a loan to the Utah fund of funds initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014.
(12) "Redemption reserve" means the reserve established by the corporation to facilitate the cash redemption of certificates.
(13) "Taxpayer" means a taxpayer:
(a) of an investor; and
(b) if that taxpayer is a:
(i) claimant;
(ii) estate; or
(iii) trust.
(14) "Trust" means a nonresident trust or a resident trust.
(15) "Utah fund of funds" means a limited partnership or limited liability company established under Section 63M-1-1213 in which a designated investor purchases an equity interest.

Amended by Chapter 334, 2014 General Session

63M-1-1204 Utah Capital Investment Board.

(1) There is created within the office the Utah Capital Investment Board to exercise the powers conferred by this part.
(2) The purpose of the board is to mobilize venture equity capital for investment in a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.
(3) In the exercise of its powers and duties, the board is considered to be performing an essential public purpose.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1205 Board members -- Meetings -- Expenses.
(1)
(a) The board shall consist of the following five members:
(i) the state treasurer;
(ii) the director or the director's designee; and
(iii) three members appointed by the governor and confirmed by the Senate.
(b) The three members appointed by the governor shall serve four-year staggered terms with the initial terms of the first three members to be four years for one member, three years for one member, and two years for one member.
(c) The governor shall appoint members of the board based on demonstrated expertise and competence in:
(i) the supervision of investment managers;
(ii) the fiduciary management of investment funds; or
(iii) the management and administration of tax credit allocation programs.
(2) When a vacancy occurs in the membership of the board for any reason, the vacancy shall be:
(a) filled in the same manner as the appointment of the original member; and
(b) for the unexpired term of the board member being replaced.
(3) Appointed members of the board may not serve more than two full consecutive terms except when the governor determines that an additional term is in the best interest of the state.
(4)
(a) Four members of the board constitute a quorum for conducting business and exercising board power.
(b) If a quorum is present, the action of a majority of members present is the action of the board.
(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
(6) The board and its members are considered to be a governmental entity with all of the rights, privileges, and immunities of a governmental entity of the state, including all of the rights and benefits conferred under Title 63G, Chapter 7, Governmental Immunity Act of Utah.
(7) Meetings of the board, except to the extent necessary to protect the information identified in Subsection 63M-1-1224(3), are subject to Title 52, Chapter 4, Open and Public Meetings Act.

Amended by Chapter 334, 2014 General Session

63M-1-1206 Board duties and powers.
(1) The board shall:

(a) establish criteria and procedures for the allocation and issuance of contingent tax credits to designated investors by means of certificates issued by the board, provided that a contingent tax credit may not be issued unless the Utah fund of funds:
(i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from the state to the Utah fund of funds; and
(ii) agrees to repay the loan upon terms and conditions established by the board;
(b) establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors, including:
(i) criteria and procedures for evaluating the value of investments made by the Utah fund of funds; and
(ii) the returns from the Utah fund of funds;
(c) establish criteria and procedures for registering and redeeming contingent tax credits by designated investors holding certificates issued by the board;
(d) establish a target rate of return or range of returns for the investment portfolio of the Utah fund of funds;
(e) establish criteria and procedures governing commitments obtained by the board from designated purchasers including:
(i) entering into commitments with designated purchasers; and
(ii) drawing on commitments to redeem certificates from designated investors;
(f) have power to:
(i) expend funds;
(ii) invest funds;
(iii) issue debt and borrow funds;
(iv) enter into contracts;
(v) insure against loss; and
(vi) perform any other act necessary to carry out its purpose; and
(g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(2)
(a) All rules made by the board under Subsection (1)(g) are subject to review by the Legislative Management Committee:
(i) whenever made, modified, or repealed; and
(ii) in each even-numbered year.
(b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review Committee from reviewing and taking appropriate action on any rule made, amended, or repealed by the board.
(3)
(a) The criteria and procedures established by the board for the allocation and issuance of contingent tax credits shall:
(i) include the contingencies that must be met for a certificate and its related tax credits to be:
(A) issued by the board;
(B) transferred by a designated investor; and
(C) redeemed by a designated investor in order to receive a contingent tax credit; and
(ii) tie the contingencies for redemption of certificates to:
(A) the targeted rates of return and scheduled redemptions of equity interests purchased by designated investors in the Utah fund of funds; and

(B) the scheduled principal and interest payments payable to designated investors that have made loans initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the Utah fund of funds.

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

(4)

(a) The board may charge a placement fee to the Utah fund of funds for the issuance of a certificate and related contingent tax credit to a designated investor.

(b) The fee shall:

(i) be charged only to pay for reasonable and necessary costs of the board; and

(ii) not exceed .5% of the private investment of the designated investor.

(5) The board's criteria and procedures for redeeming certificates:

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

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

(i) by certifying a contingent tax credit to the designated investor; or

(ii) by making demand on designated purchasers consistent with the requirements of Section 63M-1-1221.

(6)

(a) The board shall, in consultation with the corporation, publish on or before September 1 an annual report of the activities conducted by the Utah fund of funds, and submit the report to the governor; the Business, Economic Development, and Labor Appropriations Subcommittee; the Business and Labor Interim Committee; and the Retirement and Independent Entities Committee.

(b) The annual report shall:

(i) be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature;

(ii) include a copy of the audit of the Utah fund of funds described in Section 63M-1-1217;

(iii) include a detailed balance sheet, revenue and expenses statement, and cash flow statement;

(iv) include detailed information regarding new fund commitments made during the year, including the amount of money committed;

(v) include the net annual rate of return of the Utah fund of funds for the reported year, and the net rate of return from the inception of the Utah fund of funds, after accounting for all expenses, including administrative and financing costs;

(vi) include detailed information regarding:

(A) realized gains from investments and any realized losses; and

(B) unrealized gains and any unrealized losses based on the net present value of ongoing investments;

(vii) include detailed information regarding all yearly expenditures, including:

(A) administrative, operating, and financing costs;

(B) aggregate compensation information separated by full- and part-time employees, including benefit and travel expenses; and

(C) expenses related to the allocation manager;

(viii) include detailed information regarding all funding sources for administrative, operations, and financing expenses, including expenses charged by or to the Utah fund of funds, including management and placement fees;

(ix) review the progress of the investment fund allocation manager in implementing its investment plan and provide a general description of the investment plan;
(x) for each individual fund that the Utah fund of funds is invested in that represents at least 5% of the net assets of the Utah fund of funds, include the name of the fund, the total value of the fund, the fair market value of the Utah fund of funds' investment in the fund, and the percentage of the total value of the fund held by the Utah fund of funds;
(xi) include the number of companies in Utah where an investment was made from a fund that the Utah fund of funds is invested in, and provide an aggregate count of new full-time employees in the state added by all companies where investments were made by funds that the Utah fund of funds is invested in;
(xii) include an aggregate total value for all funds the Utah fund of funds is invested in, and an aggregate total amount of money invested in the state by the funds the Utah fund of funds is invested in;
(xiii) describe any redemption or transfer of a certificate issued under this part;
(xiv) include actual and estimated potential appropriations the Legislature will be required to provide as a result of redeemed certificates or tax credits during the following five years;
(xv) include an evaluation of the state's progress in accomplishing the purposes stated in Section 63M-1-1202; and
(xvi) be directly accessible to the public via a link from the main page of the Utah fund of fund's website.
(c) The annual report may not identify a specific designated investor who has redeemed or transferred a certificate.

Amended by Chapter 334, 2014 General Session
Amended by Chapter 334, 2014 General Session, (Coordination Clause)
Amended by Chapter 371, 2014 General Session

63M-1-1207 Utah Capital Investment Corporation -- Powers and purposes.
(1)
(a) There is created an independent quasi-public nonprofit corporation known as the Utah Capital Investment Corporation.
(b) The corporation:
(i) may exercise all powers conferred on independent corporations under Section 63E-2-106;
(ii) is subject to the prohibited participation provisions of Section 63E-2-107; and
(iii) is subject to the other provisions of Title 63E, Chapter 2, Independent Corporations Act, except as otherwise provided in this part.
(c) The corporation shall file with the Division of Corporations and Commercial Code:
(i) articles of incorporation; and
(ii) any amendment to its articles of incorporation.
(d) In addition to the articles of incorporation, the corporation may adopt bylaws and operational policies that are consistent with this chapter.
(e) Except as otherwise provided in this part, this part does not exempt the corporation from the requirements under state law which apply to other corporations organized under Title 63E, Chapter 2, Independent Corporations Act.
(2) The purposes of the corporation are to:
(a) organize the Utah fund of funds;
(b) select a venture capital investment fund allocation manager to make venture capital fund investments by the Utah fund of funds;

(c) negotiate the terms of a contract with the venture capital investment fund allocation manager;
(d) execute the contract with the selected venture capital investment fund manager on behalf of the Utah fund of funds;
(e) receive funds paid by designated investors for the issuance of certificates by the board for private investment in the Utah fund of funds;
(f) receive investment returns from the Utah fund of funds; and
(g) establish the redemption reserve to be used by the corporation to redeem certificates.
(3) The corporation may not:
(a) exercise governmental functions;
(b) have members;
(c) pledge the credit or taxing power of the state or any political subdivision of the state; or
(d) make its debts payable out of any money except money of the corporation.
(4) The obligations of the corporation are not obligations of the state or any political subdivision of the state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds.
(5) The corporation may:
(a) engage consultants and legal counsel;
(b) expend funds;
(c) invest funds;
(d) issue debt and borrow funds;
(e) enter into contracts;
(f) insure against loss;
(g) hire employees; and
(h) perform any other act necessary to carry out its purposes.

Amended by Chapter 342, 2011 General Session

63M-1-1208 Incorporator -- Appointment committee.
(1) To facilitate the organization of the corporation, the director or the director's designee shall serve as the incorporator as provided in Section 16-6a-201.
(2) To assist in the organization of the corporation, the Utah Board of Business and Economic Development shall appoint three individuals to serve on an appointment committee.
(3) The appointment committee shall:
(a) elect the initial board of directors of the corporation;
(b) exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this part, including in areas related to:
(i) venture capital investment;
(ii) investment management; and
(iii) supervision of investment managers and investment funds; and
(c) terminate its existence upon the election of the initial board of directors of the corporation.
(4) The office shall assist the incorporator and the appointment committee in any manner determined necessary and appropriate by the incorporator and appointment committee in order to administer this section.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1209 Board of directors.

(1) The initial board of directors of the corporation shall consist of five members.
(2) The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise, as considered appropriate by the appointment committee, in the areas of:
  (a) the selection and supervision of investment managers;
  (b) fiduciary management of investment funds; and
  (c) other areas of expertise as considered appropriate by the appointment committee.
(3) After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be filled by election by the remaining directors of the corporation.
(4)
  (a) Board members shall serve four-year terms, except that of the five initial members:
    (i) two shall serve four-year terms;
    (ii) two shall serve three-year terms; and
    (iii) one shall serve a two-year term.
  (b) Board members shall serve until their successors are elected and qualified and may serve successive terms.
  (c) A majority of the board members may remove a board member for cause.
  (d)
    (i) The board shall select a chair by majority vote.
    (ii) The chair's term is for one year.
(5) Three members of the board are a quorum for the transaction of business.
(6) Members of the board of directors:
  (a) are subject to any restrictions on conflicts of interest specified in the organizational documents of the corporation; and
  (b) may have no interest in any:
    (i) venture capital investment fund allocation manager selected by the corporation under this part; or
    (ii) investments made by the Utah fund of funds.
(7) Directors of the corporation:
  (a) shall be compensated for direct expenses and mileage; and
  (b) may not receive a director's fee or salary for service as directors.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1210 Investment manager.
(1) After incorporation, the corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Utah fund of funds in accordance with the requirements of this part.
(2) Any proposed investment plan shall address the applicant's:
  (a) level of:
    (i) experience; and
    (ii) quality of management;
  (b) investment philosophy and process;
  (c) probability of success in fund-raising;
  (d) prior investment fund results; and
  (e) plan for achieving the purposes of this part.

(3) The selected venture capital investment fund allocation manager shall have substantial, successful experience in the design, implementation, and management of seed and venture capital investment programs and in capital formation.
(4) The corporation shall only select a venture capital investment fund allocation manager:
(a) with demonstrated expertise in the management and fund allocation of investments in venture capital funds; and
(b) considered best qualified to:
(i) invest the capital of the Utah fund of funds; and
(ii) generate the amount of capital required by this part.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1211 Management fee -- Additional financial assistance.
(1) The corporation may charge a management fee on assets under management in the Utah fund of funds.
(2) The fee shall:
(a) be in addition to any fee charged to the Utah fund of funds by the venture capital investment fund allocation manager selected by the corporation; and
(b) be charged only to pay for reasonable and necessary costs of the corporation.
(3) The corporation may apply for and, when qualified, receive financial assistance from the Industrial Assistance Account under Title 63M, Chapter 1, Part 9, Industrial Assistance Fund, and under rules made by the Board of Business and Economic Development in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to help establish the program authorized under this part.

Amended by Chapter 278, 2010 General Session

63M-1-1212 Dissolution.
(1) Upon the dissolution of the Utah fund of funds, the corporation shall be liquidated and dissolved.
(2) Upon dissolution or privatization of the corporation, any assets owned by the corporation shall be distributed to one or more Utah nonprofit tax exempt organizations to be designated by the Legislature for the purposes listed in Section 63M-1-1202 as provided in Title 63E, Chapter 1, Independent Entities Act.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1213 Organization of Utah fund of funds.
(1) The corporation shall organize the Utah fund of funds.
(2) The Utah fund of funds shall make investments in private seed and venture capital partnerships or entities in a manner and for the following purposes:
(a) to encourage the availability of a wide variety of venture capital in the state;
(b) to strengthen the economy of the state;
(c) to help business in the state gain access to sources of capital;
(d) to help build a significant, permanent source of capital available to serve the needs of businesses in the state; and
(e) to accomplish all these benefits in a way that minimizes the use of contingent tax credits.
(3) The Utah fund of funds shall be organized:

(a) as a limited partnership or limited liability company under Utah law having the corporation as the general partner or manager;
(b) to provide for equity interests for designated investors which provide for a designated scheduled rate of return and a scheduled redemption in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
(c) to provide for loans by or the issuance of debt obligations to designated investors which provide for designated payments of principal, interest, or interest equivalent in accordance with rules made by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(4) Public money may not be invested in the Utah fund of funds.

Amended by Chapter 18, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1214 Compensation from the Utah fund of funds to the corporation -- Redemption reserve.
(1) The corporation shall be compensated for its involvement in the Utah fund of funds through the payment of the management fee described in Section 63M-1-1211.
(2) Before any returns may be reinvested in the Utah fund of funds:
(a) any returns shall be paid to designated investors, including the repayment by the Utah fund of funds of any outstanding loans;
(b) any returns in excess of those payable to designated investors shall be deposited in the redemption reserve and held by the corporation as a first priority reserve for the redemption of certificates;
(c) any returns received by the corporation from investment of amounts held in the redemption reserve shall be added to the redemption reserve until it has reached a total of $250,000,000; and
(d) if at the end of a calendar year the redemption reserve exceeds the $250,000,000 limitation referred to in Subsection (2)(c), the corporation may reinvest the excess in the Utah fund of funds.
(3) Funds held by the corporation in the redemption reserve shall be invested in accordance with Title 51, Chapter 7, State Money Management Act.

Amended by Chapter 334, 2014 General Session

63M-1-1215 Investments by Utah fund of funds.
(1) The Utah fund of funds shall invest funds:
(a) principally in high-quality venture capital funds managed by investment managers who have:
(i) made a commitment to equity investments in businesses located within the state; and
(ii) have committed to maintain a physical presence within the state;
(b) in private venture capital funds and not in direct investments in individual businesses; and
(c) in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of venture capital funds.
(2)
(a) The Utah fund of funds shall give priority to investments in private seed and venture capital partnerships and entities that have demonstrated a commitment to the state as evidenced by:
(i) the investments they have made in Utah-based entities;

(ii) the correspondent relationships they have established with Utah-based venture capital funds; or
(iii) the commitment they have made to expand the reach of expertise within the state by adding additional investment areas of expertise.
(b) The manager of the Utah fund of funds may waive the priorities under Subsection (2)(a) only if necessary to achieve the targeted investment returns required to attract designated investors.
(3) The Utah fund of funds may invest funds in a newly created venture capital fund only if the managers or management team of the fund have the experience, expertise, and a successful history in the investment of venture capital funds as described in Subsection (1)(c).
(4)
(a) An investment or investments by the Utah fund of funds in any venture capital fund may comprise no more than 20% of the total committed capital in the venture capital fund.
(b)
(i) No more than 50% of the funds invested by the Utah fund of funds may be made with venture capital entities with offices in the state established prior to July 1, 2002.
(ii) The restriction under Subsection (4)(b)(i) shall remain in place until three additional venture capital entities open new offices in the state.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1216 Powers of Utah fund of funds.
(1) The Utah fund of funds may:
(a) engage consultants and legal counsel;
(b) expend funds;
(c) invest funds;
(d) issue debt and borrow funds;
(e) enter into contracts;
(f) insure against loss;
(g) hire employees;
(h) issue equity interests to designated investors that have purchased equity interest certificates from the board; and
(i) perform any other act necessary to carry out its purposes.
(2)
(a) The Utah fund of funds shall engage a venture capital investment fund allocation manager.
(b) The compensation paid to the fund manager shall be in addition to the management fee paid to the corporation under Section 63M-1-1211.
(3) The Utah fund of funds may:
(a) open and manage bank and short-term investment accounts as considered necessary by the venture capital investment fund allocation manager; and
(b) expend money to secure investment ratings for investments by designated investors in the Utah fund of funds.

Amended by Chapter 18, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1217 Annual audits.

(1) Each calendar year, an audit of the activities of the Utah fund of funds shall be made as described in this section.
(2)
(a) The audit shall be conducted by:
(i) the state auditor; or
(ii) an independent auditor engaged by the state auditor.
(b) An independent auditor used under Subsection (2)(a)(ii) must have no business, contractual, or other connection to:
(i) the corporation; or
(ii) the Utah fund of funds.
(3) The corporation shall pay the costs associated with the annual audit.
(4) The annual audit report shall:
(a) be delivered to:
(i) the corporation; and
(ii) the board;
(b) include a valuation of the assets owned by the Utah fund of funds as of the end of the reporting year;
(c) include an opinion regarding the accuracy of the information provided in the annual report described in Subsection 63M-1-1206(6); and
(d) be completed on or before September 1 for the previous calendar year so that it may be included in the annual report described in Section 63M-1-1206.

Amended by Chapter 334, 2014 General Session

63M-1-1218 Certificates and contingent tax credits.
(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, in consultation with the State Tax Commission, shall make rules governing the form, issuance, transfer, and redemption of certificates.
(2) The board's issuance of certificates and related contingent tax credits to designated investors is subject to the following:
(a) the aggregate outstanding certificates may not exceed a total of:
(i) $150,000,000 of contingent tax credits used as collateral or a guarantee on loans for the debt-based financing of investments in the Utah fund of funds, including a loan refinanced using debt- or equity-based financing as described in Subsection (2)(e); and
(ii) $75,000,000 used as a guarantee on equity investments in the Utah fund of funds;
(b) the board shall issue a certificate contemporaneously with an investment in the Utah fund of funds by a designated investor;
(c) the board shall issue contingent tax credits in a manner that not more than $20,000,000 of contingent tax credits for each $100,000,000 increment of contingent tax credits may be redeemable in a fiscal year;
(d) the credits are certifiable if there are insufficient funds in the redemption reserve to make a cash redemption and the board does not exercise its other options under Subsection 63M-1-1220(3)(b);
(e) the board may not issue additional certificates as collateral or a guarantee on a loan for the debt-based financing of investments in the Utah fund of funds that is initiated after July 1, 2014, except for a loan refinanced using debt- or equity-based financing on or after July 1, 2014, that was originated before July 1, 2014;

(f) after July 1, 2014, and on or before December 31, 2017, the board may issue certificates that represent a guarantee of no more than 100% of the principal of each equity investment in the Utah fund of funds; and
(g) the board may not issue certificates after December 31, 2017.
(3) In determining the maximum limits in Subsections (2)(a)(i) and (ii) and the $20,000,000 limitation for each $100,000,000 increment of contingent tax credits in Subsection (2)(c):
(a) the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors;
(b) certificates and related contingent tax credits that have expired may not be included; and
(c) certificates and related contingent tax credits that have been redeemed shall be included only to the extent of tax credits actually allowed.
(4) Contingent tax credits are subject to the following:
(a) a contingent tax credit may not be redeemed except by a designated investor in accordance with the terms of a certificate from the board;
(b) a contingent tax credit may not be redeemed prior to the time the Utah fund of funds receives full payment from the designated investor for the certificate;
(c) a contingent tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate;
(d) an investor who redeems a certificate and the related contingent tax credit shall allocate the amount of the contingent tax credit to the taxpayers of the investor based on the taxpayer's pro rata share of the investor's earnings; and
(e) a contingent tax credit shall be claimed as a refundable credit.
(5) In calculating the amount of a contingent tax credit:
(a) the board shall certify a contingent tax credit only if the actual return, or payment of principal and interest for a loan initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, to the designated investor is less than that targeted at the issuance of the certificate;
(b) the amount of the contingent tax credit for a designated investor with an equity interest may not exceed the difference between the actual principal investment of the designated investor in the Utah fund of funds and the aggregate actual return received by the designated investor and any predecessor in interest of the initial equity investment and interest on the initial equity investment;
(c) the rates, whether fixed rates or variable rates, shall be determined by a formula stipulated in the certificate; and
(d) the amount of the contingent tax credit for a designated investor with an outstanding loan to the Utah fund of funds initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014, shall be equal to the amount of any principal, interest, or interest equivalent unpaid at the redemption of the loan or other obligation, as stipulated in the certificate.
(6) The board shall clearly indicate on the certificate:
(a) the targeted return on the invested capital, if the private investment is an equity interest;
(b) the payment schedule of principal, interest, or interest equivalent, if the private investment is a loan initiated before July 1, 2014, including a loan refinanced on or after July 1, 2014, that was originated before July 1, 2014;
(c) the amount of the initial private investment;
(d) the calculation formula for determining the scheduled aggregate return on the initial equity investment, if applicable; and

(e) the calculation formula for determining the amount of the contingent tax credit that may be claimed.
(7) Once money is invested by a designated investor, a certificate:
(a) is binding on the board; and
(b) may not be modified, terminated, or rescinded.
(8) Funds invested by a designated investor for a certificate shall be paid to the corporation for placement in the Utah fund of funds.
(9) The State Tax Commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the board, make rules to help implement this section.

Amended by Chapter 334, 2014 General Session

63M-1-1219 Transfer and registration of certificates.
(1) A certificate and the related contingent tax credit may be transferred by the designated investor.
(2) The board, in conjunction with the State Tax Commission, shall develop:
(a) a system for registration of any certificate and related contingent tax credit issued or transferred under this part; and
(b) a system that permits verification that:
(i) any contingent tax credit claimed is valid; and
(ii) any transfers of the certificate and related contingent tax credit are made in accordance with the requirements of this part.
(3) A certificate or contingent tax credit issued or transferred under this part may not be considered a security under Title 61, Chapter 1, Utah Uniform Securities Act.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1220 Redemption of certificates.
(1) If a designated investor elects to redeem a certificate, the certificate shall be presented to the board for redemption no later than June 30 of the calendar year maturity date stated on the certificate.
(2) Upon presentment to the board, it shall determine and certify the amount of the contingent tax credit that may be claimed by the designated investor based on:
(a) the limitations in Section 63M-1-1218; and
(b) rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(3)
(a) If there are sufficient funds in the redemption reserve, the board shall direct the corporation to make a cash redemption of the certificate.
(b) If there are insufficient funds in the redemption reserve, the board may elect to redeem the certificate:
(i) by certifying a contingent tax credit to the designated investor; or
(ii) by making demand on designated purchasers to purchase certificates in accordance with Section 63M-1-1221.
(4) The board shall certify to the State Tax Commission the contingent tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.
(5) The board shall cancel all redeemed certificates.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1221 Use of commitments to redeem certificates.

(1) The board may elect to draw on a commitment to redeem a certificate from a designated investor.
(2) If the board makes an election under Subsection (1), it shall:
  (a) inform the designated purchaser of the amount of the contingent tax credit that must be purchased from the board;
  (b) specify the date on which the purchase must be consummated; and
  (c) use the funds delivered to the board by the designated purchaser to redeem the certificate from the designated investor.
(3) The board has discretion in determining which commitment or commitments and what portion of those commitments to use to redeem certificates.
(4) The contingent tax credits acquired by a designated purchaser under this section are subject to Section 63M-1-1218.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1222 Powers and effectiveness.

(1) This part may not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this part are cumulative to those powers.
(2) This part shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional powers to those conferred by any other laws.
(3) The provisions of any contract entered into by the board or the Utah fund of funds may not be compromised, diminished, invalidated, or affected by the:
  (a) level, timing, or degree of success of the Utah fund of funds or the investment funds in which the Utah fund of funds invests; or
  (b) extent to which the investment funds are:
    (i) invested in Utah venture capital projects; or
    (ii) successful in accomplishing any economic development objectives.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1223 Permissible investments.

Investments by designated investors in the Utah fund of funds are permissible investments under applicable laws of the state for:
(1) state-chartered banks;
(2) state-chartered credit unions;
(3) state-chartered industrial banks; and
(4) domestic insurance companies.

Amended by Chapter 73, 2013 General Session

63M-1-1224 Exemption from certain statutes.

(1) Except as otherwise provided in this part, the corporation is exempt from statutes governing state agencies, as provided in Section 63E-2-109.
(2) The corporation is exempt from:

(a)Title 52, Chapter 4, Open and Public Meetings Act; and
(b)Title 63G, Chapter 2, Government Records Access and Management Act.
(3) The board is exempt from the requirement to report fund performance of venture firms and private equity firms set forth in Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 18, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

Part 13
Governor's Economic Development Coordinating Council

63M-1-1301 Title.
This part is known as the "Governor's Economic Development Coordinating Council."

Enacted by Chapter 236, 2011 General Session

63M-1-1302 Purpose.
This part is enacted to create the Governor's Economic Development Coordinating Council for the purpose of:
(1) planning, coordinating, and recommending economic development strategies, goals, and activities for industries, businesses, and other public and private sector entities and economic development stakeholders; and
(2) coordinating activities that enhance investment in Utah businesses from the private sector to maximize the availability of venture and seed capital for research and business growth and development in the state.

Enacted by Chapter 236, 2011 General Session

63M-1-1303 Creation of council -- Membership.
(1) There is created the Governor's Economic Development Coordinating Council, hereafter referred to in this part as the "council", consisting of the following 11 members:
(a) the director, who shall serve as chair of the council;
(b) the chair of the board or the chair's designee;
(c) the chair of the Utah Science Technology and Research Governing Authority or the chair's designee;
(d) the chair of the Utah Rural Development Council or the chair's designee;
(e) the chair of the Utah Capital Investment Corporation or the chair's designee;
(f) the chair of the Economic Development Corporation of Utah or its successor organization or the chair's designee;
(g) the chair of the World Trade Center Utah or its successor organization or the chair's designee; and
(h) four members appointed by the governor, with the advice and consent of the Senate, who have expertise in the area of business or economic development, entrepreneurship, or the raising of venture or seed capital for research and business growth.
(2)

(a) The four members appointed by the governor may serve for no more than two consecutive two-year terms.
(b) The governor shall appoint a replacement if a vacancy occurs from the membership described under Subsection (1)(h).
(3) Six members of the council constitute a quorum for the purpose of conducting council business and the action of a majority of a quorum constitutes the action of the council.
(4) A member may not receive compensation or benefits for the member's service on the council, but may receive per diem and travel expenses in accordance with:
(a) Sections 63A-3-106 and 63A-3-107; and
(b) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(5) The office shall provide office space and administrative staff support for the council.
(6) The council, as a governmental entity, has all the rights, privileges, and immunities of a governmental entity of the state and its meetings are subject to Title 52, Chapter 4, Open and Public Meetings Act.

Enacted by Chapter 236, 2011 General Session

63M-1-1304 Council powers and duties.
(1) The council shall:
(a) coordinate and advise on policies and objectives related to economic development and growth within the state;
(b) coordinate with state and private entities, including private venture capital and seed capital firms, to avoid duplication of programs and to increase the availability of venture and seed capital for research and for the development and growth of new and existing businesses in the state;
(c) focus on technologies, industries, and geographical areas of the state in which the state can expand investment and entrepreneurship and stimulate job growth;
(d) coordinate ideas and strategies to increase national and international business activities for both the urban and rural areas of the state; and
(e) plan, coordinate, advise, or recommend any other action that would better the state's economy.
(2) The council shall annually report its activities to the office for inclusion in the office's annual written report described in Section 63M-1-206.

Amended by Chapter 371, 2014 General Session

Part 14
Board of Tourism Development

63M-1-1401 Board of Tourism Development.
(1) There is created within the office the Board of Tourism Development.
(2) The board shall advise the office on the office's planning, policies, and strategies and on trends and opportunities for tourism development that may exist in the various areas of the state.
(3) The board shall perform other duties as required by Section 63M-1-1403.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1402 Members -- Meetings -- Expenses.

(1)
- (a) The board shall consist of 13 members appointed by the governor to four-year terms of office with the consent of the Senate.
- (b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(2) The members may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.

(3) Not more than seven members of the board may be of the same political party.

(4)
- (a) The members shall be representative of:
  - (i) all areas of the state with six being appointed from separate geographical areas as provided in Subsection (4)(b); and
  - (ii) a diverse mix of business ownership or executive management of tourism related industries.
- (b) The geographical representatives shall be appointed as follows:
  - (i) one member from Salt Lake, Tooele, or Morgan County;
  - (ii) one member from Davis, Weber, Box Elder, Cache, or Rich County;
  - (iii) one member from Utah, Summit, Juab, or Wasatch County;
  - (iv) one member from Carbon, Emery, Grand, Duchesne, Daggett, or Uintah County;
  - (v) one member from San Juan, Piute, Wayne, Garfield, or Kane County; and
  - (vi) one member from Washington, Iron, Beaver, Sanpete, Sevier, or Millard County.
- (c) The tourism industry representatives of ownership or executive management shall be appointed as follows:
  - (i) one member from ownership or executive management of the lodging industry, as recommended by the lodging industry for the governor's consideration;
  - (ii) one member from ownership or executive management of the restaurant industry, as recommended by the restaurant industry for the governor's consideration;
  - (iii) one member from ownership or executive management of the ski industry, as recommended by the ski industry for the governor's consideration; and
  - (iv) one member from ownership or executive management of the motor vehicle rental industry, as recommended by the motor vehicle rental industry for the governor's consideration.
- (d) One member shall be appointed at large from ownership or executive management of business, finance, economic policy, or the academic media marketing community.
- (e) One member shall be appointed from the Utah Tourism Industry Coalition as recommended by the coalition for the governor's consideration.
- (f) One member shall be appointed to represent the state's counties as recommended by the Utah Association of Counties for the governor's consideration.
- (g)
  - (i) The governor may choose to disregard a recommendation made for a board member under Subsections (4)(c), (e), and (f).
  - (ii) The governor shall request additional recommendations if recommendations are disregarded under Subsection (4)(g)(i).

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term from the same geographic area or industry representation as the member whose office was vacated.

(6) Seven members of the board constitute a quorum for conducting board business and exercising board powers.
(7) The governor shall select one of the board members as chair and one of the board members as vice chair, each for a four-year term as recommended by the board for the governor's consideration.
(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  (a) Section 63A-3-106;
  (b) Section 63A-3-107; and
  (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(9) The board shall meet monthly or as often as the board determines to be necessary at various locations throughout the state.
(10) Members who may have a potential conflict of interest in consideration of fund allocation decisions shall identify the potential conflict prior to voting on the issue.
(11)
  (a) The board shall determine attendance requirements for maintaining a designated board seat.
  (b) If a board member fails to attend according to the requirements established pursuant to Subsection (11)(a), the board member shall be replaced upon written certification from the board chair or vice chair to the governor.
  (c) A replacement appointed by the governor under Subsection (11)(b) shall serve for the remainder of the board member's unexpired term.
(12) The board's office shall be in Salt Lake City.

Amended by Chapter 286, 2010 General Session

63M-1-1403 Board duties.
(1) The board shall:
  (a) have authority to approve a tourism program of out-of-state advertising, marketing, and branding, taking into account the long-term strategic plan, economic trends, and opportunities for tourism development on a statewide basis, as a condition of the distribution of funds to the office from the Tourism Marketing Performance Account under Section 63M-1-1406;
  (b) have authority to approve a tourism program of advertising, marketing, and branding of the state, taking into account the long-term strategic plan, economic trends, and opportunities for tourism development on a statewide basis, as a condition of the distribution of money to the office from the Stay Another Day and Bounce Back Account, created in Section 63M-1-3411;
  (c) review the office programs for coordination and integration of advertising and branding themes to be used whenever possible in all office programs, including recreational, scenic, historic, and tourist attractions of the state at large;
  (d) encourage and assist in coordination of the activities of persons, firms, associations, corporations, civic groups, and governmental agencies engaged in publicizing, developing, and promoting the scenic attractions and tourist advantages of the state; and
  (e)
    (i) advise the office in establishing a Cooperative Program from the money in the Tourism Marketing Performance Account under Section 63M-1-1406 for use by cities, counties, nonprofit destination marketing organizations, and similar public entities for the purpose of supplementing money committed by these entities for advertising and promotion to and for out-of-state residents to attract them to visit sites advertised by and attend events sponsored by these entities;

(ii) the Cooperative Program shall be allocated 20% of the revenues appropriated to the office from the Tourism Marketing Performance Account;
(iii) the office, with approval from the board, shall establish eligibility, advertising, and timing requirements and criteria and provide for an approval process for applications;
(iv) an application from an eligible applicant to receive money from the Cooperative Program must be submitted on or before the appropriate date established by the office; and
(v) Cooperative Program money not used in each fiscal year shall be returned to the Tourism Marketing Performance Account.
(2) The board may:
(a) solicit and accept contributions of money, services, and facilities from any other sources, public or private and shall use these funds for promoting the general interest of the state in tourism; and
(b) establish subcommittees for the purpose of assisting the board in an advisory role only.
(3) The board may not, except as otherwise provided in Subsection (1)(a), make policy related to the management or operation of the office.

Amended by Chapter 429, 2014 General Session

63M-1-1404 Powers and duties of office related to tourism development plan -- Annual report and survey.
(1) The office shall:
(a) be the tourism development authority of the state;
(b) develop a tourism advertising, marketing, and branding program for the state;
(c) receive approval from the Board of Tourism Development under Subsection 63M-1-1403(1)(a) before implementing the out-of-state advertising, marketing, and branding campaign;
(d) develop a plan to increase the economic contribution by tourists visiting the state;
(e) plan and conduct a program of information, advertising, and publicity relating to the recreational, scenic, historic, and tourist advantages and attractions of the state at large; and
(f) encourage and assist in the coordination of the activities of persons, firms, associations, corporations, travel regions, counties, and governmental agencies engaged in publicizing, developing, and promoting the scenic attractions and tourist advantages of the state.
(2) Any plan provided for under Subsection (1) shall address, but not be limited to, enhancing the state's image, promoting Utah as a year-round destination, encouraging expenditures by visitors to the state, and expanding the markets where the state is promoted.
(3) The office shall:
(a) conduct a regular and ongoing research program to identify statewide economic trends and conditions in the tourism sector of the economy; and
(b) include in the annual written report described in Section 63M-1-206, a report on the economic efficiency of the advertising and branding campaigns conducted under this part.

Amended by Chapter 371, 2014 General Session

63M-1-1405 Agreements with other governmental entities.
The office may enter into agreements with state or federal agencies to accept services, quarters, or facilities as a contribution in carrying out the duties and functions of the office.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1406 Tourism Marketing Performance Account.

(1) There is created within the General Fund a restricted account known as the Tourism Marketing Performance Account.

(2) The account shall be administered by the office for the purposes listed in Subsection (5).

(3)

(a) The account shall earn interest.

(b) All interest earned on account money shall be deposited into the account.

(4) The account shall be funded by appropriations made to the account by the Legislature in accordance with this section.

(5) The director shall use account money appropriated to the office to pay for the statewide advertising, marketing, and branding campaign for promotion of the state as conducted by the office.

(6)

(a) For a fiscal year beginning on or after July 1, 2007, the office shall annually allocate 10% of the account money appropriated to the office to a sports organization for advertising, marketing, branding, and promoting Utah in attracting sporting events into the state.

(b) The sports organization shall:

(i) provide an annual written report to the office that gives a complete accounting of the use of money the sports organization receives under this Subsection (6); and

(ii) partner with the office to promote the state and to encourage economic growth in the state.

(c) For purposes of this Subsection (6), "sports organization" means an organization that is:

(i) exempt from federal income taxation in accordance with Section 501(c)(3), Internal Revenue Code; and

(ii) created to foster national and international sports competitions in the state, including competitions related to Olympic sports, and to promote and encourage sports tourism throughout the state, including advertising, marketing, branding, and promoting Utah for the purpose of attracting sporting events into the state.

(7) Money deposited into the account shall consist of a legislative appropriation from the cumulative sales and use tax revenue increases identified in Subsection (8), plus any appropriation made by the Legislature.

(8)

(a) In fiscal years 2006 through 2019, a portion of the state sales and use tax revenues determined under this Subsection (8) shall be certified as a set-aside for the account by the State Tax Commission and reported to the Office of Legislative Fiscal Analyst.

(b) The State Tax Commission shall determine the set-aside under this Subsection (8) in each fiscal year by applying the following formula: if the increase in the state sales and use tax revenues derived from the retail sales of tourist-oriented goods and services, in the fiscal year two years prior to the fiscal year in which the set-aside is to be made for the account, is at least 3% over the state sales and use tax revenues derived from the retail sales of tourist-oriented goods and services generated in the fiscal year three years prior to the fiscal year in which the set-aside is to be made, an amount equal to 1/2 of the state sales and use tax revenues generated above the 3% increase shall be calculated by the commission and set aside by the state treasurer for appropriation to the account.

(c) The total money appropriated to the account in any fiscal year under Subsections (8)(a) and (b) may not exceed the amount in the account under this section in the fiscal year immediately preceding the current fiscal year by more than $3,000,000.

(d) As used in this Subsection (8), "sales of tourist-oriented goods and services" are those sales by businesses registered with the State Tax Commission under the following codes of the

1997 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:
(i) NAICS Code 453 Miscellaneous Store Retailers;
(ii) NAICS Code 481 Passenger Air Transportation;
(iii) NAICS Code 487 Scenic and Sightseeing Transportation;
(iv) NAICS Code 711 Performing Arts, Spectator Sports and Related Industries;
(v) NAICS Code 712 Museums, Historical Sites and Similar Institutions;
(vi) NAICS Code 713 Amusement, Gambling and Recreation Industries;
(vii) NAICS Code 721 Accommodations;
(viii) NAICS Code 722 Food Services and Drinking Places;
(ix) NAICS Code 4483 Jewelry, Luggage, and Leather Goods Stores;
(x) NAICS Code 4853 Taxi and Limousine Service;
(xi) NAICS Code 4855 Charter Bus;
(xii) NAICS Code 5615 Travel Arrangement and Reservation Services;
(xiii) NAICS Code 44611 Pharmacies and Drug Stores;
(xiv) NAICS Code 45111 Sporting Goods Stores;
(xv) NAICS Code 45112 Hobby Toy and Game Stores;
(xvi) NAICS Code 45121 Book Stores and News Dealers;
(xvii) NAICS Code 445120 Convenience Stores without Gas Pumps;
(xviii) NAICS Code 447110 Gasoline Stations with Convenience Stores;
(xix) NAICS Code 447190 Other Gasoline Stations;
(xx) NAICS Code 532111 Passenger Car Rental; and
(xxi) NAICS Code 532292 Recreational Goods Rental.
(e) The Division of Finance shall for each fiscal year transfer the first $6,000,000 of ongoing money in the account to the General Fund.

Amended by Chapter 423, 2014 General Session

Part 16
Rural Development Act

63M-1-1601 Title -- Definitions.
(1) This part is known as the "Rural Development Act."
(2) As used in this part:
(a) "Office" means the Governor's Office of Economic Development.
(b) "Program" means the Rural Development Program.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1602 Rural Development Program -- Supervision by office.
(1) There is created within the Governor's Office of Economic Development the Office of Rural Development.
(2) The Office of Rural Development is under the administration and general supervision of the Governor's Office of Economic Development.

Amended by Chapter 381, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-1603 Purpose of the Office of Rural Development.

The Office of Rural Development is established to:

(1) foster and support economic development programs and activities for the benefit of rural counties and communities;

(2) foster and support community, county, and resource management planning programs and activities for the benefit of rural counties and communities;

(3) foster and support leadership training programs and activities for the benefit of:

(a) rural leaders in both the public and private sectors;

(b) economic development and planning personnel; and

(c) rural government officials;

(4) foster and support efforts to coordinate and focus the technical and other resources of appropriate institutions of higher education, local governments, private sector interests, associations, nonprofit organizations, federal agencies, and others, in ways that address the economic development, planning, and leadership challenges and priorities of rural Utah as identified in the strategic plan required under Subsection 63C-10-103(1)(b);

(5) work to enhance the capacity of the Governor's Office of Economic Development to address rural economic development, planning, and leadership training challenges and opportunities by establishing partnerships and positive working relationships with appropriate public and private sector entities, individuals, and institutions; and

(6) foster government-to-government collaboration and good working relations between state and rural government regarding economic development and planning issues.

Amended by Chapter 259, 2014 General Session

63M-1-1604 Duties.

(1) The Office of Rural Development shall:

(a) provide staff support to the Governor's Rural Partnership Board in accordance with Subsection 63C-10-102(6);

(b) facilitate within the Governor's Office of Economic Development implementation of the strategic plan prepared under Subsection 63C-10-103(1)(b);

(c) work to enhance the capacity of the Governor's Office of Economic Development to address rural economic development, planning, and leadership training challenges and opportunities by establishing partnerships and positive working relationships with appropriate public and private sector entities, individuals, and institutions;

(d) work with the Governor's Rural Partnership Board to coordinate and focus available resources in ways that address the economic development, planning, and leadership training challenges and priorities in rural Utah; and

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

(i) the state;

(ii) rural governments;

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

(iv) federal agencies.

(2)

(a) The Office of Rural Development may:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules necessary to carry out its duties;
(ii) accept gifts, grants, devises, and property, in cash or in kind, for the benefit of rural Utah citizens; and
(iii) use those gifts, grants, devises, and property received under Subsection (2)(a)(ii) for the use and benefit of rural citizens within the state.
(b) All resources received under Subsection (2)(a)(ii) shall be deposited in the General Fund as dedicated credits to be used as directed in Subsection (2)(a)(iii).

Amended by Chapter 259, 2014 General Session

63M-1-1605 Program manager.
(1) The director of the Governor's Office of Economic Development shall appoint a director for the Office of Rural Development with the approval of the governor.
(2) The director of the Office of Rural Development shall be a person knowledgeable in the field of rural economic development and planning and experienced in administration.
(3) Upon change of the director of the Governor's Office of Economic Development, the director of the Office of Rural Development may not be dismissed without cause for at least 180 days.
(4) The director of the Office of Rural Development shall serve as staff to the Governor's Rural Partnership Board and to the executive committee of the Governor's Rural Partnership Board in accordance with Subsection 63C-10-102(6).

Amended by Chapter 259, 2014 General Session

63M-1-1606 Annual report.
The office shall include in the annual written report described in Section 63M-1-206, a report of the program's operations and recommendations.

Amended by Chapter 371, 2014 General Session

Part 17
Economic Development Incentives Act

Part 18
Motion Picture Incentive Fund

63M-1-1801 Purpose.
(1) The Legislature finds that:
(a) the state's natural beauty, scenic wonders, and diverse topography provide a variety of magnificent settings from which the motion picture industry can choose to film part or all of major or independent motion pictures, made-for-television movies, and television series;
(b) the state has an abundance of resources, including a skilled and able workforce, the required infrastructure, and a friendly and hospitable populace that have been instrumental in the filming of hundreds of successful motion pictures and several television series; and

(c) further development of the motion picture industry in Utah is a state public purpose that will significantly impact growth in the state's economy and contribute to the fiscal well being of the state and its people.
(2) The purpose of this part is to:
(a) encourage the use of Utah as a site for the production of motion pictures, television series, and made-for-television movies;
(b) provide financial incentives to the film industry so that Utah might compete successfully with other states and countries for filming locations; and
(c) help develop a strong motion picture industry presence in the state that will contribute substantially to improving the state's economy.

Amended by Chapter 135, 2009 General Session

63M-1-1802 Definitions.
As used in this part:
(1) "Board" means the Governor's Office of Economic Development Board.
(2) "Digital media company" means a company engaged in the production of a digital media project.
(3) "Digital media project" means all or part of a production of interactive entertainment or animated production that is produced for distribution in commercial or educational markets, which shall include projects intended for Internet or wireless distribution.
(4) "Dollars left in the state" means expenditures made in the state for a state-approved production, including:
(a) an expenditure that is subject to:
(i) a corporate franchise or income tax under Title 59, Chapter 7, Corporate Franchise and Income Taxes;
(ii) an individual income tax under Title 59, Chapter 10, Individual Income Tax Act; and
(iii) a sales and use tax under Title 59, Chapter 12, Sales and Use Tax Act, notwithstanding any sales and use tax exemption allowed by law; or
(iv) a combination of Subsections (4)(a)(i), (ii), and (iii);
(b) payments made to a nonresident only to the extent of the income tax paid to the state on the payments, the amount of per diems paid in the state, and other direct reimbursements transacted in the state; and
(c) payments made to a payroll company or loan-out corporation that is registered to do business in the state, only to the extent of the amount of withholding under Section 59-10-402.
(5) "Loan-out corporation" means a corporation owned by one or more artists that provides services of the artists to a third party production company.
(6) "Motion picture company" means a company engaged in the production of:
(a) motion pictures;
(b) television series; or
(c) made-for-television movies.
(7) "Motion picture incentive" means either a cash rebate from the Motion Picture Incentive Account or a refundable tax credit under Section 59-7-614.5 or 59-10-1108.
(8) "New state revenues" means:
(a) incremental new state sales and use tax revenues generated as a result of a digital media project that a digital media company pays under Title 59, Chapter 12, Sales and Use Tax Act;
(b) incremental new state tax revenues that a digital media company pays as a result of a digital media project under:

(i)Title 59, Chapter 7, Corporate Franchise and Income Taxes;
(ii)Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;
(iii)Title 59, Chapter 10, Part 2, Trusts and Estates;
(iv)Title 59, Chapter 10, Part 4, Withholding of Tax; or
(v) a combination of Subsections (8)(b)(i), (ii), (iii), and (iv);
(c) incremental new state revenues generated as individual income taxes under Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, paid by employees of the new digital media project as evidenced by payroll records from the digital media company; or
(d) a combination of Subsections (8)(a), (b), and (c).
(9) "Office" means the Governor's Office of Economic Development.
(10) "Payroll company" means a business entity that handles the payroll and becomes the employer of record for the staff, cast, and crew of a motion picture production.
(11) "Refundable tax credit" means a refundable motion picture tax credit authorized under Section 63M-1-1803 and claimed under Section 59-7-614.5 or 59-10-1108.
(12) "Restricted account" means the Motion Picture Incentive Account created in Section 63M-1-1803.
(13) "State-approved production" means a production under Subsections (3) and (6) that is:
(a) approved by the office and ratified by the board; and
(b) produced in the state by a motion picture company.
(14) "Tax credit amount" means the amount the office lists as a tax credit on a tax credit certificate for a taxable year.
(15) "Tax credit certificate" means a certificate issued by the office that:
(a) lists the name of the applicant;
(b) lists the applicant's taxpayer identification number;
(c) lists the amount of tax credit that the office awards the applicant for the taxable year; and
(d) may include other information as determined by the office.

Amended by Chapter 338, 2011 General Session

63M-1-1803 Motion Picture Incentive Account created -- Cash rebate incentives -- Refundable tax credit incentives.

(1)
(a) There is created within the General Fund a restricted account known as the Motion Picture Incentive Account, which the office shall use to provide cash rebate incentives for state-approved productions by a motion picture company.
(b) All interest generated from investment of money in the restricted account shall be deposited in the restricted account.
(c) The restricted account shall consist of an annual appropriation by the Legislature.
(d) The office shall:
(i) with the advice of the board, administer the restricted account; and
(ii) make payments from the restricted account as required under this section.
(e) The cost of administering the restricted account shall be paid from money in the restricted account.
(2)
(a) A motion picture company or digital media company seeking disbursement of an incentive allowed under an agreement with the office shall follow the procedures and requirements of this Subsection (2).

(b) The motion picture company or digital media company shall provide the office with a report identifying and documenting the dollars left in the state or new state revenues generated by the motion picture company or digital media company for its state-approved production, including any related tax returns by the motion picture company, payroll company, digital media company, or loan-out corporation under Subsection (2)(d).

(c) For a motion picture company, an independent certified public accountant shall:

(i) review the report submitted by the motion picture company; and

(ii) attest to the accuracy and validity of the report, including the amount of dollars left in the state.

(d) The motion picture company, digital media company, payroll company, or loan-out corporation shall provide the office with a document that expressly directs and authorizes the State Tax Commission to disclose the entity's tax returns and other information concerning the entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office.

(e) The office shall submit the document described in Subsection (2)(d) to the State Tax Commission.

(f) Upon receipt of the document described in Subsection (2)(d), the State Tax Commission shall provide the office with the information requested by the office that the motion picture company, digital media company, payroll company, or loan-out corporation directed or authorized the State Tax Commission to provide to the office in the document described in Subsection (2)(d).

(g) Subject to Subsection (3), for a motion picture company the office shall:

(i) review the report from the motion picture company described in Subsection (2)(b) and verify that it was reviewed by an independent certified public accountant as described in Subsection (2)(c); and

(ii) based upon the certified public accountant's attestation under Subsection (2)(c), determine the amount of the incentive that the motion picture company is entitled to under its agreement with the office.

(h) Subject to Subsection (3), for a digital media company, the office shall:

(i) ensure the digital media project results in new state revenue; and

(ii) based upon review of new state revenue, determine the amount of the incentive that a digital media company is entitled to under its agreement with the office.

(i) Subject to Subsection (3), if the incentive is in the form of a cash rebate, the office shall pay the incentive from the restricted account to the motion picture company, notwithstanding Subsections 51-5-3(23)(b) and 63J-1-104(4)(c).

(j) If the incentive is in the form of a refundable tax credit under Section 59-7-614.5 or 59-10-1108, the office shall:

(i) issue a tax credit certificate to the motion picture company or digital media company; and

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

(k) A motion picture company or digital media company may not claim a motion picture tax credit under Section 59-7-614.5 or 59-10-1108 unless the motion picture company or digital media company has received a tax credit certificate for the claim issued by the office under Subsection (2)(j)(i).

(l) A motion picture company or digital media company may claim a motion picture tax credit on its tax return for the amount listed on the tax credit certificate issued by the office.

(m) A motion picture company or digital media company that claims a tax credit under Subsection (2)(l) shall retain the tax credit certificate and all supporting documentation in accordance with Subsection 63M-1-1804(6).

(3)
(a) Subject to Subsection (3)(b), the office may issue $6,793,700 in tax credit certificates under this part in a fiscal year.
(b) If the office does not issue tax credit certificates in a fiscal year totaling the amount authorized under Subsection (3)(a), it may carry over that amount for issuance in subsequent fiscal years.

Amended by Chapter 338, 2011 General Session

63M-1-1804 Motion picture incentives -- Standards to qualify for an incentive -- Limitations -- Content of agreement between office and motion picture company or digital media company.

(1) In addition to the requirements for receiving a motion picture incentive as set forth in this part, the office, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall make rules establishing:
(a) the standards that a motion picture company or digital media company must meet to qualify for the motion picture incentive; and
(b) criteria for determining the amount of the incentive.
(2) The office shall ensure that those standards include the following:
(a) an incentive may only be issued for a state approved production by a motion picture company or digital media company;
(b) financing has been obtained and is in place for the production; and
(c) the economic impact of the production on the state represents new incremental economic activity in the state as opposed to existing economic activity.
(3) With respect to a digital media project, the office shall consider economic modeling, including the costs and benefits of the digital media project to state and local governments in determining the motion picture incentive amount.
(4) The office may also consider giving preference to a production that stimulates economic activity in rural areas of the state or that has Utah content, such as recognizing that the production was made in the state or uses Utah as Utah in the production.
(5)
(a) The office, with advice from the board, may enter into an agreement with a motion picture company or digital media company that meets the standards established under this section and satisfies the other qualification requirements under this part.
(b) Subject to Subsection 63M-1-1803(3), the office may commit or authorize a motion picture incentive:
(i) to a motion picture company of up to 20% of the dollars left in the state by the motion picture company, and a motion picture company can receive an additional 5%, not to exceed 25% of the dollars left in the state by the motion picture company if the company fulfills certain requirements determined by the office including:
(A) employing a significant percentage of cast and crew from Utah;
(B) highlighting the state of Utah and the Utah Film Commission in the motion picture credits; or
(C) other promotion opportunities as agreed upon by the office and the motion picture company; and
(ii) to a digital media company, if the incentive does not exceed 100% of the new state revenue less the considerations under Subsection (3), but not to exceed 20% of the dollars left in the state by the digital media company.

(c) A cash rebate incentive from the Motion Picture Incentive Restricted Account may not exceed $500,000 per state approved production for a motion picture project.
(d) The office may not give a cash rebate incentive from the Motion Picture Incentive Restricted Account for a digital media project.
(6) The office shall ensure that the agreement entered into with a motion picture company or digital media company under Subsection (5)(a):
(a) details the requirements that the motion picture company or digital media company must meet to qualify for an incentive under this part;
(b) specifies:
(i) the nature of the incentive; and
(ii) the maximum amount of the motion picture incentive that the motion picture company or digital media company may earn for a taxable year and over the life of the production;
(c) establishes the length of time over which the motion picture company or digital media company may claim the motion picture incentive;
(d) requires the motion picture company or digital media company to retain records supporting its claim for a motion picture incentive for at least four years after the motion picture company or digital media company claims the incentive under this part; and
(e) requires the motion picture company or digital media company to submit to audits for verification of the claimed motion picture incentive.

Amended by Chapter 338, 2011 General Session

63M-1-1805 Annual report.

The office shall include the following information in the annual written report described in Section 63M-1-206:
(1) the office's success in attracting within-the-state production of television series, made-for-television movies, and motion pictures, including feature films and independent films;
(2) the amount of incentive commitments made by the office under this part and the period of time over which the incentives will be paid; and
(3) the economic impact on the state related to:
(a) dollars left in the state; and
(b) providing motion picture incentives under this part.

Amended by Chapter 371, 2014 General Session

Part 19
Economic Development on Military Installations

63M-1-1901 Military installation projects for economic development -- Funding -- Criteria -- Dispersal -- Report.

(1) The Legislature recognizes that significant growth in the state's economy can be achieved by state and local support of the continuing expansion and development of federal military installations throughout the state.
(2) The office, through its director, may receive and distribute legislative appropriations and public and private grants and donations for military installation projects that:

(a) have a strong probability of increasing the growth and development of a military facility within the state, thereby providing significant economic benefits to the state;
(b) will provide a significant number of new jobs within the state that should remain within the state for a period of several years; and
(c) involve a partnership between the military and private industry or local government or the military and private industry and local government.
(3)
(a) The director may distribute money under this section to:
(i) a regional or statewide nonprofit economic development organization; or
(ii) a federal military partnership that has the mission of promoting the economic growth of a military installation.
(b) The director shall make a distribution under this section upon:
(i) receipt of an application on a form prescribed by the office that lists:
(A) the particulars of the proposed use of the money requested, such as needed equipment purchases and anticipated training costs;
(B) the estimated number of new jobs that will be created by the proposed project;
(C) pending contracts related to the project that are to be finalized from funding anticipated under this section; and
(D) a projected date on which the applicant shall provide the director with a report on the implementation and performance of the project, including the creation of new jobs; and
(ii) a determination by the director that the project satisfies the requirements listed in Subsection (2).
(c)
(i) The office shall monitor the activities of a recipient of money under this section to ensure that there is compliance with the terms and conditions imposed on the recipient under this part.
(ii) The office shall include in the annual written report described in Section 63M-1-206, a report regarding the use and impact of the money distributed under this section.

Amended by Chapter 371, 2014 General Session

Part 20
Business Development for Disadvantaged Rural Communities Act

63M-1-2001 Title.
This part is known as the "Business Development for Disadvantaged Rural Communities Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-2002 Definitions.
As used in this part:
(1) "Board" means the Board of Business and Economic Development created by Section 63M-1-301.
(2) "Business incubator expense" means an expense relating to funding a program that is:
(a) designed to provide business support services and resources to one or more business entities within a project area during the business entities' early stages of development; and
(b) determined to be a business incubator by the board.

(3) "Business rehabilitation expense" means an expense relating to the renovation or rehabilitation of an existing building within a project area as determined by the board.
(4) "Debt service" means the payment of debt service on a bond issued to pay a:
(a) business rehabilitation expense relating to a project; or
(b) public infrastructure expense relating to a project.
(5) "Eligible county" means a county of the third, fourth, fifth, or sixth class.
(6) "Eligible expense" means an expense:
(a) incurred by an eligible county;
(b) relating to a project; and
(c) that is:
(i) a business incubator expense;
(ii) debt service; or
(iii) a public infrastructure expense.
(7) "Project" means an economic development project:
(a) as determined by the board; and
(b) for which an eligible county applies to the board in accordance with this part for a loan or grant to assist the eligible county in paying an eligible expense.
(8) "Project area" means the geographic area within which a project is implemented by an eligible county.
(9) "Public infrastructure expense" means an expense relating to a publicly owned improvement located within a project area if:
(a) the expense is:
(i) incurred for:
(A) construction;
(B) demolition;
(C) design;
(D) engineering;
(E) an environmental impact study;
(F) environmental remediation; or
(G) rehabilitation; or
(ii) similar to an expense described in Subsection (9)(a)(i) as determined by the board; and
(b) the publicly owned improvement is:
(i) not a building as determined by the board; and
(ii) necessary to support a project as determined by the board.
(10) "Publicly owned improvement" means an improvement to real property if:
(a) the real property is owned by:
(i) the United States;
(ii) the state; or
(iii) a political subdivision:
(A) as defined in Section 17B-1-102; and
(B) of the state; and
(b) the improvement relates to:
(i) a sewage system including a system for collection, transport, storage, treatment, dispersal, effluent use, or discharge;
(ii) a drainage or flood control system, including a system for collection, transport, diversion, storage, detention, retention, dispersal, use, or discharge;
(iii) a water system including a system for production, collection, storage, treatment, transport, delivery, connection, or dispersal;

(iv) a highway, street, or road system for vehicular use for travel, ingress, or egress;
(v) a rail transportation system;
(vi) a system for pedestrian use for travel, ingress, or egress;
(vii) a public utility system including a system for electricity, gas, or telecommunications; or
(viii) a system or device that is similar to a system or device described in Subsections (10)(b)(i) through (vii) as determined by the board.

Amended by Chapter 203, 2014 General Session

63M-1-2004 Board authority to award a grant or loan to an eligible county -- Interest on a loan -- Eligible county proposal process -- Process for awarding a grant or loan.

(1)
(a) Subject to the provisions of, and funds made available for, this section, beginning on July 1, 2005, through June 30, 2015, the board may make an award to an eligible county of one or more grants or loans to assist in paying an eligible expense relating to a project.
(b) The total amount of grants and loans that the board may award in accordance with this section relating to one project is $75,000.
(c) If the board awards a loan to an eligible county in accordance with this section, the loan shall be subject to interest as provided by the procedures and methods referred to in Subsection (6).

(2)
(a) Before the board may award an eligible county a grant or loan in accordance with this section, the eligible county shall submit a written proposal to the board in accordance with Subsection (2)(b).
(b) The proposal described in Subsection (2)(a) shall:
(i) describe the project area;
(ii) describe the characteristics of the project including a description of how the project will be implemented;
(iii) provide an economic development plan for the project including a description of any eligible expenses that will be incurred as part of implementing the project;
(iv) describe the characteristics of the community within which the project area is located;
(v) establish that the community within which the project area is located is a disadvantaged community on the basis of one or more of the following factors:
(A) median income per capita within the community;
(B) median property tax revenues generated within the community;
(C) median sales and use tax revenues generated within the community; or
(D) unemployment rates within the community;
(vi) demonstrate that there is a need for the project in the community within which the project area is located;
(vii) describe the short-term and long-term benefits of the project to the community within which the project area is located;
(viii) demonstrate that there is a need for assistance in paying eligible expenses relating to the project;
(ix) indicate the amount of any revenues that will be pledged to match any funds the board may award as a loan or grant under this section; and
(x) indicate whether there is support for the implementation of the project from:
(A) the community within which the project area is located; and
(B) any cities or towns within which the project area is located.

(3) At the request of the board, representatives from an eligible county shall appear before the board to:
(a) present a proposal submitted to the board in accordance with Subsection (2)(b); and
(b) respond to any questions or issues raised by the board relating to eligibility to receive a grant or loan under this section.
(4) The board shall:
(a) consider a proposal submitted to the board in accordance with Subsection (2);
(b) make written findings as to whether the proposal described in Subsection (4)(a) meets the requirements of Subsection (2)(b);
(c) make written findings as to whether to award the eligible county that submitted the proposal described in Subsection (4)(a) one or more grants or loans:
(i) on the basis of the factors established in Subsection (5);
(ii) in consultation with the director; and
(iii) in accordance with the procedures established for prioritizing which projects may be awarded a grant or loan by the board under this section;
(d) if the board determines to award an eligible county a grant or loan in accordance with this section, make written findings in consultation with the director specifying the:
(i) amount of the grant or loan;
(ii) time period for distributing the grant or loan;
(iii) terms and conditions that the eligible county shall meet to receive the grant or loan;
(iv) structure of the grant or loan; and
(v) eligible expenses for which the eligible county may expend the grant or loan;
(e) if the board determines to award an eligible county a loan in accordance with this section, make written findings stating:
(i) the method of calculating interest applicable to the loan; and
(ii) procedures for:
(A) applying interest to the loan; and
(B) paying interest on the loan; and
(f) provide the written findings required by Subsections (4)(b) through (e) to the eligible county.
(5) For purposes of Subsection (4)(c), the board shall consider the following factors in determining whether to award an eligible county one or more grants or loans authorized by this part:
(a) whether the project is likely to result in economic development in the community within which the project area is located;
(b) whether the community within which the project area is located is a disadvantaged community on the basis of one or more of the following factors:
(i) median income per capita within the community;
(ii) median property tax revenues generated within the community;
(iii) median sales and use tax revenues generated within the community; or
(iv) unemployment rates within the community;
(c) whether there is a need for the project in the community within which the project area is located;
(d) whether the project is likely to produce short-term and long-term benefits to the community within which the project area is located;
(e) whether the project would be successfully implemented without the board awarding a grant or a loan to the eligible county;
(f) whether any revenues will be pledged to match any funds the board may award as a grant or loan under this section;
(g) whether there is support for the implementation of the project from:

(i) the community within which the project area is located; and
(ii) any cities or towns within which the project area is located; and
(h) any other factor as determined by the board.
(6) The office shall establish procedures:
(a) for prioritizing which projects may be awarded a grant or loan by the board under this section; and
(b) for loans awarded in accordance with this section:
(i) the methods of calculating interest applicable to the loans; and
(ii) procedures for:
(A) applying interest to the loans; and
(B) paying interest on the loans.

Amended by Chapter 203, 2014 General Session

63M-1-2005 Agreement between the executive director and an eligible county -- Failure to meet or violation of a term or condition of an agreement.

(1) Before an eligible county that has been awarded a grant or loan in accordance with Section 63M-1-2004 may receive the grant or loan, the eligible county shall enter into a written agreement with the director.
(2) The written agreement described in Subsection (1):
(a) shall:
(i) specify the amount of the grant or loan;
(ii) specify the time period for distributing the grant or loan;
(iii) specify the terms and conditions that the eligible county shall meet to receive the grant or loan;
(iv) specify the structure of the grant or loan;
(v) specify the eligible expenses for which the eligible county may expend the grant or loan;
(vi) if the eligible county has been awarded a loan:
(A) specify the repayment schedule for the loan;
(B) specify the method of calculating interest applicable to the loan; and
(C) specify procedures for:
(I) applying interest to the loan; and
(II) paying interest on the loan; and
(vii) subject to Subsection (3), contain provisions governing the failure to meet or the violation of a term or condition of the agreement; and
(b) may contain any other provision as determined by the director.
(3)
(a) Except as provided in Subsection (3)(b), and subject to Subsection (3)(c), if an eligible county fails to meet or violates any provision of the agreement described in Subsection (2), the board shall impose one or more of the following penalties:
(i) require the eligible county to repay all or a portion of the amount of any grant or loan the eligible county received in an amount determined by the board;
(ii) provide that an eligible county may not receive any amounts of a grant or loan that the eligible county has been awarded in accordance with Section 63M-1-2004 but has not received; or
(iii) provide that an eligible county may not be awarded a grant or loan under this part for a time period determined by the board.

(b) Notwithstanding Subsection (3)(a), the board may waive, reduce, or compromise a penalty described in Subsection (3)(a) if an eligible county demonstrates that reasonable cause exists for the eligible county failing to meet or violating a provision of the agreement described in Subsection (2).
(c) If the board imposes a penalty in accordance with this Subsection (3) on an eligible county, the board shall provide written notice of the penalty to the eligible county within 10 calendar days after the day on which the board determines to impose the penalty.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-2006 Report on amount of grants and loans, projects, and outstanding debt.

The board shall annually provide the following information to the office for inclusion in the office's annual written report described in Section 63M-1-206:
(1) the total amount of grants and loans the board awarded to eligible counties under this part during the fiscal year that ended on the June 30 immediately preceding the November interim meeting;
(2) a description of the projects with respect to which the board awarded a grant or loan under this part;
(3) the total amount of outstanding debt service that is being repaid by a grant or loan awarded under this part;
(4) whether the grants and loans awarded under this part have resulted in economic development within project areas; and
(5) whether the board recommends:
(a) that the grants and loans authorized by this part should be continued; or
(b) any modifications to this part.

Amended by Chapter 371, 2014 General Session

Part 21
Economic Development - Government Procurement Contracts

63M-1-2101 Projects to assist companies secure new business with federal, state, and local governments.

(1) The Legislature recognizes that:
(a) many Utah companies provide products and services which are routinely procured by a myriad of governmental entities at all levels of government, but that attempting to understand and comply with the numerous certification, registration, proposal, and contract requirements associated with government procurement often raises significant barriers for those companies with no government contracting experience;
(b) the costs associated with obtaining a government contract for products or services often prevent most small businesses from working in the governmental procurement market;
(c) currently a majority of federal procurement opportunities are contracted to businesses located outside of the state;
(d) the Governor's Office of Economic Development currently administers programs and initiatives that help create and grow companies in Utah and recruit companies to Utah through the use of state employees, public-private partnerships, and contractual services; and

(e) there exists a significant opportunity for Utah companies to secure new business with federal, state, and local governments.

(2) The office, through its director:

(a) shall manage and direct the administration of state and federal programs and initiatives whose purpose is to procure federal, state, and local governmental contracts;

(b) may require program accountability measures; and

(c) may receive and distribute legislative appropriations and public and private grants for projects and programs that:

(i) are focused on growing Utah companies and positively impacting statewide revenues by helping these companies secure new business with federal, state, and local governments;

(ii) provide guidance to Utah companies interested in obtaining new business with federal, state, and local governmental entities;

(iii) would facilitate marketing, business development, and expansion opportunities for Utah companies in cooperation with the Governor's Office of Economic Development's Procurement Technical Assistance Center Program and with public, nonprofit, or private sector partners such as local chambers of commerce, trade associations, or private contractors as determined by the office's director to successfully match Utah businesses with government procurement opportunities; and

(iv) may include the following components:

(A) recruitment, individualized consultation, and an introduction to government contracting;

(B) specialized contractor training for companies located in Utah;

(C) a Utah contractor matching program for government requirements;

(D) experienced proposal and bid support; and

(E) specialized support services.

(3)

(a) The office, through its director, shall make any distribution referred to in Subsection (2) on a semiannual basis.

(b) A recipient of money distributed under this section shall provide the office with a set of standard monthly reports, the content of which shall be determined by the office to include at least the following information:

(i) consultive meetings with Utah companies;

(ii) seminars or training meetings held;

(iii) government contracts awarded to Utah companies;

(iv) increased revenues generated by Utah companies from new government contracts;

(v) jobs created;

(vi) salary ranges of new jobs; and

(vii) the value of contracts generated.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 22
Transient Room Tax Fund Act

63M-1-2201 Title.

This part is known as the "Transient Room Tax Fund Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-2202 Definitions.

As used in this part, "fund" means the Transient Room Tax Fund created by Section 63M-1-2203.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-1-2203 Transient Room Tax Fund -- Source of revenues -- Interest -- Expenditure or pledge of revenues.

(1) There is created an expendable special revenue fund known as the Transient Room Tax Fund.
(2)
(a) The fund shall be funded by the portion of the sales and use tax described in Subsection 59-12-301(2).
(b)
(i) The fund shall earn interest.
(ii) Any interest earned on fund money shall be deposited into the fund.
(3)
(a) Subject to Subsection (3)(b), the director shall expend or pledge the money deposited into the fund:
(i) to mitigate the impacts of traffic and parking relating to a convention facility within a county of the first class;
(ii) for a purpose listed in Section 17-31-2, except that any requirements in Section 17-31-2 for the expenditure of money do not apply; or
(iii) for a combination of Subsections (3)(a)(i) and (ii).
(b) The director may not expend more than $20,000,000 in total to mitigate the impacts of traffic and parking relating to a convention facility within a county of the first class.

Amended by Chapter 400, 2013 General Session

Part 24
Economic Development Incentives Act

63M-1-2401 Title.

This part is known as the "Economic Development Incentives Act."

Enacted by Chapter 372, 2008 General Session

63M-1-2402 Findings.

(1) The Legislature finds that:
(a) to foster and develop industry in Utah is a public purpose necessary to assure adequate employment for, and the welfare of, Utah's citizens and the growth of the state's economy;
(b) Utah loses prospective high paying jobs, new economic growth, and corresponding incremental new state and local revenues to competing states because of a wide variety of competing economic incentives offered by those states; and

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

(2) This part is enacted to:

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

(b) provide a cooperative and unified working relationship between state and local economic development efforts.

Enacted by Chapter 372, 2008 General Session

63M-1-2403 Definitions.

As used in this part:

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

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

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

(4) "High paying jobs" means:

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

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

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

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

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

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

(6)

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

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

(7) "New incremental jobs" means employment positions that are:

(a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and

(b)

(i) with respect to a business entity, created in addition to the baseline count of employment positions that existed within the business entity before the new commercial project;

(ii) with respect to a county, created as a result of a new commercial project with respect to which the county or a community development and renewal agency seeks to claim a tax credit under Section 59-7-614.2; or

(iii) with respect to a city or town, created as a result of a new commercial project with respect to which the city, town, or a community development and renewal agency seeks to claim a tax credit under Section 59-7-614.2.

(8) "New state revenues" means:

(a) with respect to a business entity:

(i) incremental new state sales and use tax revenues that a business entity pays under Title 59, Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a development zone;

(ii) incremental new state tax revenues, if any, that a business entity pays as a result of a new commercial project in a development zone under:

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

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

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

(D)Title 59, Chapter 10, Part 4, Withholding of Tax; or

(E) a combination of Subsections (8)(a)(ii)(A) through (D);

(iii) incremental new state tax revenues paid as individual income taxes under Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by employees of a new or expanded industrial, manufacturing, distribution, or business service within a new commercial project as evidenced by payroll records that indicate the amount of employee income taxes withheld and transmitted to the State Tax Commission by the new or expanded industrial, manufacturing, distribution, or business service within the new commercial project; or

(iv) a combination of Subsections (8)(a)(i) through (iii); or

(b) with respect to a local government entity:

(i) incremental new state sales and use tax revenues that are collected under Title 59, Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a development zone;

(ii) incremental new state tax revenues, if any, that are collected as a result of a new commercial project in a development zone under:

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

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

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

(D)Title 59, Chapter 10, Part 4, Withholding of Tax; or

(E) a combination of Subsections (8)(b)(ii)(A) through (D);

(iii) incremental new state tax revenues paid as individual income taxes under Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by employees of a new or expanded industrial, manufacturing, distribution, or business service within a new commercial project as evidenced by payroll records that indicate the amount of employee income taxes withheld and transmitted to the State Tax Commission by the new or expanded industrial, manufacturing, distribution, or business service within the new commercial project; or

(iv) a combination of Subsections (8)(b)(i) through (iii).

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

(10) "Significant capital investment" means an amount of at least $10,000,000 to purchase a capital asset or a fixed asset:

(a) with the primary purpose of the investment to increase a business entity's rate at which it produces goods based on output per unit of labor;

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

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

(11) "Tax credit" means an economic development tax credit created by Section 59-7-614.2 or 59-10-1107.
(12) "Tax credit amount" means the amount the office lists as a tax credit on a tax credit certificate for a taxable year.
(13) "Tax credit certificate" means a certificate issued by the office that:
(a) lists the name of the business entity, local government entity, or community development and renewal agency to which the office authorizes a tax credit;
(b) lists the business entity's, local government entity's, or community development and renewal agency's taxpayer identification number;
(c) lists the amount of tax credit that the office authorizes the business entity, local government entity, or community development and renewal agency for the taxable year; and
(d) may include other information as determined by the office.

Amended by Chapter 104, 2010 General Session
Amended by Chapter 164, 2010 General Session

63M-1-2404 Creation of economic development zones -- Tax credits -- Assignment of tax credit.
(1) The office, with advice from the board, may create an economic development zone in the state that satisfies all of the following requirements:
(a) the area is zoned commercial, industrial, manufacturing, business park, research park, or other appropriate use in a community-approved master plan;
(b) the request to create a development zone has been forwarded to the office after first being approved by an appropriate local government entity; and
(c) local incentives have been committed or will be committed to be provided within the area.
(2)
(a) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules establishing the conditions that a business entity or local government entity shall meet to qualify for a tax credit under this part.
(b) The office shall ensure that the conditions described in Subsection (2)(a) include the following requirements:
(i) the new commercial project must be within the development zone;
(ii) the new commercial project includes direct investment within the geographic boundaries of the development zone;
(iii) the new commercial project brings new incremental jobs to Utah;
(iv) the new commercial project includes significant capital investment, the creation of high paying jobs, or significant purchases from Utah vendors and providers, or any combination of these three economic factors;
(v) the new commercial project generates new state revenues; and
(vi)
(A) a business entity or local government entity qualifying for the tax credit meets the requirements of Section 63M-1-2405; or
(B) a community development and renewal agency to which a local government entity assigns a tax credit under this section meets the requirements of Section 63M-1-2405.
(3)
(a) Subject to the other provisions of this Subsection (3), the office, with advice from the board, may enter into an agreement with a business entity or local government entity authorizing

a tax credit to the business entity or local government entity if the business entity or local government entity meets the standards established under Subsection (2).

(b)

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

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

(c)

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

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

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

(ii) Notwithstanding Subsection (3)(c)(i), the office may authorize or commit to authorize a tax credit not exceeding 60% of new state revenues from the new commercial project in any given year, if the eligible business entity creates a significant number of high paying jobs and makes capital expenditures in the state of at least $1,000,000,000.

(d)

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

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

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

(A) the agreement described in this section shall:

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

(II) establish:

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

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

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

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

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

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

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

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

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

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

Amended by Chapter 392, 2013 General Session

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

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

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

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

(b)

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

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

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

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

(e)

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

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

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

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

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

(II) lists the taxpayer identification number of that new or expanded industrial, manufacturing, distribution, or business service; or

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

(A) a document signed by the members of the governing body of the community development and renewal agency that expressly directs and authorizes the State Tax Commission

to disclose the returns of the community development and renewal agency and other information that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office; and

(B) if the new state revenues collected as a result of a new commercial project are attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or business service within a new commercial project within the community development and renewal agency, a document signed by an authorized representative of the new or expanded industrial, manufacturing, distribution, or business service that:

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

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

(f) for a business entity only, documentation that the business entity has satisfied the performance benchmarks outlined in the agreement described in Subsection 63M-1-2404(3)(a), including:

(i) significant capital investment;

(ii) the creation of high paying jobs;

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

(iv) any combination of Subsections (2)(f)(i), (ii), and (iii).

(3)

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

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

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

(a)

(i) deny the tax credit; or

(ii) terminate the agreement described in Subsection 63M-1-2404(3)(a) for failure to meet the performance standards established in the agreement; or

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

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

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

(b) issue a tax credit certificate to the business entity, local government entity, or if the local government entity assigns the tax credit in accordance with Section 63M-1-2404, to the community development and renewal agency to which the local government entity assigns the tax credit; and
(c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.
(6) A business entity, local government entity, or community development and renewal agency may not claim a tax credit unless the business entity, local government entity, or community development and renewal agency has a tax credit certificate issued by the office.
(7)
(a) A business entity, local government entity, or community development and renewal agency may claim a tax credit in the amount listed on the tax credit certificate on its tax return.
(b) A business entity, local government entity, or community development and renewal agency that claims a tax credit under this section shall retain the tax credit certificate in accordance with Section 59-7-614.2 or 59-10-1107.

Amended by Chapter 392, 2013 General Session

63M-1-2406 Reports -- Posting monthly and annual reports -- Audit and study of tax credits.
(1) The office shall include the following information in the annual written report described in Section 63M-1-206:
(a) the office's success in attracting new commercial projects to development zones under this part and the corresponding increase in new incremental jobs;
(b) the estimated amount of tax credit commitments made by the office and the period of time over which tax credits will be paid;
(c) the economic impact on the state related to generating new state revenues and providing tax credits under this part;
(d) the estimated costs and economic benefits of the tax credit commitments that the office made;
(e) the actual costs and economic benefits of the tax credit commitments that the office made; and
(f) tax credit commitments that the office made, with the associated calculation.
(2) The office shall monthly post on its website and on a state website:
(a) the new tax credit commitments that the office made during the previous month; and
(b) the estimated costs and economic benefits of those tax credit commitments.
(3)
(a) On or before November 1, 2014, and every five years after November 1, 2014, the office shall:
(i) conduct an audit of the tax credits allowed under Section 63M-1-2405;
(ii) study the tax credits allowed under Section 63M-1-2405; and
(iii) make recommendations concerning whether the tax credits should be continued, modified, or repealed.
(b) An audit under Subsection (3)(a)(i) shall include an evaluation of:
(i) the cost of the tax credits;
(ii) the purposes and effectiveness of the tax credits; and
(iii) the extent to which the state benefits from the tax credits.

Amended by Chapter 371, 2014 General Session

63M-1-2407 Reports of new state revenues, partial rebates, and tax credits.

(1) Before December 1 of each year, the office shall submit a report to the Governor's Office of Management and Budget, the Office of Legislative Fiscal Analyst, and the Division of Finance identifying:
  (a)
    (i) the total estimated amount of new state revenues created from new commercial projects in the development zones; and
    (ii) the estimated amount of new state revenues from new commercial projects in the development zones that will be generated from:
      (A) sales tax;
      (B) income tax; and
      (C) corporate franchise and income tax;
  (b)
    (i) the total estimated amount of partial rebates as defined in Section 63M-1-2408 that the office projects will be required to be paid in the next fiscal year; and
    (ii) the estimated amount of partial rebates as defined in Section 63M-1-2408 that are attributable to:
      (A) sales tax;
      (B) income tax; and
      (C) corporate franchise and income tax; and
  (c) the total estimated amount of tax credits that the office projects that business entities, local government entities, or community development and renewal agencies will qualify to claim under this part.

(2) By the first business day of each month, the office shall submit a report to the Governor's Office of Management and Budget, the Office of Legislative Fiscal Analyst, and the Division of Finance identifying:
  (a) each new agreement entered into by the office since the last report;
  (b) the estimated amount of new state revenues that will be generated under each agreement; and
  (c) the estimated amount of tax credits that a business entity, local government entity, or community development and renewal agency could qualify for under each agreement.

Amended by Chapter 310, 2013 General Session

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

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

(2)
  (a) Unless modified or renegotiated as provided in Subsection (2)(b), the Division of Finance shall make partial rebate payments due under agreements entered into by the office before May 5, 2008 as provided in this section.
  (b) By January 1, 2009, the office shall:
    (i) contact each business entity with whom the office entered into an agreement under former Section 63-38f-1304 or 63-38f-1704; and
    (ii) subject to the limits established in Subsection 63M-1-2404(3)(c), seek to modify those agreements for the sole purpose of providing the incentives in the form of tax credits under this part rather than partial rebates.

(c) The office shall:
(i) for each modified agreement granting tax credits, follow the procedures and requirements of Section 63M-1-2405; and
(ii) for each agreement that still requires the state to pay partial rebates to the business entity, follow the procedures and requirements of this section.
(3)
(a) There is created a restricted account in the General Fund known as the Economic Incentive Restricted Account.
(b) The account shall consist of money transferred into the account by the Division of Finance from the General Fund as provided in this section.
(c) The Division of Finance shall make payments from the account as required by this section.
(4)
(a) Each business entity seeking a partial rebate shall follow the procedures and requirements of this Subsection (4) to obtain a partial rebate.
(b) Within 90 days of the end of each calendar year, a business entity seeking a partial rebate shall:
(i) provide the office with documentation of the new state revenues that the business entity generated during the preceding calendar year; and
(ii) ensure that the documentation includes:
(A) the types of taxes and corresponding amounts of taxes paid directly to the State Tax Commission; and
(B) the sales taxes paid to Utah vendors and suppliers that were indirectly paid to the State Tax Commission.
(c) The office shall:
(i) audit or review the documentation for accuracy;
(ii) based upon its analysis of the documentation, determine the amount of partial rebates that the business entity earned under the agreement; and
(iii) submit to the Division of Finance:
(A) a request for payment of partial rebates to the business entity;
(B) the name and address of the payee; and
(C) any other information requested by the Division of Finance.
(5) Upon receipt of a request for payment of partial rebates from the office, the Division of Finance shall:
(a) transfer from the General Fund to the restricted account the amount contained in the request for payment of partial rebates after reducing the amount transferred by any unencumbered balances in the restricted account; and
(b) notwithstanding Subsections 51-5-3(23)(b) and 63J-1-104(3)(c), after receiving a request for payment of partial rebates and making the transfer required by Subsection (5)(a), the Division of Finance shall pay the partial rebates from the account.

Amended by Chapter 164, 2010 General Session
Amended by Chapter 323, 2010 General Session
Amended by Chapter 391, 2010 General Session

63M-1-2409 Expenditure of amounts received by a local government entity or community development and renewal agency as a tax credit -- Commingling of tax credit amounts with certain other amounts.

(1) Subject to Subsections (2) and (3), a local government entity or community development and renewal agency may expend amounts the local government entity or community development and renewal agency receives as a tax credit under Section 59-7-614.2:
  (a) for infrastructure, including real property or personal property, if that infrastructure is related to the new commercial project with respect to which the local government entity or community development and renewal agency claims the tax credit under Section 59-7-614.2; or
  (b) for another economic development purpose related to the new commercial project with respect to which the local government entity or community development and renewal agency claims the tax credit under Section 59-7-614.2.
(2) A local government entity may:
  (a) commingle amounts the local government entity receives as a tax credit under Section 59-7-614.2 with amounts the local government entity receives under Title 63M, Chapter 1, Part 9, Industrial Assistance Fund; and
  (b) expend the commingled amounts described in Subsection (2)(a) for a purpose described in Title 63M, Chapter 1, Part 9, Industrial Assistance Fund, if that purpose is related to the new commercial project with respect to which the local government entity claims the tax credit under Section 59-7-614.2.
(3) A community development and renewal agency may:
  (a) commingle amounts the community development and renewal agency receives as a tax credit under Section 59-7-614.2 with amounts the community development and renewal agency receives under Title 17C, Chapter 1, Part 4, Tax Increment and Sales Tax; and
  (b) expend the commingled amounts described in Subsection (3)(a) for a purpose described in Title 17C, Chapter 1, Part 4, Tax Increment and Sales Tax, if that purpose is related to the new commercial project with respect to which the community development and renewal agency claims the tax credit under Section 59-7-614.2.

Enacted by Chapter 164, 2010 General Session

Part 25
Health System Reform Act

63M-1-2501 Title.
This part is known as the "Health System Reform Act."

Enacted by Chapter 383, 2008 General Session

63M-1-2502 Definitions.
As used in this part, "office" means the Office of Consumer Health Services created in Section 63M-1-2504.

Enacted by Chapter 383, 2008 General Session

63M-1-2503 Duties related to health system reform.
The Governor's Office of Economic Development shall coordinate the efforts of the Office of Consumer Health Services, the Department of Health, the Insurance Department, and the

Department of Workforce Services to assist the Legislature with developing the state's strategic plan for health system reform described in Section 63M-1-2505.

Enacted by Chapter 383, 2008 General Session

63M-1-2504 Creation of Office of Consumer Health Services -- Duties.

(1) There is created within the Governor's Office of Economic Development the Office of Consumer Health Services.

(2) The office shall:

(a) in cooperation with the Insurance Department, the Department of Health, and the Department of Workforce Services, and in accordance with the electronic standards developed under Sections 31A-22-635 and 63M-1-2506, create a Health Insurance Exchange that:

(i) provides information to consumers about private and public health programs for which the consumer may qualify;

(ii) provides a consumer comparison of and enrollment in a health benefit plan posted on the Health Insurance Exchange; and

(iii) includes information and a link to enrollment in premium assistance programs and other government assistance programs;

(b) contract with one or more private vendors for:

(i) administration of the enrollment process on the Health Insurance Exchange, including establishing a mechanism for consumers to compare health benefit plan features on the exchange and filter the plans based on consumer preferences;

(ii) the collection of health insurance premium payments made for a single policy by multiple payers, including the policyholder, one or more employers of one or more individuals covered by the policy, government programs, and others; and

(iii) establishing a call center in accordance with Subsection (4);

(c) assist employers with a free or low cost method for establishing mechanisms for the purchase of health insurance by employees using pre-tax dollars;

(d) establish a list on the Health Insurance Exchange of insurance producers who, in accordance with Section 31A-30-209, are appointed producers for the Health Insurance Exchange;

(e) include in the annual written report described in Section 63M-1-206, a report on the operations of the Health Insurance Exchange required by this chapter; and

(f) in accordance with Subsection (3), provide a form to a small employer that certifies:

(i) that the small employer offered a qualified health plan to the small employer's employees; and

(ii) the period of time within the taxable year in which the small employer maintained the qualified health plan coverage.

(3) The form required by Subsection (2)(f) shall be provided to a small employer if:

(a) the small employer selected a qualified health plan on the small employer health exchange created by this section; or

(b)

(i) the small employer selected a health plan in the small employer market that is not offered through the exchange created by this section; and

(ii) the issuer of the health plan selected by the small employer submits to the office, in a form and manner required by the office:

(A) an affidavit from a member of the American Academy of Actuaries stating that based on generally accepted actuarial principles and methodologies the issuer's health plan meets

the benefit and actuarial requirements for a qualified health plan under PPACA as defined in Section 31A-1-301; and

(B) an affidavit from the issuer that includes the dates of coverage for the small employer during the taxable year.

(4) A call center established by the office:

(a) shall provide unbiased answers to questions concerning exchange operations, and plan information, to the extent the plan information is posted on the exchange by the insurer; and

(b) may not:

(i) sell, solicit, or negotiate a health benefit plan on the Health Insurance Exchange;

(ii) receive producer compensation through the Health Insurance Exchange; and

(iii) be designated as the default producer for an employer group that enters the Health Insurance Exchange without a producer.

(5) The office:

(a) may not:

(i) regulate health insurers, health insurance plans, health insurance producers, or health insurance premiums charged in the exchange;

(ii) adopt administrative rules, except as provided in Section 63M-1-2506; or

(iii) act as an appeals entity for resolving disputes between a health insurer and an insured;

(b) may establish and collect a fee for the cost of the exchange transaction in accordance with Section 63J-1-504 for:

(i) processing an application for a health benefit plan;

(ii) accepting, processing, and submitting multiple premium payment sources;

(iii) providing a mechanism for consumers to filter and compare health benefit plans in the exchange based on consumer preferences; and

(iv) funding the call center; and

(c) shall separately itemize the fee established under Subsection (5)(b) as part of the cost displayed for the employer selecting coverage on the exchange.

Amended by Chapter 371, 2014 General Session
Amended by Chapter 425, 2014 General Session

63M-1-2505 Strategic plan for health system reform.

The state's strategic plan for health system reform shall include consideration of the following:

(1) legislation necessary to allow a health insurer in the state to offer one or more health benefit plans that:

(a) allow an individual to purchase a policy for individual or family coverage, with or without employer contributions, and keep the policy even if the individual changes employment;

(b) incorporate rating practices and issue practices that will sustain a viable insurance market and provide affordable health insurance products for the most purchasers;

(c) are based on minimum required coverages that result in a lower premium than most current health insurance products;

(d) include coverage for immunizations, screenings, and other preventive health services;

(e) encourage cost-effective use of health care systems;

(f) minimize risk-skimming insurance benefit designs;

(g) maximize the use of federal and state income tax policies to allow for payment of health insurance products with tax-exempt funds;

(h) may include other innovative provisions that may lower the costs of health insurance products;

(i) may incorporate innovative consumer-driven provisions, including:
(i) an exemption from selected state health insurance laws and regulations;
(ii) a range of benefit and cost sharing provisions tailored to the health status, financial capacity, and preferences of individual consumers; and
(iii) varying the amount of cost sharing for a service based on where the service falls along a continuum of care ranging from preventive care to purely elective care; and
(j) encourage employers to allow their employees greater control of the employee's health care benefits by providing tax-exempt defined contributions for the purchase of health insurance by either the employer or the employee;
(2) current rating and issue practices by health insurers and changes that may be necessary to achieve the goals of Subsection (1)(b);
(3) methods to decrease cost shifting from the uninsured and under-insured to the insured, health care providers and taxpayers, including:
(a) eligibility and benefit levels for entitlement programs;
(b) reimbursement rates for entitlement programs; and
(c) the Utah Premium Partnership for Health Insurance Program and the Children's Health Insurance Program's enrollment and benefit policies, and whether those policies provide appropriate and effective coverage for children;
(4) providing public employees an option that gives them greater control of their health care benefits through a system of defined contributions for insurance policies;
(5) giving public employees access to an option that provides individually selected and owned policies;
(6) encouraging the use of health care quality measures and the adoption of best practice protocols by health care providers for the benefit of consumers, health care providers, and third party payers;
(7) providing some protection from liability for health care providers who follow best practice protocols;
(8) promoting personal responsibility through:
(a) obtaining health insurance;
(b) achieving self reliance;
(c) making healthy choices; and
(d) encouraging healthy behaviors and lifestyles to the full extent allowed by the Health Insurance Portability and Accountability Act;
(9) studying the costs and benefits associated with:
(a) different forms of mandates for individual responsibility; and
(b) potential enforcement mechanisms for individual responsibility;
(10)
(a) increasing the number of affordable health insurance policies available to a person responsible for obtaining health insurance under Subsection (8)(a) by creating a system of subsidies and Medicaid waivers that bring more people into the private insurance market; and
(b) funding subsidies to support bringing more people into the private insurance market, which may include:
(i) imposing assessments on:
(A) health care facilities;
(B) health care providers;
(C) health care services; and
(D) health insurance products; or
(ii) relying on other funding sources;

(11) investigating and applying for Medicaid waivers that will promote the use of private sector health insurance;
(12) identifying federal barriers to state health system reform and seeking collaborative solutions to those barriers;
(13) maximizing the use of pre-tax dollars for health insurance premium payments;
(14) requiring employers in the state to adopt mechanisms that allow an employee to use tax-exempt earnings, other than pre-tax contributions by the employer, to purchase a health insurance product;
(15) extending a preference under the state procurement code for bidders who offer goods or services to the state if the bidder provides health insurance benefits or a defined contribution for health insurance to the bidder's employees; and
(16) requiring insurers to accept premium payments from multiple sources, including state-funded subsidies.

Enacted by Chapter 383, 2008 General Session

63M-1-2505.5 Reporting on federal health reform -- Prohibition of individual mandate.
(1) The Legislature finds that:
(a) the state has embarked on a rigorous process of implementing a strategic plan for health system reform pursuant to Section 63M-1-2505;
(b) the health system reform efforts for the state were developed to address the unique circumstances within Utah and to provide solutions that work for Utah;
(c) Utah is a leader in the nation for health system reform which includes:
(i) developing and using health data to control costs and quality; and
(ii) creating a defined contribution insurance market to increase options for employers and employees; and
(d) the federal government proposals for health system reform:
(i) infringe on state powers;
(ii) impose a uniform solution to a problem that requires different responses in different states;
(iii) threaten the progress Utah has made towards health system reform; and
(iv) infringe on the rights of citizens of this state to provide for their own health care by:
(A) requiring a person to enroll in a third party payment system;
(B) imposing fines, penalties, and taxes on a person who chooses to pay directly for health care rather than use a third party payer;
(C) imposing fines, penalties, and taxes on an employer that does not meet federal standards for providing health care benefits for employees; and
(D) threatening private health care systems with competing government supported health care systems.
(2)
(a) For purposes of this section:
(i) "Implementation" includes adopting or changing an administrative rule, applying for or spending federal grant money, issuing a request for proposal to carry out a requirement of PPACA, entering into a memorandum of understanding with the federal government regarding a provision of PPACA, or amending the state Medicaid plan.
(ii) "PPACA" is as defined in Section 31A-1-301.
(b) A department or agency of the state may not implement any part of PPACA unless, prior to implementation, the department or agency reports in writing, and, if practicable, in person if requested, to the Legislature's Business and Labor Interim Committee, the Health Reform

Task Force, or the legislative Executive Appropriations Committee in accordance with Subsection (2)(d).

(c) The Legislature may pass legislation specifically authorizing or prohibiting the state's compliance with, or participation in provisions of PPACA.

(d) The report required under Subsection (2)(b) shall include:

(i) the specific federal statute or regulation that requires the state to implement a provision of PPACA;

(ii) whether PPACA has any state waiver or options;

(iii) exactly what PPACA requires the state to do, and how it would be implemented;

(iv) who in the state will be impacted by adopting the federal reform provision, or not adopting the federal reform provision;

(v) what is the cost to the state or citizens of the state to implement the federal reform provision;

(vi) the consequences to the state if the state does not comply with PPACA;

(vii) the impact, if any, of the PPACA requirements regarding:

(A) the state's protection of a health care provider's refusal to perform an abortion on religious or moral grounds as provided in Section 76-7-306; and

(B) abortion insurance coverage restrictions provided in Section 31A-22-726.

(3)

(a) The state shall not require an individual in the state to obtain or maintain health insurance as defined in PPACA, regardless of whether the individual has or is eligible for health insurance coverage under any policy or program provided by or through the individual's employer or a plan sponsored by the state or federal government.

(b) The provisions of this title may not be used to facilitate the federal PPACA individual mandate or to hold an individual in this state liable for any penalty, assessment, fee, or fine as a result of the individual's failure to procure or obtain health insurance coverage.

(c) This section does not apply to an individual who voluntarily applies for coverage under a state administered program pursuant to Title XIX or Title XXI of the Social Security Act.

Amended by Chapter 341, 2013 General Session

63M-1-2506 Health benefit plan information on Health Insurance Exchange -- Insurer transparency.

(1)

(a) The office shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish uniform electronic standards for insurers, employers, brokers, consumers, and vendors to use when transmitting or receiving information, uniform applications, waivers of coverage, or payments to, or from, the Health Insurance Exchange.

(b) The administrative rules adopted by the office shall:

(i) promote an efficient and consumer friendly process for shopping for and enrolling in a health benefit plan offered on the Health Insurance Exchange; and

(ii) if appropriate, as determined by the office, comply with standards adopted at the national level.

(2) The office shall assist the risk adjuster board created under Title 31A, Chapter 42, Defined Contribution Risk Adjuster Act, and carriers participating in the defined contribution market on the Health Insurance Exchange with the determination of when an employer is eligible to participate in the Health Insurance Exchange under Title 31A, Chapter 30, Part 2, Defined Contribution Arrangements.

(3)
(a) The office shall create an advisory board to advise the exchange concerning the operation of the exchange, the consumer experience on the exchange, and transparency issues.
(b) The advisory board shall have the following members:
(i) two health producers who are appointed producers with the Health Insurance Exchange;
(ii) two representatives from community-based, non-profit organizations;
(iii) one representative from an employer that participates in the defined contribution market on the Health Insurance Exchange;
(iv) up to four representatives from insurers who participate in the defined contribution market of the Health Insurance Exchange;
(v) one representative from the Insurance Department; and
(vi) one representative from the Department of Health.
(c) Members of the advisory board shall serve without compensation.
(4) The office shall post or facilitate the posting, on the Health Insurance Exchange, of the information required by this section and Section 31A-22-635 and links to websites that provide cost and quality information from the Department of Health Data Committee or neutral entities with a broad base of support from the provider and payer communities.

Amended by Chapter 400, 2011 General Session

Part 26
Government Procurement Private Proposal Program

63M-1-2601 Title.
This part is known as "Government Procurement Private Proposal Program."

Enacted by Chapter 352, 2008 General Session

63M-1-2602 Definitions.
As used in this part:
(1) "Affected department" means, as applicable, the Board of Education or the Department of Technology Services.
(2) "Board" means the Board of Business and Economic Development created under Section 63M-1-301.
(3) "Board of Education" means the Utah State Board of Education.
(4) "Chief procurement officer" means the chief procurement officer appointed under Section 63G-6a-302.
(5) "Committee" means the proposal review committee created under Section 63M-1-2604.
(6) "Day" means a calendar day.
(7) "Director" is as defined in Section 63M-1-102.
(8) "Executive Appropriations Committee" means the Legislature's Executive Appropriations Committee.
(9) "Information technology" is as defined in Section 63F-1-102.
(10) "Office" means the Governor's Office of Economic Development created under Section 63M-1-201.

(11) "Private entity" means a person submitting a proposal under this part for the purpose of entering into a project.
(12) "Project" means the subject of a proposal or an agreement for the procurement or disposal of:
(a) information technology or telecommunications products or services; or
(b) supplies or services for or on behalf of the Department of Technology Services or the Board of Education.
(13) "Proposal" means an unsolicited offer by a private entity to undertake a project, including an initial proposal under Section 63M-1-2605 and a detailed proposal under Section 63M-1-2608.
(14) "Services" is as defined in Section 63G-6a-103.
(15) "Supplies" is as defined in Section 63G-6a-103.
(16) "Telecommunications" is as defined in Section 63F-1-102.

Amended by Chapter 347, 2012 General Session

63M-1-2603 Government Procurement Private Proposal Program -- Proposals -- Rulemaking.
(1) There is created within the office the Government Procurement Private Proposal Program.
(2) In accordance with this part, the board may:
(a) accept a proposal for a project;
(b) solicit comments, suggestions, and modifications to a project in accordance with Section 63G-6a-711; and
(c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements, including time limits for any action required by the affected department, a directly affected state entity or school district, or the Governor's Office of Management and Budget, for the procurement of a project to the extent not governed by Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 310, 2013 General Session
Amended by Chapter 310, 2013 General Session

63M-1-2604 Committee for reviewing proposals -- Appointment -- Accepting or rejecting proposal.
(1) The director shall appoint a committee composed of members of the board to review and evaluate a proposal submitted in accordance with this part.
(2) The director shall determine the number of board members that constitute a committee.
(3) The committee shall, at all times, consist of less than a quorum of the members of the board, as established under Section 63M-1-301.
(4) A committee member shall serve on the committee until:
(a) replaced by the director; or
(b) the committee member ceases to be a member of the board.
(5) The director may fill a vacancy among voting members on the committee.
(6) The committee shall include the following nonvoting members in addition to the members appointed under Subsection (1):
(a) a member of the Senate, appointed by the president of the Senate; and
(b) a member of the House of Representatives, appointed by the speaker of the House of Representatives, who may not be from the same political party as the member of the Senate appointed under Subsection (6)(a).
(7)

(a) A vacancy among legislative members appointed under Subsection (6) shall be filled by the president of the Senate or the speaker of the House of Representatives, respectively.
(b) At the time of appointment or reappointment, the president of the Senate and the speaker of the House of Representatives shall consult to ensure that the legislative members appointed under Subsection (6) are not members of the same political party.
(8) A committee member is subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, and any additional requirement established by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(9) The committee shall inform a private entity of the committee's decision to approve or reject a proposal in writing.
(10) If the committee, in its sole discretion, accepts a proposal, the proposal shall be evaluated under this part.
(11) If the committee, in its sole discretion, rejects a proposal, the committee shall notify the private entity of the reason for the rejection and shall return any remaining portion of the fee required under Section 63M-1-2612.

Enacted by Chapter 352, 2008 General Session

63M-1-2605 Initial proposal -- Requirements.
(1) In accordance with this part, a private entity may at any time submit to the committee an initial proposal for a project.
(2) An initial proposal shall include:
(a) a conceptual description of the project;
(b) a description of the economic benefit of the project to the state and the affected department;
(c) information concerning the products, services, and supplies currently being provided by the state, that are similar to the project;
(d) an estimate of the following costs associated with the project:
(i) design;
(ii) implementation;
(iii) operation and maintenance; and
(iv) any other related project cost; and
(e) the name and address of a person who may be contacted for further information concerning the initial proposal.
(3) A private entity submitting an initial proposal under this section shall pay the fee required by Section 63M-1-2612 when the initial proposal is submitted.
(4) An initial proposal submitted under this section is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, until the chief procurement officer initiates a procurement process in accordance with Section 63G-6a-711.
(5) The board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, detailing the portions of an initial proposal that remain protected after the chief procurement officer initiates a procurement process.

Amended by Chapter 347, 2012 General Session

63M-1-2606 Review of initial proposal -- Affected department review.
(1) The committee shall review and evaluate an initial proposal submitted in accordance with:
(a) this part; and
(b) any rule established by the board under Section 63M-1-2603.

(2) If the committee, in its sole discretion, determines to proceed with the project, the committee shall submit a copy of the initial proposal to:
  (a) the affected department; and
  (b) the Governor's Office of Management and Budget.
(3)
  (a) An affected department, directly affected state entity, and school district receiving a copy of the initial proposal under Subsection (2) or (4) shall review the initial proposal and provide the committee with any comment, suggestion, or modification to the project.
  (b) After receiving an initial proposal, the Governor's Office of Management and Budget shall prepare an economic feasibility report containing:
    (i) information concerning the economic feasibility and effectiveness of the project based upon competent evidence;
    (ii) a dollar amount representing the total estimated fiscal impact of the project to the affected department and the state; and
    (iii) any other matter the committee requests or is required by the board by rule.
(4) In reviewing an initial proposal, the affected department shall share the initial proposal with any other state entity or school district that will be directly affected if the proposal is ultimately adopted, if the confidentiality of the initial proposal is maintained.
(5) If the committee determines to proceed with the project, the committee shall submit a copy of the initial proposal, including any comment, suggestion, or modification to the initial proposal, to:
  (a) the chief procurement officer in accordance with Section 63G-6a-711; and
  (b) the Executive Appropriations Committee, for informational purposes.
(6) Before taking any action under Subsection (5), the committee shall consider:
  (a) any comment, suggestion, or modification to the initial proposal submitted in accordance with Subsection (3);
  (b) the extent to which the project is practical, efficient, and economically beneficial to the state and the affected department;
  (c) the economic feasibility report prepared by the Governor's Office of Management and Budget; and
  (d) any other reasonable factor identified by the committee or required by the board by rule.

Amended by Chapter 310, 2013 General Session
Amended by Chapter 310, 2013 General Session

63M-1-2607 Acceptance of initial proposal -- Obtaining detailed proposals.
(1) If an initial proposal is accepted under Section 63M-1-2606, the chief procurement officer shall:
  (a) take action under Section 63G-6a-711 to initiate a procurement process to obtain one or more detailed proposals using information from portions of the initial proposal that are not protected records under Title 63G, Chapter 2, Government Records Access and Management Act;
  (b) consult with the committee during the procurement process; and
  (c) submit all detailed proposals that meet the guidelines established under Subsection 63M-1-2608(1), including the detailed proposal submitted by the private entity that submitted the initial proposal for the project, to:
    (i) the committee; and
    (ii) the Governor's Office of Management and Budget.
(2) The office is considered the purchasing agency for a procurement process initiated under this part.

Amended by Chapter 310, 2013 General Session
Amended by Chapter 310, 2013 General Session

63M-1-2608 Detailed proposal -- Requirements -- Cooperation of affected department.

(1) A detailed proposal submitted in response to a procurement process initiated under Section 63M-1-2607 shall include:
  (a) a conceptual description of the project, including the scope of the work;
  (b) a description of the economic benefit of the project to the state and the affected department;
  (c) an estimate of the design, implementation, operation, maintenance, or other costs associated with the project;
  (d) information concerning the information technology or telecommunication product and service or other supply or service currently provided by the state that is similar to the project being proposed, if applicable;
  (e) a statement setting forth the private entity's general plan for financing the project, including any appropriation by the Legislature or other public money and, if applicable, the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity;
  (f) the name and address of the person who may be contacted for further information concerning the detailed proposal;
  (g) a statement describing the private entity's experience with other similar projects and a description of why the private entity is best qualified for the project; and
  (h) any other information:
    (i) reasonably requested by the affected department or the committee, or required by the board by rule; or
    (ii) that the private entity considers necessary or appropriate to complete or describe the detailed proposal.
(2) To assist each private entity in preparing a detailed proposal:
  (a) the affected department shall provide each private entity with access to all information, records, documents, and reports related to the proposal and the project that are designated public records under Title 63G, Chapter 2, Government Records Access and Management Act; and
  (b) the affected department and the committee shall cooperate with each private entity to assist the private entity in the development of a detailed proposal that is:
    (i) practical;
    (ii) efficient; and
    (iii) economically beneficial to the state and the affected department.
(3) The committee or any private entity may choose to terminate the development of the detailed proposal at any time before the submission of the detailed proposal to the chief procurement officer under Section 63G-6a-711.

Amended by Chapter 347, 2012 General Session

63M-1-2609 Receipt of detailed proposals -- Economic feasibility report -- Acceptance of a detailed proposal.

(1) If the committee, in its sole discretion, determines that a detailed proposal does not substantially meet the guidelines established under Subsection 63M-1-2608(1), the committee may elect not to review the detailed proposal.

(2)
(a) After receiving a detailed proposal, the Governor's Office of Management and Budget shall update the economic feasibility report prepared under Section 63M-1-2606.
(b) A detailed proposal that is to be reviewed by the committee shall be submitted to the affected department, a directly affected state entity, and a directly affected school district for comment or suggestion.
(3) In determining which, if any, of the detailed proposals to accept, in addition to the proposal evaluation criteria, the committee shall consider the following factors:
(a) any comment, suggestion, or modification offered in accordance with Subsection 63M-1-2606(3) or Subsection (2)(b);
(b) the economic feasibility report updated in accordance with Subsection (2)(a);
(c) the source of funding and any resulting constraint necessitated by the funding source;
(d) any alternative funding proposal;
(e) the extent to which the project is practical, efficient, and economically beneficial to the state and the affected department; and
(f) any other reasonable factor identified by the committee or required by the board by rule.
(4)
(a) If the committee accepts a detailed proposal, the accepted detailed proposal shall be submitted to the board for approval.
(b) If the affected department or a directly affected state entity or school district disputes the detailed proposal approved by the board, the Governor's Office of Management and Budget shall consider the detailed proposal and any comment, suggestion, or modification and determine whether to proceed with a project agreement.
(c) If there is no funding for a project that is the subject of a detailed proposal and the committee determines to proceed with the project, the office shall submit a report to the Governor's Office of Management and Budget and the Executive Appropriations Committee detailing the position of the board, the affected department, a directly affected state entity or school district.
(5) A detailed proposal received from a private entity other than the private entity that submitted the initial proposal may not be accepted in place of the detailed proposal offered by the private entity that submitted the initial proposal solely because of a lower cost if the lower cost is within the amount of the fee paid by the private entity that submitted the initial proposal for review of the initial proposal.

Amended by Chapter 310, 2013 General Session

63M-1-2610 Project agreement.
(1) If the board accepts the detailed proposal, the director shall:
(a) prepare a project agreement in consultation with the affected department and any other state entity directly impacted by the detailed proposal; and
(b) enter into the project agreement with the private entity.
(2) A project agreement shall be signed by the director, the affected department, a directly affected state entity or school district, and the private entity.
(3) A project agreement shall include provisions concerning:
(a) the scope of the project;
(b) the pricing method of the project;
(c) the director's or the state's ability to terminate for convenience or for default, and any termination compensation to be paid to the private entity, if applicable;
(d) the ability to monitor performance under the project agreement;

(e) the appropriate limits of liability;
(f) the appropriate transition of services, if applicable;
(g) the exceptions from applicable rules and procedures for the implementation and administration of the project by the affected department, if any;
(h) the clauses and remedies applicable to state contracts under Title 63G, Chapter 6a, Part 12, Contracts and Change Orders; and
(i) any other matter reasonably requested by the committee or required by the board by rule.
(4) A copy of the signed project agreement shall be submitted to:
(a) the affected department; and
(b) the Executive Appropriations Committee.
(5) A project agreement is considered a contract under Title 63G, Chapter 6a, Utah Procurement Code.
(6) The affected department shall implement and administer the project agreement in accordance with rules made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except as modified by the project agreement under Subsection (3)(g).

Amended by Chapter 347, 2012 General Session

63M-1-2611 Advisory committee.
(1) The director may appoint an advisory committee comprised of:
(a) representatives of:
(i) the affected department for the proposal;
(ii) a directly affected state entity or school district;
(iii) the Department of Human Resource Management; and
(iv) the Division of Risk Management;
(b) members of the public; and
(c) other members.
(2) A member of an advisory committee may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(3) An advisory committee appointed in accordance with Subsection (1) may not participate in the final decision-making of the committee or the board.
(4) The staff, any outside consultant, and any advisory subcommittee shall:
(a) provide the committee and the board with professional services, including architectural, engineering, legal, and financial services, to develop rules and guidelines to implement the program described in this part; and
(b) assist the committee and the board in:
(i) reviewing and commenting on initial proposals;
(ii) reviewing and commenting on detailed proposals; and
(iii) preparing and negotiating the terms of any project agreement.

Amended by Chapter 286, 2010 General Session

63M-1-2612 Private Proposal Expendable Special Revenue Fund -- Fees.
(1) There is created an expendable special revenue fund within the office called the Private Proposal Expendable Special Revenue Fund.

(2) Money collected from the payment of a fee required by this part shall be deposited in the Private Proposal Expendable Special Revenue Fund.
(3) The board or the committee may use the money in the Private Proposal Expendable Special Revenue Fund to offset:
  (a) the expense of hiring staff and engaging any outside consultant to review a proposal under this part; and
  (b) any expense incurred by the Governor's Office of Management and Budget or the affected department in the fulfillment of its duties under this part.
(4) The board shall establish a fee in accordance with Section 63J-1-504 for:
  (a) reviewing an initial proposal;
  (b) reviewing any detailed proposal; and
  (c) preparing any project agreement.
(5) The board may waive the fee established under Subsection (4) if the board determines that it is:
  (a) reasonable; and
  (b) in the best interest of the state.

Amended by Chapter 310, 2013 General Session
Amended by Chapter 400, 2013 General Session

Part 27
Utah Business Resource Centers Act

63M-1-2701 Title.
This part is known as the "Utah Business Resource Centers Act."

Enacted by Chapter 50, 2008 General Session

63M-1-2702 Purpose.
The Legislature recognizes that:
(1) the development of and assistance to business in Utah is a state public purpose necessary to assure the growth of the state's economy and provide adequate employment opportunities for its citizens;
(2) public colleges and universities in the state hereafter, referred to as "host institutions," have academic and physical resources that can enhance economic development within the state through a partnership with the Governor's Office of Economic Development;
(3) state funded economic development agencies, hereafter referred to as "agencies" could broaden and improve services to business clients through better regional and statewide coordination;
(4) coordination of business clients needs is best done in the regions where they are established;
(5) this coordination needs to be done under the direction of one designated state agency;
(6) an important tool in these coordination efforts will be the development of a data base to identify, track, and assign agencies to be accountable for clients;
(7) agency accountability can be improved through client tracking and monitoring at the regional level;

(8) the state has historically experienced a high business start-up rate and has experienced a commensurate failure rate partially due to lack of coordination and accountability by state agencies;
(9) the state's economy will continue to improve as state agencies and resources become more responsive to private business by identifying them, focusing on their needs, and tracking their progress; and
(10) the governor and the Legislature will benefit from an annual report measuring tax revenue increases, new job creation, and other economic impact as a result of tracking and measuring state agencies' performance in the various regions of the state.

Enacted by Chapter 50, 2008 General Session

63M-1-2703 Definitions.

As used in this part, "business resource centers" means entities established by the Governor's Office of Economic Development in partnership with state public institutions of higher education as certified resource centers to provide private businesses with one-stop technical assistance and access to statewide resources and programs, and to identify, coordinate, track, and measure the impact of business resource programs provided by state agencies in the various regions of the state.

Enacted by Chapter 50, 2008 General Session

63M-1-2704 Establishment and administration of business resource centers -- Components.

(1) The Governor's Office of Economic Development, hereafter referred to in this part as "the office," shall establish business resource centers in at least four different geographical regions of the state where host institutions are located and the host institutions agree to enter into a business resource center partnership with the office.
(2) The office, in partnership with a host institution, shall provide methodology and oversight for a business resource center.
(3) A host institution shall contribute 50% of a business resource center's operating costs through cash or in-kind contributions, unless otherwise provided under Subsection 63M-1-2707(7).
(4) The office shall work with the Utah Business Assistance Advisory Board established under Section 63M-1-2706, hereafter referred to in this part as "the board," to provide operational oversight and coordination of the business resource centers established under this part.
(5)
  (a) A business resource center shall work with state agencies in creating methods to coordinate functions and measure the impact of the efforts provided by the state agencies and the center.
  (b) The host institution, state, local and federal governmental entities, quasi-governmental entities, and private entities may:
    (i) participate in the activities offered by or through a business resource center; and
    (ii) provide personnel or other appropriate links to the center.
  (c)
    (i) Other entities that are not initially involved in the establishment of a business resource center and that are capable of providing supportive services to Utah businesses may apply to the center to become a provider of services at the center.

(ii) Entities identified in Subsections (5)(a) and (b) shall provide the board with a service plan, to include funding, which would be made available or supplied to cover the expenses of their services offered at a business resource center.
(iii) The board shall review each application made under Subsection (5)(c)(i) and make a recommendation for approval by the office as a precondition for providing the service being offered.
(6) A business resource center may:
(a) partner with the office, other host institutions, and other entities to develop and establish web-based access to virtual business resource center services over the Internet to assist in establishing and growing businesses in the state, particularly in those situations where traveling to a business resource center site is not practical;
(b) develop a data base and software for:
(i) tracking clients and their progress; and
(ii) tracking responses and services provided by state agencies and evaluating their effectiveness; and
(c) develop outreach programs and services targeted to business clients in rural areas of the state.
(7) The office shall include in the annual written report described in Section 63M-1-206, a report on measured performance of economic development programs offered by or through established business resource centers.

Amended by Chapter 371, 2014 General Session

63M-1-2705 Duties and responsibilities.
(1) A business resource center shall:
(a) have a director;
(b) be the organization responsible for identifying, tracking, coordinating, and measuring output of assisted business clients in its region;
(c) develop programs to aid business clients in finding the resources they need;
(d) recruit state funded agencies to locate and establish their programs in the business center's region;
(e) initiate and encourage business education programs, including programs in collaboration with public, private, and governmental and educational institutions; and
(f) work with the host institution in providing academic resources, including faculty and student assistance.
(2) A business resource center shall collaborate with the host institution and state agencies to:
(a) provide research, development, or training programs for new or existing businesses, industries, or high technology business located in its region;
(b) assist in providing needs assessment relating to new or existing businesses, industries, or high technology business in conjunction with other public or private economic development programs or initiatives;
(c) assist in providing business incubator space or services, or both, if considered feasible and practical, to clients based on criteria established by the office in consultation with the board;
(d) work with local business leaders and government officials to help them formulate and implement sound, coordinated, and measurable economic development programs for their communities; and
(e) work with local government and other entities in its region in developing and certifying non-state funded satellite business resource centers.

Enacted by Chapter 50, 2008 General Session

63M-1-2706 Utah Business Assistance Advisory Board -- Creation -- Membership -- Vacancies -- Chairs.

(1) There is created the Utah Business Assistance Advisory Board, composed of at least 13 members appointed by the executive director of the Governor's Office of Economic Development.

(2)
(a) The executive director shall appoint:
(i) one member from three host institutions of business resource centers on a rotating basis;
(ii) three members from urban areas in the state;
(iii) two members from rural areas in the state; and
(iv) one member from each host institution of a statewide business service provider.
(b) The executive director may appoint ex officio board members who are sponsors of or partners with statewide business server providers.

(3) Each board member shall have a background or expertise in any one or all of the following:
(a) state or local economic development;
(b) business networking, growth, or development;
(c) entrepreneurship;
(d) business management or administration; or
(e) the establishment of partnerships or collaborative efforts with state, local, and federal agencies and institutions, as well as private entities.

(4)
(a) The executive director shall appoint board members for four-year terms.
(b) The board shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of these members are staggered so that approximately half of the members are appointed every two years.
(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the executive director for the unexpired term in the same manner as the vacated member was chosen.

(5) The board shall elect one of its members as a chair of the board for a two-year term.

(6) The board shall meet at the call of the chair, but at least quarterly.

(7)
(a) A majority of the members of the board constitute a quorum.
(b) The action of a majority of a quorum constitutes the action of the board.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 112, 2011 General Session

63M-1-2707 Duties.

The board shall:

(1) assist the office in providing operational oversight, coordination, and performance review and provide advice and improve the effectiveness of state-funded business assistance programs throughout the state as designated by the executive director;
(2) make recommendations to the office on requirements for the requisite certification of each business resource center and staff at each center by the executive director;
(3) make recommendations to the office for certification of the business plans the board is required to review under Subsection 63M-1-2704(5)(c)(iii);
(4) at the direction of the executive director:
  (a) assist the office in providing operational oversight to and coordination of the business resource centers established under this part; and
  (b) work closely with the Governor's Office of Economic Development's Board of Business and Economic Development;
(5) identify issues and make recommendations to the office regarding programs, policies, and procedures that could be implemented by:
  (a) business resource centers in fulfilling their duties and responsibilities under Section 63M-1-2705; and
  (b) state-funded business service providers;
(6) make budget recommendations to the office regarding the operation and staffing of business resource centers established under this part;
(7) recommend matching fund exceptions under Subsection 63M-1-2704(3);
(8) recommend certification of all non-state funded satellite business resource centers; and
(9) establish metrics to report the performance of economic development output in each region serviced by a business resource center.

Amended by Chapter 112, 2011 General Session

Part 29
Technology and Life Science Economic Development Act

63M-1-2901 Title.
This part is known as the "Technology and Life Science Economic Development Act."

Enacted by Chapter 306, 2011 General Session

63M-1-2902 Definitions.
As used in this part:
(1) "Board" means the Governor's Office of Economic Development Board of Directors.
(2) "Claimant" is as defined in Section 59-10-1002.
(3) "Eligible business entity" means a person that:
  (a) enters into an agreement with the office in accordance with this part to receive a tax credit certificate for a tax credit under Section 59-7-614.6 or 59-10-1109;
  (b) is:
    (i) a life science establishment; or
    (ii) described in NAICS Code 334413, Semiconductor and Related Device Manufacturing, of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;

(c) has at least 50% of its employees in the state for each day of a taxable year the eligible business entity claims a tax credit under Section 59-7-614.6 or 59-10-1109; and
(d) receives a tax credit certificate from the office in accordance with this part.
(4) "Eligible claimant, estate, or trust" means a claimant, estate, or trust that:
(a) enters into an agreement with the office in accordance with this part to receive a tax credit certificate for a tax credit under Section 59-10-1025; and
(b) receives a tax credit certificate from the office in accordance with this part.
(5) "Eligible new state tax revenues" means an increased amount of tax revenues generated as a result of an eligible product or project by an eligible business entity or a new incremental job within the state under the following:
(a)Title 59, Chapter 7, Corporate Franchise and Income Taxes;
(b)Title 59, Chapter 10, Individual Income Tax Act; and
(c)Title 59, Chapter 12, Sales and Use Tax Act.
(6) "Eligible product or project" means any product or project produced by an eligible business entity that was not produced prior to the date of an agreement with the office under Section 63M-1-2908:
(a) by the eligible business entity; and
(b) within the state.
(7) "Life science establishment" is as defined in Section 59-10-1025.
(8) "New incremental job within the state" means, with respect to an eligible business entity, an employment position that:
(a) did not exist within the state before:
(i) the eligible business entity entered into an agreement with the office in accordance with this part; and
(ii) the eligible product was produced or the eligible project began;
(b) is not shifted from one location in the state to another location in the state; and
(c) is established to the satisfaction of the office, including by amounts paid or withheld by the eligible business entity under Title 59, Chapter 10, Individual Income Tax Act.
(9) "Office" means the Governor's Office of Economic Development.
(10) "Tax credit" means a tax credit under:
(a) Section 59-7-614.6;
(b) Section 59-10-1025; or
(c) Section 59-10-1109.
(11) "Tax credit applicant" means a person that applies to the office to receive a tax credit certificate under this part.
(12) "Tax credit certificate" means a certificate issued by the office that:
(a) lists the name of the tax credit certificate recipient;
(b) lists the tax credit certificate recipient's taxpayer identification number;
(c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and
(d) includes other information as determined by the office.
(13) "Tax credit certificate recipient" means:
(a) an eligible business entity that receives a tax credit certificate in accordance with this part for a tax credit under Section 59-7-614.6 or 59-10-1109; or
(b) an eligible claimant, estate, or trust that receives a tax credit certificate in accordance with this part for a tax credit under Section 59-10-1025.

Amended by Chapter 423, 2012 General Session

63M-1-2903 Tax credits issued by office.

(1)
(a) The office may issue tax credit certificates under this part only to the extent that the Legislature, by statute, expressly authorizes the office to issue the tax credit certificates under this part for a fiscal year.
(b) The Legislature intends that a statutory authorization under Subsection (1)(a) specify:
(i) the total allocation to the tax credits under Sections 59-7-614.6 and 59-10-1109; and
(ii) the allocation to the tax credit under Section 59-10-1025.
(2) For fiscal year 2011-12 only, the office may issue a total of $1,300,000 in tax credit certificates in accordance with this part.
(3)
(a) If the total amount of tax credit certificates the office issues in a fiscal year is less than the amount of tax credit certificates the office may issue under this part in a fiscal year, the office may issue the remaining amount of tax credit certificates in a fiscal year after the fiscal year for which there is a remaining amount of tax credit certificates.
(b) Except as provided in Subsection (3)(c), if the total amount of tax credit certificates the office issues in a quarter of a fiscal year is less than the amount of tax credit certificates the office may issue under this part in that quarter, the office may issue the remaining amount of tax credit certificates in a quarter after the quarter for which there is a remaining amount of tax credit certificates.
(c) For fiscal year 2011-12 only, if the total amount of tax credit certificates the office issues in fiscal year 2011-12 is less than the amount of tax credit certificates the office may issue in tax credit certificates under Subsection (2), the office:
(i) may issue the remaining amount of tax credit certificates in a fiscal year after fiscal year 2011-12; and
(ii) is not required to allocate the tax credit certificates to any particular quarter.

Amended by Chapter 423, 2012 General Session

63M-1-2904 Person may not claim or pass through a tax credit without tax credit certificate.

A person may not claim or pass through a tax credit unless the person has received a tax credit certificate from the office for the taxable year for which the person claims or passes through the tax credit.

Enacted by Chapter 306, 2011 General Session

63M-1-2905 Application process.

(1) A tax credit applicant may apply to the office to receive a tax credit certificate by filing an application with the office:
(a) on or before the quarterly deadline established by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
(b) on a form and in the manner prescribed by the office.
(2) The application shall include:
(a) tax return information as required by the office that is necessary for the office to determine eligibility for and the amount of a tax credit; and
(b) other documentation as required by the office.

(3) As part of the application required by this section, a tax credit applicant shall sign a separate document that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit certificate recipient's tax returns and other information concerning the tax credit certificate that:
  (a) would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code; and
  (b) are necessary for the office to determine eligibility for and the amount of a tax credit under this part.
(4) Upon receipt of the document described in Subsection (3), the State Tax Commission shall provide the office with the tax returns and other information requested by the office that the tax credit applicant directed or authorized the State Tax Commission to provide to the office, including information necessary to determine eligibility for the amount of a tax credit.
(5) If the office determines that the information a tax credit applicant provides is inadequate to provide a reasonable justification for authorizing a tax credit, the office shall:
  (a) deny the tax credit; or
  (b) inform the tax credit applicant that the information is inadequate and ask the tax credit applicant to submit new or additional documentation.

Amended by Chapter 423, 2012 General Session

63M-1-2906 Criteria for tax credits.
(1) A tax credit applicant shall establish as part of the application required by Section 63M-1-2905 that the tax credit applicant:
  (a) meets all of the criteria to receive the tax credit for which the tax credit applicant applies, except for the requirement to obtain a tax credit certificate; and
  (b) will provide a long-term economic benefit to the state.
(2) The office may not issue a tax credit certificate to a tax credit applicant that fails to meet the requirements of Subsection (1)(a).

Enacted by Chapter 306, 2011 General Session

63M-1-2907 Rulemaking authority.
The office shall, by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish:
(1) criteria to prioritize the issuance of tax credits amongst tax credit applicants in a manner consistent with this part; and
(2) procedures for documenting the office's application of the criteria described in Subsection (1).

Enacted by Chapter 306, 2011 General Session

63M-1-2908 Agreement between tax credit applicant and office -- Tax credit certificate.
(1)
  (a) Except as provided in Subsection 63M-1-2903(3)(b), for each quarter of a fiscal year after fiscal year 2011-12, the office shall allocate:
    (i) 25% of the total amounts made available for allocation in accordance with Section 63M-1-2903 for the tax credits under Sections 59-7-614.6 and 59-10-1109; and
    (ii) 25% of the amounts made available for allocation in accordance with Section 63M-1-2903 for the tax credit under Section 59-10-1025.

(b) Subject to the other provisions of this part, the office, with advice from the board, shall determine quarterly:
(i) the tax credit applicant or applicants to which a tax credit certificate may be provided; and
(ii) the amount of tax credit a tax credit applicant may receive.
(2) The office, with advice from the board, may enter into an agreement to grant a tax credit certificate to a tax credit applicant selected in accordance with this part, if the tax credit applicant meets the conditions established in the agreement and under this part.
(3) The agreement described in Subsection (2) shall:
(a) detail the requirements that the tax credit applicant shall meet prior to receiving a tax credit certificate;
(b) require the tax credit certificate recipient to retain records supporting a claim for a tax credit for at least four years after the tax credit certificate recipient claims a tax credit under this part; and
(c) require the tax credit certificate recipient to submit to audits for verification of the tax credit claimed, including audits by the office and by the State Tax Commission.

Amended by Chapter 423, 2012 General Session

63M-1-2909 Issuance of tax credit certificates.
(1) For a tax credit applicant that seeks to claim a tax credit, the office may issue a tax credit certificate to the tax credit applicant:
(a) for the first taxable year for which the tax credit applicant qualifies for the tax credit and enters into an agreement with the office;
(b) for two taxable years immediately following the taxable year described in Subsection (1)(a); and
(c) for the seven taxable years immediately following the last of the two taxable years described in Subsection (1)(b) if:
(i) the agreement with the office described in Section 63M-1-2908 includes a provision that the tax credit applicant will make new capital expenditures of at least $1,000,000,000 in the state; and
(ii) the tax credit applicant makes new capital expenditures of at least $1,000,000,000 in the state in accordance with the agreement with the office described in Section 63M-1-2908.
(2) The office shall provide a duplicate copy of each tax credit certificate to the State Tax Commission.

Amended by Chapter 423, 2012 General Session

63M-1-2910 Reports on tax credit certificates -- Study by legislative committees.
(1) The office shall include the following information in the annual written report described in Section 63M-1-206:
(a) the total amount listed on tax credit certificates the office issues under this part;
(b) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax credit applicants under this part; and
(c) the economic impact on the state related to providing tax credits under this part.
(2)
(a) On or before November 1, 2016, and every five years after November 1, 2016, the Revenue and Taxation Interim Committee shall:
(i) study the tax credits allowed under Sections 59-7-614.6, 59-10-1025, and 59-10-1109; and

(ii) make recommendations concerning whether the tax credits should be continued, modified, or repealed.
(b) The study under Subsection (2)(a) shall include an evaluation of:
(i) the cost of the tax credits under Sections 59-7-614.6, 59-10-1025, and 59-10-1109;
(ii) the purposes and effectiveness of the tax credits; and
(iii) the extent to which the state benefits from the tax credits.

Amended by Chapter 371, 2014 General Session

63M-1-2911 Reports of tax credits.
(1) Before December 1 of each year, the office shall submit a report to the Governor's Office of Management and Budget, the Office of Legislative Fiscal Analyst, and the Division of Finance identifying:
(a) the total amount listed on tax credit certificates the office issues under this part; and
(b) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax credit applicants.
(2) By the first business day of each month, the office shall submit a report to the Governor's Office of Management and Budget, the Office of Legislative Fiscal Analyst, and the Division of Finance identifying:
(a) each new agreement entered into by the office since the last report;
(b) the total amount listed on tax credit certificates the office issues under this part; and
(c) the criteria that the office uses in prioritizing the issuance of tax credits amongst tax credit applicants.

Amended by Chapter 310, 2013 General Session

Part 30
Bond Volume Cap Allocation

63M-1-3001 Legislative intent.
It is the intent of the Legislature to establish procedures to most effectively and equitably allocate this state's private activity bond volume cap authorized by the Internal Revenue Code of 1986 in order to maximize the social and economic benefits to this state.

Renumbered and Amended by Chapter 370, 2011 General Session

63M-1-3002 Definitions.
As used in this part:
(1) "Allocated volume cap" means a volume cap for which a certificate of allocation is in effect or for which bonds have been issued.
(2) "Allotment accounts" means the various accounts created in Section 63M-1-3006.
(3) "Board of review" means the Private Activity Bond Review Board created in Section 63M-1-3003.
(4) "Bond" means any obligation for which an allocation of volume cap is required by the code.
(5) "Code" means the Internal Revenue Code of 1986, as amended, and any related Internal Revenue Service regulations.

(6) "Form 8038" means the Department of the Treasury tax form 8038 (OMB No. 1545-0720) or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the code.
(7) "Issuing authority" means:
(a) any county, city, or town in the state;
(b) any not-for-profit corporation or joint agency, or other entity acting on behalf of one or more counties, cities, towns, or any combination of these;
(c) the state; or
(d) any other entity authorized to issue bonds under state law.
(8) "State" means the state of Utah and any of its agencies, institutions, and divisions authorized to issue bonds or certificates under state law.
(9) "Volume cap" means the private activity bond volume cap for the state as computed under Section 146 of the code.
(10) "Year" means each calendar year.

Renumbered and Amended by Chapter 370, 2011 General Session

63M-1-3003 Private Activity Bond Review Board.
(1) There is created within the office the Private Activity Bond Review Board, composed of 11 members as follows:
(a) five ex officio members who are:
(i) the director of the office or the director's designee;
(ii) the director of the Division of Business and Economic Development or the director's designee;
(iii) the state treasurer or the treasurer's designee;
(iv) the chair of the Board of Regents or the chair's designee; and
(v) the chair of the Utah Housing Corporation or the chair's designee; and
(b) six local government members who are:
(i) three elected or appointed county officials, nominated by the Utah Association of Counties and appointed by the governor with the consent of the Senate; and
(ii) three elected or appointed municipal officials, nominated by the Utah League of Cities and Towns and appointed by the governor with the consent of the Senate.
(2)
(a) Except as required by Subsection (2)(b), the terms of office for the local government members of the board of review shall be four-year terms.
(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
(c) Members may be reappointed only once.
(3)
(a) If a local government member ceases to be an elected or appointed official of the city or county the member is appointed to represent, that membership on the board of review terminates immediately and there shall be a vacancy in the membership.
(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed within 30 days in the manner of the regular appointment for the unexpired term, and until his successor is appointed and qualified.
(4)
(a) The chair of the board of review is the director of the office or the director's designee.

(b) The chair is nonvoting except in the case of a tie vote.
(5) Six members of the board of review constitute a quorum.
(6) Formal action by the board of review requires a majority vote of a quorum.
(7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(8) The chair of the board of review serves as the state official designated under state law to make certifications required to be made under Section 146 of the code including the certification required by Section 149(e)(2)(F) of the code.

Renumbered and Amended by Chapter 370, 2011 General Session

63M-1-3004 Powers, functions, and duties of board of review.

The board of review shall:
(1) make, subject to the limitations of the code, allocations of volume cap to issuing authorities;
(2) determine the amount of volume cap to be allocated with respect to approved applications;
(3) maintain a record of all applications filed by issuing authorities under Section 63M-1-3005 and all certificates of allocation issued under Section 63M-1-3007;
(4) maintain a record of all bonds issued by issuing authorities during each year;
(5) determine the amount of volume cap to be treated as a carryforward under Section 146(f) of the code and allocate this carryforward to one or more qualified carryforward purposes;
(6) make available upon reasonable request a certified copy of all or any part of the records maintained by the board of review under this part or a summary of them, including information relating to the volume cap for each year and any amounts available for allocation under this part;
(7) promulgate rules for the allocation of volume cap under this part; and
(8) charge reasonable fees for the performance of duties prescribed by this part, including application, filing, and processing fees.

Renumbered and Amended by Chapter 370, 2011 General Session

63M-1-3005 Allocation of volume cap.

(1)
(a) Subject to Subsection (1)(b), the volume cap for each year shall be distributed by the board of review to the various allotment accounts as set forth in Section 63M-1-3006.
(b) The board of review may distribute up to 50% of each increase in the volume cap that occurs after March 11, 1999, for use in development that occurs in quality growth areas, depending upon the board's analysis of the relative need for additional volume cap between development in quality growth areas and the allotment accounts under Section 63M-1-3006.
(2) To obtain an allocation of the volume cap, issuing authorities shall submit to the board of review an application containing information required by the procedures and processes of the board of review.
(3)
(a) The board of review shall establish criteria for making allocations of volume cap that are consistent with the purposes of the code and this part.
(b) In making an allocation of volume cap the board of review shall consider the following:

(i) the principal amount of the bonds proposed to be issued;
(ii) the nature and the location of the project or the type of program;
(iii) the likelihood that the bonds will be sold and the timeframe of bond issuance;
(iv) whether the project or program could obtain adequate financing without an allocation of volume cap;
(v) the degree to which an allocation of volume cap is required for the project or program to proceed or continue;
(vi) the social, health, economic, and educational effects of the project or program on the local community and state as a whole;
(vii) the anticipated economic development created or retained within the local community and the state as a whole;
(viii) the anticipated number of jobs, both temporary and permanent, created or retained within the local community and the state as a whole;
(ix) if the project is a residential rental project, the degree to which the residential rental project:
(A) targets lower income populations; and
(B) is accessible housing; and
(x) whether the project meets the principles of quality growth recommended by the Quality Growth Commission created under Section 11-38-201.

(4) The board of review shall evidence an allocation of volume cap by issuing a certificate in accordance with Section 63M-1-3007.

(5)
(a) From January 1 to June 30, the board shall set aside at least 50% of the Small Issue Bond Account that may be allocated only to manufacturing projects.
(b) From July 1 to August 15, the board shall set aside at least 50% of the Pool Account that may be allocated only to manufacturing projects.

Renumbered and Amended by Chapter 370, 2011 General Session

63M-1-3006 Allotment accounts.

(1) There are created the following allotment accounts:
(a) the Single Family Housing Account, for which eligible issuing authorities are those authorized under the code and state statute to issue qualified mortgage bonds under Section 143 of the code;
(b) the Student Loan Account, for which eligible issuing authorities are those authorized under the code and state statute to issue qualified student loan bonds under Section 144(b) of the code;
(c) the Small Issue Bond Account, for which eligible issuing authorities are those authorized under the code and state statute to issue:
(i) qualified small issue bonds under Section 144(a) of the code;
(ii) qualified exempt facility bonds for qualified residential rental projects under Section 142(d) of the code; or
(iii) qualified redevelopment bonds under Section 144(c) of the code;
(d) the Exempt Facilities Account, for which eligible issuing authorities are those authorized under the code and state statute to issue any bonds requiring an allocation of volume cap other than for purposes described in Subsections (1)(a), (b), or (c);
(e) the Pool Account, for which eligible issuing authorities are those authorized under the code and state statute to issue any bonds requiring an allocation of volume cap; and

(f) the Carryforward Account, for which eligible issuing authorities are those with projects or programs qualifying under Section 146(f) of the code.

(2)

(a) The volume cap shall be distributed to the various allotment accounts on January 1 of each year on the following basis:

(i) 42% to the Single Family Housing Account;

(ii) 33% to the Student Loan Account;

(iii) 1% to the Exempt Facilities Account; and

(iv) 24% to the Small Issue Bond Account.

(b) From July 1 to September 30 of each year, the board of review may transfer any unallocated volume cap from the Exempt Facilities Account or the Small Issue Bond Account to the Pool Account.

(c) The board of review, upon written notification by the issuing authorities eligible for volume cap allocation from the Single Family Housing Account or the Student Loan Account that all or a portion of volume cap distributed into that allotment account will not be used, may transfer the unused volume cap between the Single Family Housing Account and the Student Loan Account.

(d) From October 1 to the third Friday of December of each year, the board of review shall transfer all unallocated volume cap into the Pool Account.

(e) On the third Saturday of December, the board of review shall transfer uncollected volume cap or allocated volume cap for which bonds have not been issued prior to the third Saturday of December into the Carryforward Account.

(f) If the authority to issue bonds designated in any allotment account is rescinded by amendment to the code, the board of review may transfer any unallocated volume cap from that allotment account to any other allotment account.

Renumbered and Amended by Chapter 370, 2011 General Session

63M-1-3007 Certificates of allocation.

(1)

(a) After an allocation of volume cap for a project or program is approved by the board of review, the board shall issue a numbered certificate of allocation stating the amount of the allocation, the allotment account for which the allocation is being made, and the expiration date of the allocation.

(b) The certificates of allocation shall be mailed to the issuing authority within 10 working days of the date of approval.

(c) No bonds are entitled to any allocation of the volume cap unless the issuing authority received a certificate of allocation with respect to the bonds.

(d)

(i) Certificates of allocation shall remain in effect for a period of 90 days from the date of approval.

(ii) If bonds for which a certificate has been approved are not issued within the 90-day period, the certificate of allocation is void and volume cap shall be returned to the applicable allotment account for reallocation by the board of review.

(2)

(a) An issuing authority receiving an allocation of volume cap from the Carryforward Account shall receive a certificate of allocation similar to the certificates of allocation described in Subsection (1) from the board of review stating the amount of allocation from the

Carryforward Account that has been allocated to the issuing authority and the expiration of the allocation.

(b) If in the judgment of the board of review an issuing authority or a person or entity responsible for a project or program receiving an allocation from the Carryforward Account does not proceed with diligence in providing for the issuance of the bonds with respect to the project or program, and because of the lack of diligence the volume cap cannot be used, the board of review may exclude from its consideration for a given period of time, determined by the board of review, an application of the issuing authority, person, or entity. The board of review may, at any time, review and modify its decisions relating to this exclusion.

Renumbered and Amended by Chapter 370, 2011 General Session

63M-1-3008 Issuing authorities -- Limitations -- Duties.

(1)

(a) Any law to the contrary notwithstanding, an issuing authority issuing bonds without a certificate of allocation issued under Section 63M-1-3007, or an issuing authority issuing bonds after the expiration of a certificate of allocation, is not entitled to an allocation of the volume cap for those bonds.

(b) An issuing authority issuing bonds in excess of the amount set forth in the related certificate of allocation is not entitled to an allocation of the volume cap for the excess.

(2) Each issuing authority shall:

(a) advise the board of review, within 15 days after the issuance of bonds, of the principal amount of bonds issued under each certificate of allocation by delivering to the board of review a copy of the Form 8038 that was delivered or shall be delivered to the Internal Revenue Service in connection with the bonds, or, if no Form 8038 is required to be delivered to the Internal Revenue Service, a completed copy of a Form 8038 prepared for the board of review with respect to the bonds; and

(b) if all or a stated portion of the bonds for which a certificate of allocation was received will not be issued, advise the board of review in writing, within 15 days of the earlier of:

(i) the final decision not to issue all or a stated portion of the bonds; or

(ii) the expiration of the certificate of allocation.

(3) Failure by an issuing authority to notify the board of review under Subsection (2), including failure to timely deliver a Form 8038, may, in the sole discretion of the board of review, result in the issuing authority being denied further consideration of applications.

Renumbered and Amended by Chapter 370, 2011 General Session

63M-1-3009 Procedures -- Adjudicative proceedings.

The board of review shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Renumbered and Amended by Chapter 370, 2011 General Session

Part 31
Alternative Energy Manufacturing Tax Credit Act

63M-1-3101 Title.

This part is known as the "Alternative Energy Manufacturing Tax Credit Act."

Enacted by Chapter 410, 2012 General Session

63M-1-3102 Definitions.

As used in this section:

(1) "Alternative energy" is as defined in Section 59-12-102.

(2)

(a) "Alternative energy entity" means a person that:

(i) conducts business within the state; and

(ii) enters into an agreement with the office that qualifies the person to receive a tax credit.

(b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (2)(a).

(3) "Alternative energy manufacturing project" means a project produced by an alternative energy entity if that project involves:

(a) a new or expanding operation in the state of a new or expanding alternative energy entity; and

(b) the manufacturing of machinery or equipment used directly in the production of alternative energy.

(4) "New incremental job within the state" means, with respect to an alternative energy entity, an employment position that:

(a) did not exist within the state before:

(i) the alternative energy entity entered into an agreement with the office in accordance with Section 63M-1-3103; and

(ii) the alternative energy manufacturing project began;

(b) is not shifted from one location in the state to another location in the state; and

(c) is established to the satisfaction of the office, including by amounts paid or withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax Act.

(5) "New state revenues" means an increased amount of tax revenues generated as a result of an alternative energy manufacturing project by an alternative energy entity or a new incremental job within the state under the following:

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

(b)Title 59, Chapter 10, Individual Income Tax Act; and

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

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

(7) "Tax credit" means a tax credit under Section 59-7-614.8 or 59-10-1030.

(8) "Tax credit applicant" means an alternative energy entity that applies to the office to receive a tax credit certificate under this part.

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

(a) lists the name of the tax credit certificate recipient;

(b) lists the tax credit certificate recipient's taxpayer identification number;

(c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and

(d) includes other information as determined by the office.

(10) "Tax credit certificate recipient" means an alternative energy entity that receives a tax credit certificate for a tax credit in accordance with this part.

Enacted by Chapter 410, 2012 General Session

63M-1-3103 Tax credits.

(1)
- (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office, with advice from the board, shall make rules establishing standards an alternative energy entity shall meet to qualify for a tax credit.
- (b) Before the office enters into an agreement described in Subsection (2) with an alternative energy entity, the office shall certify:
  - (i) that the alternative energy manufacturing project will generate new state revenues;
  - (ii) the economic life of the alternative energy manufacturing project produced by the alternative energy entity;
  - (iii) that local incentives have been committed or will be committed to be provided to the alternative energy manufacturing project;
  - (iv) that the alternative energy entity meets the requirements of Section 63M-1-3104; and
  - (v) that the alternative energy entity has received a Certificate of Good Standing from the Division of Corporations and Commercial Code.

(2) If an alternative energy entity meets the requirements of this part to receive a tax credit, the office may enter into an agreement with the alternative energy entity to authorize the tax credit in accordance with Subsection (3).

(3)
- (a) Subject to Subsections (3)(b) through (d), the office may authorize or commit a tax credit under this part that may not exceed 100% of new state revenues generated by the alternative energy manufacturing project.
- (b) As determined by the office, the office may authorize or commit a tax credit under this section for a time period that does not exceed the lesser of:
  - (i) the economic life of the alternative energy manufacturing project; or
  - (ii) 20 years.
- (c) The office shall consider economic modeling, including the costs and benefits of an alternative energy manufacturing project to the state and local governments, in determining:
  - (i) the amount of tax credit to authorize or commit in accordance with Subsection (3)(a); and
  - (ii) the time period for which the office will authorize or commit a tax credit in accordance with Subsection (3)(b).
- (d) For a taxable year, a tax credit under this section may not exceed the new state revenues generated by an alternative energy manufacturing project during that taxable year.

(4) An alternative energy entity that seeks to receive a tax credit or has entered into an agreement described in Subsection (2) with the office shall:
- (a) annually file a report with the office showing the new state revenues generated by the alternative energy manufacturing project during the taxable year for which the alternative energy entity seeks to receive a tax credit under Section 59-7-614.8 or 59-10-1030;
- (b) submit to an audit for verification of a tax credit under Section 59-7-614.8 or 59-10-1030;
- (c) provide the office with information required by the office to certify the economic life of the alternative energy manufacturing project produced by the alternative energy entity, which may include a power purchase agreement, a lease, or a permit; and
- (d) retain records supporting a claim for a tax credit for at least four years after the alternative energy entity claims a tax credit under Section 59-7-614.8 or 59-10-1030.

(5) The office shall annually certify the new state revenues generated by an alternative energy manufacturing project for a taxable year for which an alternative energy entity seeks to receive a tax credit under Section 59-7-614.8 or 59-10-1030.

Enacted by Chapter 410, 2012 General Session

63M-1-3104 Qualifications for tax credit -- Procedure.

(1) The office, with advice from the board, shall certify an alternative energy entity's eligibility for a tax credit as provided in this section.
(2) A tax credit applicant shall provide the office with:
  (a) an application for a tax credit certificate;
  (b) documentation that the tax credit applicant meets the standards and requirements described in Section 63M-1-3103 to the satisfaction of the office for the taxable year for which the tax credit applicant seeks to claim a tax credit; and
  (c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit applicant's returns and other information concerning the tax credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.
(3)
  (a) The office shall submit the documentation described in Subsection (2)(c) to the State Tax Commission.
  (b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (2)(c) requested by the office that the tax credit applicant directed and authorized the State Tax Commission to provide to the office.
(4) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is not substantially accurate, the office shall:
  (a) deny the tax credit; or
  (b) inform the tax credit applicant that the documentation supporting the tax credit applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new documentation.
(5) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is substantially accurate, the office shall, on the basis of that documentation:
  (a) enter into the agreement described in Section 63M-1-3103;
  (b) issue a tax credit certificate to the tax credit applicant; and
  (c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b) to the State Tax Commission.
(6) An alternative energy entity may not claim a tax credit under this part unless the alternative energy entity is a tax credit certificate recipient.
(7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 63M-1-3103(4).

Enacted by Chapter 410, 2012 General Session

63M-1-3105 Reporting.

The office shall provide the following information in the annual written report described in Section 63M-1-206:
(1) the office's success in attracting alternative energy manufacturing projects to the state and the resulting increase in new state revenues under this part;
(2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
(3) the economic impact on the state by comparing new state revenues to tax credits that have been or will be granted under this part.

Amended by Chapter 371, 2014 General Session

Part 32
Science, Technology, Engineering, and Mathematics Action Center

63M-1-3201 Definitions.
As used in this part:
(1) "Board" means the STEM Action Center Board created in Section 63M-1-3202.
(2) "Educator" has the meaning defined in Section 53A-6-103.
(3) "High quality professional development" means professional development that meets high quality standards developed by the State Board of Education.
(4) "Office" means the Governor's Office of Economic Development.
(5) "Provider" means a provider, selected by staff of the board and staff of the Utah State Board of Education, on behalf of the board:
  (a) through a request for proposals process; or
  (b) through a direct award or sole source procurement process for a pilot described in Section 63M-1-3205.
(6) "STEM" means science, technology, engineering, and mathematics.
(7) "STEM Action Center" means the center described in Section 63M-1-3204.

Amended by Chapter 318, 2014 General Session

63M-1-3202 STEM Action Center Board creation -- Membership.
(1) There is created the STEM Action Center Board within the office, composed of the following members:
  (a) six private sector members who represent business, appointed by the governor;
  (b) the state superintendent of public instruction or the state superintendent of public instruction's designee;
  (c) the commissioner of higher education or the commissioner of higher education's designee;
  (d) one member appointed by the governor;
  (e) a member of the State Board of Education, chosen by the chair of the State Board of Education;
  (f) the executive director of the Governor's Office of Economic Development or the executive director of the Governor's Office of Economic Development's designee;
  (g) the president of the Utah College of Applied Technology or the president of the Utah College of Applied Technology's designee; and

(h) one member who has a degree in engineering and experience working in a government military installation, appointed by the governor.

(2)

(a) The private sector members appointed by the governor in Subsection (1)(a) shall represent a business or trade association whose primary focus is science, technology, or engineering.

(b) Except as required by Subsection (2)(c), members appointed by the governor shall be appointed to four-year terms.

(c) The length of terms of the members shall be staggered so that approximately half of the committee is appointed every two years.

(d) The members may not serve more than two full consecutive terms except where the governor determines that an additional term is in the best interest of the state.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(3) Attendance of a simple majority of the members constitutes a quorum for the transaction of official committee business.

(4) Formal action by the committee requires a majority vote of a quorum.

(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(6) The governor shall select the chair of the board to serve a one-year term.

(7) The executive director of the Governor's Office of Economic Development or the executive director of the Governor's Office of Economic Development's designee shall serve as the vice chair of the board.

Amended by Chapter 318, 2014 General Session

63M-1-3203 STEM Action Center Board -- Duties.

(1) The board shall:

(a) establish a STEM Action Center to:

(i) coordinate STEM activities in the state among the following stakeholders:

(A) the State Board of Education;

(B) school districts and charter schools;

(C) the State Board of Regents;

(D) institutions of higher education;

(E) parents of home-schooled students; and

(F) other state agencies;

(ii) align public education STEM activities with higher education STEM activities; and

(iii) create and coordinate best practices among public education and higher education;

(b) with the consent of the Senate, appoint an executive director to oversee the administration of the STEM Action Center;

(c) select a physical location for the STEM Action Center;

(d) strategically engage industry and business entities to cooperate with the board:

(i) to support high quality professional development and provide other assistance for educators and students; and

(ii) to provide private funding and support for the STEM Action Center;

(e) give direction to the STEM Action Center and the providers selected through a request for proposals process pursuant to this part; and
(f) work to meet the following expectations:
(i) that at least 50 educators are implementing best practice learning tools in classrooms per each product specialist or manager working with the STEM Action Center;
(ii) performance change in student achievement in each classroom working with a STEM Action Center product specialist or manager; and
(iii) that students from at least 50 high schools participate in the STEM competitions, fairs, and camps described in Subsection 63M-1-3204(2)(d).
(2) The board may:
(a) enter into contracts for the purposes of this part;
(b) apply for, receive, and disburse funds, contributions, or grants from any source for the purposes set forth in this part;
(c) employ, compensate, and prescribe the duties and powers of individuals necessary to execute the duties and powers of the board;
(d) prescribe the duties and powers of the STEM Action Center providers; and
(e) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to administer this part.
(3) The board may establish a foundation to assist in:
(a) the development and implementation of the programs authorized under this part to promote STEM education; and
(b) implementation of other STEM education objectives described in this part.
(4) A foundation established by the board under Subsection (3):
(a) may solicit and receive contributions from a private organization for STEM education objectives described in this part;
(b) shall comply with Title 51, Chapter 7, State Money Management Act;
(c) does not have power or authority to incur contractual obligations or liabilities that constitute a claim against public funds;
(d) may not exercise executive or administrative authority over the programs or other activities described in this part, except to the extent specifically authorized by the board;
(e) shall provide the board with information detailing transactions and balances of funds managed for the board; and
(f) may not:
(i) engage in lobbying activities;
(ii) attempt to influence legislation; or
(iii) participate in any campaign activity for or against:
(A) a political candidate; or
(B) an initiative, referendum, proposed constitutional amendment, bond, or any other ballot proposition submitted to the voters.
(5) Money donated to a foundation established under Subsection (3) may be accounted for in an expendable special revenue fund.

Amended by Chapter 189, 2014 General Session
Amended by Chapter 318, 2014 General Session

63M-1-3204 STEM Action Center.
(1) As funding allows, the board shall:
(a) establish a STEM Action Center;

(b) ensure that the STEM Action Center:
(i) is accessible by the public; and
(ii) includes the components described in Subsection (2);
(c) work cooperatively with the State Board of Education to:
(i) further STEM education; and
(ii) ensure best practices are implemented as described in Sections 63M-1-3205 and 63M-1-3206; and
(d) engage private entities to provide financial support or employee time for STEM activities in schools in addition to what is currently provided by private entities.
(2) As funding allows, the executive director of the STEM Action Center shall:
(a) support high quality professional development for educators regarding STEM education;
(b) ensure that the STEM Action Center acts as a research and development center for STEM education through a request for proposals process described in Section 63M-1-3205;
(c) review and acquire STEM education related materials and products for:
(i) high quality professional development;
(ii) assessment, data collection, analysis, and reporting; and
(iii) public school instruction;
(d) facilitate participation in interscholastic STEM related competitions, fairs, camps, and STEM education activities;
(e) engage private industry in the development and maintenance of the STEM Action Center and STEM Action Center projects;
(f) use resources to bring the latest STEM education learning tools into public education classrooms;
(g) identify at least 10 best practice innovations used in Utah that have resulted in at least 80% of students performing at grade level in STEM areas;
(h) identify best practices being used outside the state and, as appropriate, develop and implement selected practices through a pilot program;
(i) identify:
(i) learning tools for kindergarten through grade 6 identified as best practices; and
(ii) learning tools for grades 7 through 12 identified as best practices;
(j) provide a Utah best practices database, including best practices from public education, higher education, the Utah Education and Telehealth Network, and other STEM related entities;
(k) keep track of the following items related to the best practices database described in Subsection (2)(j):
(i) how the best practices database is being used; and
(ii) how many individuals are using the database, including the demographics of the users, if available;
(l) as appropriate, join and participate in a national STEM network;
(m) identify performance changes linked to use of the best practices database described in Subsection (2)(j);
(n) work cooperatively with the State Board of Education to designate schools as STEM schools, where the schools have agreed to adopt a plan of STEM implementation in alignment with criteria set by the State Board of Education and the board;
(o) support best methods of high quality professional development for STEM education in kindergarten through grade 12, including methods of high quality professional development that reduce cost and increase effectiveness, to help educators learn how to most effectively implement best practice learning tools in classrooms;

(p) recognize a high school's achievement in the STEM competitions, fairs, and camps described in Subsection (2)(d);
(q) send student results from STEM competitions, fairs, and camps described in Subsection (2)(d) to media and ask the media to report on them;
(r) develop and distribute STEM information to parents of students being served by the STEM Action Center;
(s) support targeted high quality professional development for improved instruction in STEM education, including:
(i) improved instructional materials that are dynamic and engaging for students;
(ii) use of applied instruction; and
(iii) introduction of other research-based methods that support student achievement in STEM areas; and
(t) ensure that an online college readiness assessment tool be accessible by:
(i) public education students; and
(ii) higher education students.
(3) The board may prescribe other duties for the STEM Action Center in addition to the responsibilities described in this section.
(4)
(a) The executive director shall track and compare the student performance of students participating in a STEM Action Center program to all other similarly situated students in the state, in the following STEM related activities, at the beginning and end of each year:
(i) public education high school graduation rates;
(ii) the number of students taking a remedial mathematics course at an institution of higher education described in Section 53B-2-101;
(iii) the number of students who graduate from a Utah public school and begin a postsecondary education program; and
(iv) the number of students, as compared to all similarly situated students, who are performing at grade level in STEM classes.
(b) The State Board of Education and the State Board of Regents shall provide information to the board to assist the board in complying with the requirements of Subsection (4)(a) if allowed under federal law.

Amended by Chapter 63, 2014 General Session
Amended by Chapter 318, 2014 General Session

63M-1-3205 Acquisition of STEM education related instructional technology program -- Research and development of education related instructional technology through a pilot program.
(1) For purposes of this section:
(a) "Pilot" means a pilot of the program.
(b) "Program" means the STEM education related instructional technology program created in Subsection (2).
(2)
(a) There is created the STEM education related instructional technology program to provide public schools the STEM education related instructional technology described in Subsection (3).
(b) On behalf of the board, the staff of the board and the staff of the State Board of Education shall collaborate and may select one or more providers, through a request for proposals

process, to provide STEM education related instructional technology to school districts and charter schools.

(c) On behalf of the board, the staff of the board and the staff of the State Board of Education shall consider and may accept an offer from a provider in response to the request for proposals described in Subsection (2)(b) even if the provider did not participate in a pilot described in Subsection (5).

(3) The STEM education related instructional technology shall:

(a) support mathematics instruction for students in:

(i) kindergarten though grade 6; or

(ii) grades 7 and 8; or

(b) support mathematics instruction for secondary students to prepare the secondary students for college mathematics courses.

(4) In selecting a provider for STEM education related instructional technology to support mathematics instruction for the students described in Subsection (3)(a), the board shall consider the following criteria:

(a) the technology contains individualized instructional support for skills and understanding of the core standards in mathematics;

(b) the technology is self-adapting to respond to the needs and progress of the learner; and

(c) the technology provides opportunities for frequent, quick, and informal assessments and includes an embedded progress monitoring tool and mechanisms for regular feedback to students and teachers.

(5) Before issuing a request for proposals described in Subsection (2), on behalf of the board, the staff of the board and the staff of the State Board of Education shall collaborate and may:

(a) conduct a pilot of the program to test and select providers for the program;

(b) select at least two providers through a direct award or sole source procurement process for the purpose of conducting the pilot; and

(c) select schools to participate in the pilot.

(6)

(a) A contract with a provider for STEM education related instructional technology may include professional development for full deployment of the STEM education related instructional technology.

(b) No more than 10% of the money appropriated for the program may be used to provide professional development related to STEM education related instructional technology in addition to the professional development described in Subsection (6)(a).

Amended by Chapter 318, 2014 General Session

63M-1-3206 Distribution of STEM education instructional technology to schools.

(1) Subject to legislative appropriations, on behalf of the board, the staff of the board and the staff of the State Board of Education shall collaborate and shall:

(a) distribute STEM education related instructional technology described in Section 63M-1-3205 to school districts and charter schools; and

(b) provide related professional development to the school districts and charter schools that receive STEM education related instructional technology.

(2) A school district or charter school may apply to the board, through a competitive process, to receive STEM education related instructional technology from the board.

(3) A school district or charter school that receives STEM education related instructional technology as described in this section shall provide the school district's or charter school's own computer hardware.

Enacted by Chapter 336, 2013 General Session

63M-1-3207 Report to Legislature and the State Board of Education.

(1) The board shall report the progress of the STEM Action Center, including the information described in Subsection (2), to the following groups once each year:
  (a) the Education Interim Committee;
  (b) the Public Education Appropriations Subcommittee;
  (c) the State Board of Education; and
  (d) the office for inclusion in the office's annual written report described in Section 63M-1-206.
(2) The report described in Subsection (1) shall include information that demonstrates the effectiveness of the program, including:
  (a) the number of educators receiving high quality professional development;
  (b) the number of students receiving services from the STEM Action Center;
  (c) a list of the providers selected pursuant to this part;
  (d) a report on the STEM Action Center's fulfilment of its duties described in Section 63M-1-3204; and
  (e) student performance of students participating in a STEM Action Center program as collected in Subsection 63M-1-3204(4).

Amended by Chapter 318, 2014 General Session
Amended by Chapter 371, 2014 General Session

63M-1-3208 STEM education endorsements and incentive program.

(1) The State Board of Education shall collaborate with the STEM Action Center to:
  (a) develop STEM education endorsements; and
  (b) create and implement financial incentives for:
    (i) an educator to earn an elementary or secondary STEM education endorsement described in Subsection (1)(a); and
    (ii) a school district or a charter school to have STEM endorsed educators on staff.
(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Board of Education shall make rules to establish how a STEM education endorsement incentive described in Subsection (1)(a) will be valued on a salary scale for educators.

Enacted by Chapter 318, 2014 General Session

63M-1-3209 Acquisition of STEM education high quality professional development.

(1) The STEM Action Center shall, through a request for proposals process, select technology providers for the purpose of providing a STEM education high quality professional development application.
(2) The high quality professional development application described in Subsection (1) shall:
  (a) allow the State Board of Education, a school district, or a school to define the application's input and track results of the high quality professional development;
  (b) allow educators to access automatic tools, resources, and strategies;

(c) allow educators to work in online learning communities, including giving and receiving feedback via uploaded video;
(d) track and report data on the usage of the components of the application's system and the relationship to improvement in classroom instruction;
(e) include video examples of highly effective STEM education teaching that:
(i) cover a cross section of grade levels and subjects;
(ii) under the direction of the State Board of Education, include videos of highly effective Utah STEM educators; and
(iii) contain tools to help educators implement what they have learned; and
(f) allow for additional STEM education video content to be added.
(3) In addition to the high quality professional development application described in Subsections (1) and (2), the STEM Action Center may create STEM education hybrid or blended high quality professional development that allows for face-to-face applied learning.

Enacted by Chapter 318, 2014 General Session

63M-1-3210 STEM education middle school applied science initiative.
(1) The STEM Action Center shall develop an applied science initiative for students in grades 7 and 8 that includes:
(a) a STEM applied science curriculum with instructional materials;
(b) STEM hybrid or blended high quality professional development that allows for face-to-face applied learning; and
(c) hands-on tools for STEM applied science learning.
(2) The STEM Action Center may, through a request for proposals process, select a consultant to assist in developing the initiative described in Subsection (1).

Enacted by Chapter 318, 2014 General Session

63M-1-3211 High school STEM education initiative.
(1) Subject to legislative appropriations, after consulting with State Board of Education staff, the STEM Action Center shall award grants to school districts and charter schools to fund STEM related certification for high school students.
(2)
(a) A school district or charter school may apply for a grant from the STEM Action Center, through a competitive process, to fund the school district's or charter school's STEM related certification training program.
(b) A school district's or charter school's STEM related certification training program shall:
(i) prepare high school students to be job ready for available STEM related positions of employment; and
(ii) when a student completes the program, result in the student gaining a nationally industry-recognized employer STEM related certification.
(3) A school district or charter school may partner with one or more of the following to provide a STEM related certification program:
(a) a Utah College of Applied Technology college campus;
(b) Salt Lake Community College;
(c) Snow College; or
(d) a private sector employer.

Enacted by Chapter 318, 2014 General Session

Part 33
Utah Outdoor Recreation Office Act

63M-1-3301 Title.

This part is known as "Utah Outdoor Recreation Office Act."

Enacted by Chapter 25, 2013 General Session

63M-1-3302 Definitions.

As used in this part:

(1) "Director" means the director of the office.

(2) "Executive director" means the director of the Governor's Office of Economic Development created in Section 63M-1-201.

(3) "Office" means the Outdoor Recreation Office created in Section 63M-1-3304.

Enacted by Chapter 25, 2013 General Session

63M-1-3303 Policy.

It is the declared policy of the state that outdoor recreation is vital to a diverse economy and a healthy community.

Enacted by Chapter 25, 2013 General Session

63M-1-3304 Creation of office and appointment of director -- Purposes of office.

(1) There is created within the Governor's Office of Economic Development an Outdoor Recreation Office.

(2)

(a) The executive director shall appoint a director of the office.

(b) The director shall report to the executive director and may appoint staff.

(3) The purposes of the office are to:

(a) coordinate outdoor recreation policy, management, and promotion:

(i) among state and federal agencies and local government entities in the state; and

(ii) with the Public Lands Policy Coordinating Office created in Section 63J-4-602, if public land is involved;

(b) promote economic development by:

(i) coordinating with outdoor recreation stakeholders;

(ii) improving recreational opportunities; and

(iii) recruiting outdoor recreation business;

(c) recommend to the governor and Legislature policies and initiatives to enhance recreational amenities and experiences in the state and help implement those policies and initiatives;

(d) develop data regarding the impacts of outdoor recreation in the state; and

(e) promote the health and social benefits of outdoor recreation, especially to young people.

Enacted by Chapter 25, 2013 General Session

63M-1-3305 Duties of director.
(1) The director shall:
(a) assure that the purposes outlined in Subsection 63M-1-3304(3) are fulfilled; and
(b) organize and provide administrative oversight to the office staff.
(2) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:
(a) seek federal grants or loans;
(b) seek to participate in federal programs; and
(c) in accordance with applicable federal program guidelines, administer federally funded outdoor recreation programs.
(3) For purposes of administering this part, the office may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 25, 2013 General Session

63M-1-3306 Annual report.
The executive director shall include in the annual written report described in Section 63M-1-206, a report from the director on the activities of the Outdoor Recreation Office.

Repealed and Re-enacted by Chapter 371, 2014 General Session

Part 34
New Convention Facility Development Incentive Act

63M-1-3401 Title.
This part is known as the "New Convention Facility Development Incentive Act."

Enacted by Chapter 429, 2014 General Session

63M-1-3402 Definitions.
As used in this part:
(1) "Agreement" means an agreement described in Section 63M-1-3403.
(2) "Commission" means the Utah State Tax Commission.
(3) "Community development and renewal agency" has the same meaning as defined in Section 17C-1-102.
(4) "Eligibility period" means:
(a) the period that:
(i) begins the date construction of a qualified hotel begins; and
(ii) ends:
(A) for purposes of the state portion, 20 years after the date of initial occupancy of that qualified hotel; or
(B) for purposes of the local portion, 25 years after the date of initial occupancy of that hotel; or
(b) as provided in an agreement between the office and a qualified hotel owner or host local government, a period that:

(i) begins no earlier than the date construction of a qualified hotel begins; and
(ii) is shorter than the period described in Subsection (4)(a).
(5) "Endorsement letter" means a letter:
(a) from the county in which a qualified hotel is located or is proposed to be located;
(b) signed by the county executive; and
(c) expressing the county's endorsement of a developer of a qualified hotel as meeting all the county's criteria for receiving the county's endorsement.
(6) "Host agency" means the community development and renewal agency of the host local government.
(7) "Host local government" means:
(a) a county that enters into an agreement with the office for the construction of a qualified hotel within the unincorporated area of the county; or
(b) a city or town that enters into an agreement with the office for the construction of a qualified hotel within the boundary of the city or town.
(8) "Hotel property" means a qualified hotel and any property that is included in the same development as the qualified hotel, including convention, exhibit, and meeting space, retail shops, restaurants, parking, and other ancillary facilities and amenities.
(9) "Incremental property tax revenue" means the amount of property tax revenue generated from hotel property that equals the difference between:
(a) the amount of property tax revenue generated in any tax year by all taxing entities from hotel property, using the current assessed value of the hotel property; and
(b) the amount of property tax revenue that would be generated that tax year by all taxing entities from hotel property, using a base taxable value of the hotel property as established by the county in which the hotel property is located.
(10) "Local portion" means:
(a) the portion of new tax revenue that is not the state portion; and
(b) incremental property tax revenue.
(11) "New tax revenue" means:
(a) all new revenue generated from a tax under Title 59, Chapter 12, Sales and Use Tax Act, on transactions occurring during the eligibility period as a result of the construction of the hotel property, including purchases made by a qualified hotel owner and its subcontractors;
(b) all new revenue generated from a tax under Title 59, Chapter 12, Sales and Use Tax Act, on transactions occurring on hotel property during the eligibility period; and
(c) all new revenue generated from a tax under Title 59, Chapter 12, Sales and Use Tax Act, on transactions by a third-party seller occurring other than on hotel property during the eligibility period, if:
(i) the transaction is subject to a tax under Title 59, Chapter 12, Sales and Use Tax Act; and
(ii) the third-party seller voluntarily consents to the disclosure of information to the office, as provided in Subsection 63M-1-3405(1)(b)(i)(E).
(12) "Public infrastructure" means:
(a) water, sewer, storm drainage, electrical, telecommunications, and other similar systems and lines;
(b) streets, roads, curbs, gutters, sidewalks, walkways, parking facilities, and public transportation facilities; and
(c) other buildings, facilities, infrastructure, and improvements that benefit the public.
(13) "Qualified hotel" means a full-service hotel development constructed in the state on or after July 1, 2014 that:
(a) requires a significant capital investment;

(b) includes at least 85 square feet of convention, exhibit, and meeting space per guest room; and
(c) is located within 1,000 feet of a convention center that contains at least 500,000 square feet of convention, exhibit, and meeting space.
(14) "Qualified hotel owner" means a person who owns a qualified hotel.
(15) "Review committee" means the independent review committee established under Section 63M-1-3404.
(16) "Significant capital investment" means an amount of at least $200,000,000.
(17) "State portion" means the portion of new tax revenue that is attributable to a tax imposed under Subsection 59-12-103(2)(a)(i)(A).
(18) "Tax credit" means a tax credit under Section 59-7-616 or 59-10-1110.
(19) "Tax credit applicant" means a qualified hotel owner or host local government that:
(a) has entered into an agreement with the office; and
(b) pursuant to that agreement, submits an application for the issuance of a tax credit certificate.
(20) "Tax credit certificate" means a certificate issued by the office that includes:
(a) the name of the tax credit recipient;
(b) the tax credit recipient's taxpayer identification number;
(c) the amount of the tax credit authorized under this part for a taxable year; and
(d) other information as determined by the office.
(21) "Tax credit recipient" means a tax credit applicant that has been issued a tax credit certificate.
(22) "Third-party seller" means a person who is a seller in a transaction:
(a) occurring other than on hotel property;
(b) that is:
(i) the sale, rental, or lease of a room or of convention or exhibit space or other facilities on hotel property; or
(ii) the sale of tangible personal property or a service that is part of a bundled transaction, as defined in Section 59-12-102, with a sale, rental, or lease described in Subsection (22)(b)(i); and
(c) that is subject to a tax under Title 59, Chapter 12, Sales and Use Tax Act.

Enacted by Chapter 429, 2014 General Session

63M-1-3403 Agreement for development of new convention hotel -- Tax credit authorized -- Agreement requirements.

(1) The office, with the board's advice, may enter into an agreement with a qualified hotel owner or a host local government:
(a) for the development of a qualified hotel; and
(b) to authorize a tax credit:
(i) to the qualified hotel owner or host local government, but not both;
(ii) for a period not to exceed the eligibility period;
(iii) if:
(A) the county in which the qualified hotel is proposed to be located has issued an endorsement letter endorsing the qualified hotel owner; and
(B) all applicable requirements of this part and the agreement are met; and
(iv) that is reduced by $1,900,000 per year during the first two years of the eligibility period, as described in Subsection (2)(c).
(2) An agreement shall:
(a) specify the requirements for a tax credit recipient to qualify for a tax credit;

(b) require compliance with the terms of the endorsement letter issued by the county in which the qualified hotel is proposed to be located;
(c) require the amount of a tax credit listed in a tax credit certificate issued during the first two years of the eligibility period to be reduced by $1,900,000 per year;
(d) with respect to the state portion of any tax credit that the tax credit recipient may receive during the eligibility period:
(i) specify the maximum dollar amount that the tax credit recipient may receive, subject to a maximum of:
(A) for any taxable year, the amount of the state portion of new tax revenue in that taxable year; and
(B) $75,000,000 in the aggregate for any tax credit recipient during an eligibility period, calculated as though the two $1,900,000 reductions of the tax credit amount under Subsection (1)(b)(iv) had not occurred; and
(ii) specify the maximum percentage of the state portion of new tax revenue that may be used in calculating a tax credit that a tax credit recipient may receive during the eligibility period for each taxable year and in the aggregate;
(e) establish a shorter period of time than the period described in Subsection 63M-1-3402(5)(a) during which the tax credit recipient may claim a tax credit or that the host agency may be paid incremental property tax revenue, if the office and qualified hotel owner or host local government agree to a shorter period of time;
(f) require the tax credit recipient to retain books and records supporting a claim for a tax credit as required by Section 59-1-1406;
(g) allow the transfer of the agreement to a third party if the third party assumes all liabilities and responsibilities in the agreement;
(h) limit the expenditure of funds received under a tax credit as provided in Section 63M-1-3412; and
(i) require the tax credit recipient to submit to any audit the office considers appropriate for verification of any tax credit or claimed tax credit.

Enacted by Chapter 429, 2014 General Session

63M-1-3404 Independent review committee.
(1) In accordance with rules adopted by the office under Section 63M-1-3408, the board shall establish a separate, independent review committee to:
(a) review each initial tax credit application submitted under this part for compliance with the requirements of this part and the agreement; and
(b) consult with the office, as provided in this part.
(2) The review committee shall consist of:
(a) one member appointed by the director to represent the office;
(b) two members appointed by the mayor or chief executive of the county in which the qualified hotel is located or proposed to be located;
(c) two members appointed by:
(i) the mayor of the municipality in which the qualified hotel is located or proposed to be located, if the qualified hotel is located or proposed to be located within the boundary of a municipality; or
(ii) the mayor or chief executive of the county in which the qualified hotel is located or proposed to be located, in addition to the two members appointed under Subsection (2)(b), if the qualified hotel is located or proposed to be located outside the boundary of a municipality;

(d) an individual representing the hotel industry, appointed by the Utah Hotel and Lodging Association;
(e) an individual representing the commercial development and construction industry, appointed by the president or chief executive officer of the local chamber of commerce;
(f) an individual representing the convention and meeting planners industry, appointed by the president or chief executive officer of the local convention and visitors bureau; and
(g) one member appointed by the board.
(3)
(a) A member serves an indeterminate term and may be removed from the review committee by the appointing authority at any time.
(b) A vacancy may be filled in the same manner as an appointment under Subsection (2).
(4) A member of the review committee may not be paid for serving on the review committee and may not receive per diem or expense reimbursement.
(5) The office shall provide any necessary staff support to the review committee.

Enacted by Chapter 429, 2014 General Session

63M-1-3405 Submission of written application for tax credit certificate -- Disclosure of tax returns and other information -- Determination of tax credit application.
(1) For each taxable year for which a tax credit applicant seeks the issuance of a tax credit certificate, the tax credit applicant shall submit to the office:
(a) a written application for a tax credit certificate;
(b)
(i) for an application submitted by a qualified hotel owner:
(A) a certification by the individual signing the application that the individual is duly authorized to sign the application on behalf of the qualified hotel owner;
(B) documentation of the new tax revenue generated during the preceding year;
(C) a document in which the qualified hotel owner expressly directs and authorizes the commission to disclose to the office the qualified hotel owner's tax returns and other information that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code;
(D) a document in which the qualified hotel's direct vendors, lessees, or subcontractors, as applicable, expressly direct and authorize the commission to disclose to the office the tax returns and other information of those vendors, lessees, or subcontractors that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code;
(E) a document in which a third-party seller expressly and voluntarily directs and authorizes the commission to disclose to the office the third-party seller's tax returns and other information that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code; and
(F) documentation verifying that the qualified hotel owner is in compliance with the terms of the agreement;
(ii) for an application submitted by a host local government, documentation of the new tax revenue generated during the preceding year;
(c) if the host local government intends to assign the tax credit sought in the tax credit application to a community development and renewal agency:
(i) the taxpayer identification number of the community development and renewal agency; and

(ii) a document signed by the governing body members of the community development and renewal agency that expressly directs and authorizes the commission to disclose to the office the agency's tax returns and other information that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code; and

(d) a statement provided by an independent certified public accountant, at the tax credit applicant's expense, attesting to the accuracy of the documentation of new tax revenue.

(2)

(a) The office shall submit to the commission the documents described in Subsections (1)(b)(i)(C), (D), and (E) and (1)(c)(ii) authorizing disclosure of the tax returns and other information.

(b) Upon receipt of the documents described in Subsection (2)(a), the commission shall provide to the office the tax returns and other information described in those documents.

(3) If the office determines that the tax returns and other information is inadequate to validate the issuance of a tax credit certificate, the office shall inform the tax credit applicant that the tax returns and other information were inadequate and request the tax credit applicant to submit additional documentation to validate the issuance of a tax credit certificate.

(4) If the office determines that the returns and other information, including any additional documentation provided under Subsection (3), provide reasonable justification for the issuance of a tax credit certificate, the office shall:

(a) determine the amount of the tax credit to be listed on the tax credit certificate;

(b) issue a tax credit certificate to the tax credit applicant for the amount of that tax credit; and

(c) provide a copy of the tax credit certificate to the commission.

Enacted by Chapter 429, 2014 General Session

63M-1-3406 Effect of tax credit certificate -- Retaining tax credit certificate.

(1) A person may not claim a tax credit unless the office has issued the person a tax credit certificate.

(2) A tax credit recipient may claim a tax credit in the amount of the tax credit stated in a tax credit certificate.

(3) A tax credit recipient shall retain the tax credit certificate in accordance with the requirements of Section 59-1-1406 for retaining books and records.

(4) The amount of a tax credit indicated on a tax credit certificate issued during the eligibility period may not exceed the amount of eligible new tax revenue generated during the taxable year preceding the taxable year for which the tax credit certificate is issued.

Enacted by Chapter 429, 2014 General Session

63M-1-3407 Assigning tax credit.

(1) A host local government that enters into an agreement with the office may, by resolution, assign a tax credit to a community development and renewal agency, in accordance with rules adopted by the office.

(2) A host local government that adopts a resolution assigning a tax credit under Subsection (1) shall provide a copy of the resolution to the office and the commission.

Enacted by Chapter 429, 2014 General Session

63M-1-3408 Payment of incremental property tax revenue.

(1)

(a) In accordance with rules adopted by the office, a host agency shall be paid incremental property tax revenue during the eligibility period.
(b) Incremental property tax revenue may be used only for:
(i) the purchase of or payment for, or reimbursement of a previous purchase of or payment for:
(A) tangible personal property used in the construction of convention, exhibit, or meeting space on hotel property;
(B) tangible personal property that, upon the construction of hotel property, becomes affixed to hotel property as real property; or
(C) any labor and overhead costs associated with the construction described in Subsections (1)(b)(i)(A) and (B);
(ii) public infrastructure; and
(iii) other purposes as approved by the host agency.
(2) A county that collects property tax on hotel property during the eligibility period shall pay and distribute to the host agency the incremental property tax revenue that the host agency is entitled to collect under Subsection (1), in the manner and at the time provided in Section 59-2-1365.

Enacted by Chapter 429, 2014 General Session

63M-1-3409 Rulemaking authority -- Requirements for rules.
(1) The office shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules to carry out its responsibilities under this part and to implement the provisions of this part.
(2) The rules the office makes under Subsection (1) shall:
(a) establish, consistent with this part, the conditions that a tax credit applicant is required to meet to qualify for a tax credit;
(b) require that a significant capital investment be made in the development of the hotel property;
(c) require a tax credit applicant to meet all applicable requirements in order to receive a tax credit certificate;
(d) require that a qualified hotel owner meet the county's requirements to receive an endorsement letter; and
(e) provide for the establishment of an independent review committee, in accordance with the requirements of Section 63M-1-3404.

Enacted by Chapter 429, 2014 General Session

63M-1-3410 Report by office -- Posting of report.
(1) Before November 1 of each year, the office shall submit a written report to the Economic Development and Workforce Services Interim Committee of the Legislature, the Governor's Office of Management and Budget, and the Office of the Legislative Fiscal Analyst describing:
(a) the state's success in attracting new conventions and corresponding new state revenue;
(b) the estimated amount of tax credit commitments and the associated calculation made by the office and the period of time over which tax credits are expected to be paid;
(c) the economic impact on the state related to generating new state revenue and providing tax credits; and
(d) the estimated and actual costs and economic benefits of the tax credit commitments that the office made.

(2) The office shall post the annual report under Subsection (1) on its website and on a state website.
(3) Upon the commencement of the construction of a qualified hotel, the office shall send a written notice to the Division of Finance:
(a) referring to the two annual deposits required under Subsection 59-12-103(14); and
(b) notifying the Division of Finance that construction on the qualified hotel has begun.

Enacted by Chapter 429, 2014 General Session

63M-1-3411 Stay Another Day and Bounce Back Fund.
(1) As used in this section:
(a) "Bounce back fund" means the Stay Another Day and Bounce Back Fund, created in Subsection (2).
(b) "Tourism board" means the Board of Tourism Development created in Section 63M-1-1401.
(2) There is created an expendable special revenue fund known as the Stay Another Day and Bounce Back Fund.
(3) The bounce back fund shall:
(a) be administered by the tourism board;
(b) earn interest; and
(c) be funded by:
(i) annual payments under Section 17-31-9 from the county in which a qualified hotel is located;
(ii) money transferred to the bounce back fund under Section 63M-1-3412; and
(iii) any money that the Legislature chooses to appropriate to the bounce back fund.
(4) Interest earned by the bounce back fund shall be deposited into the bounce back fund.
(5) The tourism board may use money in the bounce back fund to pay for a tourism program of advertising, marketing, and branding of the state, taking into consideration the long-term strategic plan, economic trends, and opportunities for tourism development on a statewide basis.

Enacted by Chapter 429, 2014 General Session

63M-1-3412 Hotel Impact Mitigation Fund.
(1) As used in this section:
(a) "Affected hotel" means a hotel built in the state before July 1, 2014.
(b) "Direct losses" means affected hotels' losses of hotel guest business attributable to the qualified hotel room supply being added to the market in the state.
(c) "Mitigation fund" means the Hotel Impact Mitigation Fund, created in Subsection (2).
(2) There is created an expendable special revenue fund known as the Hotel Impact Mitigation Fund.
(3) The mitigation fund shall:
(a) be administered by the board;
(b) earn interest; and
(c) be funded by:
(i) payments required to be deposited into the mitigation fund by the Division of Finance under Subsection 59-12-103(14);
(ii) money required to be deposited into the mitigation fund under Subsection 17-31-9(2) by the county in which a qualified hotel is located; and
(iii) any money deposited into the mitigation fund under Subsection (6).

(4) Interest earned by the mitigation fund shall be deposited into the mitigation fund.
(5)
(a) In accordance with office rules, the board shall annually pay up to $2,100,000 of money in the mitigation fund:
(i) to affected hotels;
(ii) for four consecutive years, beginning 12 months after the date of initial occupancy of the qualified hotel occurs; and
(iii) to mitigate direct losses.
(b)
(i) If the amount the board pays under Subsection (5)(a) in any year is less than $2,100,000, the board shall pay to the Stay Another Day and Bounce Back Fund, created in Section 63M-1-3411, the difference between $2,100,000 and the amount paid under Subsection (5)(a).
(ii) The board shall make any required payment under Subsection (5)(b)(i) within 90 days after the end of the year for which a determination is made of how much the board is required to pay to affected hotels under Subsection (5)(a).
(6) A host local government or qualified hotel owner may make payments to the Division of Finance for deposit into the mitigation fund.
(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall, in consultation with the Utah Hotel and Lodging Association and the county in which the qualified hotel is located, make rules establishing procedures and criteria governing payments under Subsection (5)(a) to affected hotels.

Enacted by Chapter 429, 2014 General Session

63M-1-3413 Authorized expenditures of tax credit money.
(1) A tax credit recipient may spend money received as a direct result of the state portion of a tax credit only for the purchase of or payment for, or reimbursement of a previous purchase of or payment for:
(a) tangible personal property used in the construction of convention, exhibit, or meeting space on hotel property;
(b) tangible personal property that, upon the construction of hotel property, becomes affixed to hotel property as real property; or
(c) any labor and overhead costs associated with the construction described in Subsections (1)(a) and (b).
(2) A tax credit recipient may spend money received as a direct result of the local portion of a tax credit only for:
(a) a purpose described in Subsection (1);
(b) public infrastructure; and
(c) other purposes as approved by the host agency.

Enacted by Chapter 429, 2014 General Session

Part 35
Utah Small Business Jobs Act

63M-1-3501 Title.

This part is known as the "Utah Small Business Jobs Act."

Enacted by Chapter 435, 2014 General Session

63M-1-3502 Definitions.

As used in this part:

(1) "Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the entity specified.

(2) "Applicable percentage" means:

(a) 0% for the first two credit allowance dates;

(b) 12% for the next three credit allowance dates; and

(c) 11% for the next two credit allowance dates.

(3) "Community Development Financial Institutions Fund" means the fund created in 12 U.S.C. Sec. 4703.

(4) "Credit allowance date" means with respect to a qualified equity investment:

(a) the date on which the qualified equity investment is initially made; and

(b) each of the six anniversary dates of the date described in Subsection (4)(a).

(5) "Federal New Markets Tax Credit Program" means the program created under Section 45D, Internal Revenue Code.

(6) "Long-term debt security" means a debt instrument issued by a qualified community development entity:

(a) with an original maturity date of at least seven years from the date of its issuance; and

(b) with no repayment, amortization, or prepayment features before its original maturity date.

(7) "Purchase price" means the amount paid to the qualified community development entity that issues a qualified equity investment for the qualified equity investment that may not exceed the amount of qualified equity investment authority certified pursuant to Section 63M-1-3503.

(8)

(a) "Qualified active low-income community business" is as defined in Section 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses meeting the United States Small Business Administration size eligibility standards established in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is made.

(b) Notwithstanding Subsection (8)(a), "qualified active low-income community business" does not include a business that derives or projects to derive 15% or more of its annual revenue from the rental or sale of real estate, unless the business is controlled by or under common control with another business if the second business:

(i) does not derive or project to derive 15% or more of its annual revenue from the rental or sale of real estate; and

(ii) is the primary tenant of the real estate leased from the initial business.

(c) A business is considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the qualified community development entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the United States Small Business Administration size standards, throughout the entire period of the investment or loan.

(9)

(a) "Qualified community development entity" is as defined in Section 45D, Internal Revenue Code, if the entity has entered into an allocation agreement with the Community Development

Financial Institutions Fund of the United States Treasury Department with respect to credits authorized by Section 45D, Internal Revenue Code, that includes Utah within the service area set forth in the allocation agreement.

(b) An entity may not be considered to be controlled by another entity solely as a result of the entity having made a direct or indirect equity investment in the other entity that earns tax credits under Section 45D, Internal Revenue Code, or in a similar state program.

(c) "Qualified community development entity" includes a subsidiary community development entity of a qualified community development entity.

(10)

(a) "Qualified equity investment" means an equity investment in, or long-term debt security issued by, a qualified community development entity that:

(i) is acquired on or after September 2, 2014, at its original issuance solely in exchange for cash;

(ii) has at least 85% of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date; and

(iii) is designated by the qualified community development entity as a qualified equity investment and is certified by the office pursuant to Section 63M-1-3503.

(b) Notwithstanding Subsection (10)(a), "qualified equity investment" includes a qualified equity investment that does not meet the provisions of Subsection (10)(a) if the investment was a qualified equity investment in the hands of a prior holder.

(11) "Qualified low-income community investment" means a capital or equity investment in, or a loan to, a qualified active low-income community business, except, with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of the business's affiliates, with the proceeds of qualified equity investments certified under Section 63M-1-3503 shall be $4,000,000, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized on the repaid or redeemed qualified low-income community investments.

(12) "Tax credit certificate" is a certificate issued by the office under Subsection 63M-1-3503(11) to an entity eligible for a tax credit under Section 59-9-107 that:

(a) lists the name of the entity eligible for a tax credit;

(b) lists the entity's taxpayer identification number;

(c) lists the amount of tax credit that the office determines the entity is eligible for the calendar year; and

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

Enacted by Chapter 435, 2014 General Session

63M-1-3503 Certification of qualified equity investments -- Issuance of tax credit related certificates.

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and as eligible for tax credits under Section 59-9-107 shall apply to the office. The office shall begin accepting applications on September 2, 2014. The qualified community development entity shall include the following in the qualified community development entity's application:

(a) evidence of the applicant's certification as a qualified community development entity, including evidence of the service area of the applicant that includes this state;
(b) a copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;
(c) a certificate executed by an executive officer of the applicant attesting that:
(i) the applicant or its controlling entity has received more than one allocation of qualified equity investment authority under the Federal New Markets Tax Credit Program; and
(ii) the allocation agreement submitted with the application remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund;
(d) a description of the proposed amount, structure, and purchaser of the qualified equity investment;
(e) examples of the types of qualified active low-income businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the Federal New Markets Tax Credit Program, except that when submitting an application an applicant is not required to identify qualified active low-income community businesses in which the applicant will invest;
(f) the amount of qualified equity investment authority the applicant agrees to designate as a federal qualified equity investment under Section 45D, Internal Revenue Code, including a copy of the screen shot from the Community Development Financial Institutions Fund's Allocation Tracking System of the applicant's remaining federal qualified equity investment authority;
(g) if applicable, the refundable performance deposit required by Subsection 63M-1-3506(1);
(h) a copy of a certificate of qualified equity investment authority under another state's new markets tax credit program; and
(i) evidence that the applicant, its controlling entity, and subsidiary qualified community development entities of the controlling entity have collectively made at least $40,000,000 in qualified low-income community investments under the Federal New Markets Tax Credit Program and other state's new markets tax credit programs with a maximum qualified low-income community investment size of $4,000,000 per business.

(2)
(a) Within 30 days after receipt of a completed application containing the information set forth in Subsection (1), including, if applicable, the refundable performance deposit, the office shall grant or deny the application in full or in part.
(b) If the office denies any part of the application, the office shall inform the applicant of the grounds for the denial. If the applicant provides additional information required by the office or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission.
(c) If the applicant fails to provide the information or complete its application within the 15-day period:
(i) the application is denied;
(ii) the applicant shall resubmit an application in full with a new submission date; and
(iii) the office shall return any refundable performance deposit required by Subsection 63M-1-3506(1).

(3)
(a) If the application is complete, the office shall certify the proposed equity investment or long-term debt security as a qualified equity investment, subject to the limitation contained in Subsection (6).

(b) The office shall provide written notice of the certification to the qualified community development entity.

(4) The office shall certify qualified equity investments in the order applications are received by the office. Applications received on the same day are considered to have been received simultaneously.

(5) For applications that are complete and received on the same day, the office shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants as follows:

(a) First, the office shall certify applications by applicants that agree to designate qualified equity investments as federal qualified equity investments in accordance with Subsection (1)(f) in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in an application to be designated as federal qualified equity investments to the total amount of qualified equity investments to be designated as federal qualified equity investments requested in all applications received on the same day.

(b) After complying with Subsection (5)(a), the office shall certify the qualified equity investments of all other applicants, including the remaining qualified equity investment authority requested by applicants not designated as federal qualified equity investments in accordance with Subsection (1)(f), in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in the applications to the total amount of qualified equity investments requested in all applications received on the same day.

(6)

(a) The office shall certify $50,000,000 in qualified equity investments pursuant to this section. If a pending request cannot be fully certified due to this limit, the office shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

(b) If a qualified community development entity withdraws its request pursuant to Subsection (6)(a), the office shall return any refundable performance deposit required by Subsection 63M-1-3506(1).

(c) A partial certification does not decrease the amount of the refundable performance deposit required under Subsection 63M-1-3506(1).

(7) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or a subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify the office of the transfer with the notice set forth in Subsection (8) and include with the notice the information required in the application with respect to the transferee.

(8)

(a) Within 45 days of the applicant receiving notice of certification, the qualified community development entity or any transferee under Subsection (7) shall:

(i) issue the qualified equity investment;

(ii) receive cash in the amount of the certified amount; and

(iii) if applicable, designate the required amount of qualified equity investment authority as federal qualified equity investments.

(b) The qualified community development entity or transferee under Subsection (7) shall provide the office with evidence of the receipt of the cash investment and designation of the qualified equity investment as a federal qualified equity investment within 50 days of the applicant receiving notice of certification.

(c) The certification under this section lapses and the qualified community development entity may not issue the qualified equity investment without reapplying to the office for certification

if, within 45 days following receipt of the certification notice, the qualified community development entity or any transferee under Subsection (7) does not:

(i) receive the cash investment;

(ii) issue the qualified equity investment; and

(iii) if applicable, designate the required amount of qualified equity investment authority as federal qualified equity investments.

(d) A lapsed certification under this Subsection (8) reverts back to the office and shall be reissued as follows:

(i) first, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection (5)(a), if applicable;

(ii) second, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection (5)(b); and

(iii) after complying with Subsections (8)(d)(i) and (ii), in accordance with the application process.

(e)

(i) The office shall:

(A) calculate an annual fee to be paid by each applicant certified pursuant to Subsection (3)(a), regardless of the number of transferees under Subsection (7), by dividing $100,000 by the number of applications certified pursuant to Subsection (3)(a); and

(B) notify each successful applicant of the amount of the annual fee.

(ii) The initial annual fee shall be due and payable to the office with the evidence of receipt of cash investment set forth in Subsection (8)(b). After the initial annual fee, an annual fee shall be due and payable to the office with each report submitted pursuant to Section 63M-1-3510.

(iii) An annual fee may not be required once a qualified community development entity together with all transferees under Subsection (7) have decertified all qualified equity investments in accordance with Subsection 63M-1-3507(2).

(iv) To maintain an aggregate annual fee of $100,000 for all qualified community development entities, the office shall recalculate the annual fee as needed upon:

(A) the lapse of any certification under Subsection (8)(c);

(B) the recapture of tax credits pursuant to Section 63M-1-3504; or

(C) the decertification of qualified equity investments pursuant to Subsection 63M-1-3507(2).

(v) An annual fee collected under this Subsection (8)(e) shall be deposited into the General Fund as a dedicated credit for use by the office to implement this part.

(9) A qualified community development entity that issues a debt instrument described in Subsection 63M-1-3502(6) may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under Section 45D, Internal Revenue Code, of the qualified community development entity for that period before giving effect to the interest expense of the long-term debt security. This Subsection (9) does not limit the holder of the debt instrument's ability to accelerate payments on the debt instrument in situations when the qualified community development entity has defaulted on covenants designed to ensure compliance with this part or Section 45D, Internal Revenue Code.

(10)

(a) A qualified community development entity that issues qualified equity investments shall notify the office of the names of the entities that are eligible to use tax credits under this section and Section 59-9-107:

(i) pursuant to an allocation of tax credits;
(ii) pursuant to a change in allocation of tax credits; or
(iii) due to a transfer of a qualified equity investment.
(b) The office may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the form and content of the notice required under this Subsection (10).
(11)
(a) An entity may claim a tax credit under Section 59-9-107 against tax liability under Title 59, Chapter 9, Taxation of Admitted Insurers, if the entity:
(i) makes a qualified equity investment; and
(ii) obtains a tax credit certificate in accordance with Subsection (11)(b).
(b) For each calendar year, beginning with calendar year 2016, an entity is eligible for a tax credit under this section and Section 59-9-107, the office shall issue to the entity a tax credit certificate for use after January 1, 2017, and provide the State Tax Commission a copy of the tax credit certificate.
(c) On each credit allowance date of the qualified equity investment, the entity that made the qualified equity investment, or the subsequent holder of the qualified equity investment, may claim a portion of the tax credit during the calendar year that includes the credit allowance date.
(d) The office shall calculate the tax credit amount and the tax credit amount shall be equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the qualified community development entity for the qualified equity investment.
(e) A tax credit allowed to a partnership, limited liability company, or S-corporation shall be allocated to the partners, members, or shareholders of the partnership, limited liability company, or S-corporation for the partners', members', or shareholders' direct use in accordance with the provisions of any agreement among the partners, members, or shareholders.
(f) An entity may not sell a tax credit allowed under this section on the open market.
(12)
(a) An entity that claims a tax credit under Section 59-9-107 and this section shall provide the office with a document that expressly directs and authorizes the State Tax Commission to disclose the entity's tax returns and other information concerning the entity that are required by the office and that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to the office.
(b) The office shall submit the document described in Subsection (12)(a) to the State Tax Commission.
(c) Upon receipt of the document described in Subsection (12)(a), the State Tax Commission shall provide the office with the information requested by the office that the entity authorized the State Tax Commission to provide to the office in the document described in Subsection (12)(a).

Enacted by Chapter 435, 2014 General Session

63M-1-3504 Recapture.
(1) The office may recapture a tax credit from an entity that claimed the tax credit allowed under Section 59-9-107 on a return, if any of the following occur:
(a) If any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this part is recaptured under Section 45D, Internal Revenue

Code, the office may recapture the tax credit in an amount that is proportionate to the federal recapture with respect to the qualified equity investment.

(b) If the qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment before the seventh anniversary of the issuance of the qualified equity investment, the office may recapture an amount proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

(c)

(i) If the qualified community development entity fails to invest an amount equal to 85% of the purchase price of the qualified equity investment in qualified low-income community investments in Utah within 12 months of the issuance of the qualified equity investment and maintains at least 85% of the level of investment in qualified low-income community investments in Utah until the last credit allowance date for the qualified equity investment, the office may recapture the tax credit.

(ii) For purposes of this part, an investment is considered held by a qualified community development entity even if the investment has been sold or repaid if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of the capital.

(iii) Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year.

(iv) A qualified community development entity is not required to reinvest capital returned from a qualified low-income community investment after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance.

(d) If a qualified community development entity makes a distribution or debt payment in violation of Subsection 63M-1-3507(1), the office may recapture the tax credit.

(e) If there is a violation of Section 63M-1-3509, the office may recapture the tax credit.

(2) A recaptured tax credit and the related qualified equity investment authority revert back to the office and shall be reissued:

(a) first, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection 63M-1-3503(5)(a);

(b) second, pro rata to applicants whose qualified equity investment allocations were reduced under Subsection 63M-1-3503(5)(b); and

(c) after complying with Subsections (2)(a) and (b), in accordance with the application process.

Enacted by Chapter 435, 2014 General Session

63M-1-3505 Notice of noncompliance.

Enforcement of a recapture provision under Subsection 63M-1-3504(1) is subject to a six-month cure period. The office may not recapture a tax credit until the office notifies the qualified community development entity of noncompliance and affords the qualified community development entity six months from the date of the notice to cure the noncompliance.

Enacted by Chapter 435, 2014 General Session

63M-1-3506 Refundable performance deposit -- Small Business Jobs Performance Guarantee Account.

(1)

(a) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and as eligible for tax credits under Section 59-9-107 shall pay a deposit in the amount of .5% of the amount of the equity investment or long-term debt security requested in an application to be certified as a qualified equity investment to the office for deposit into the Small Business Jobs Performance Guarantee Account.

(b)

(i) There is created in the General Fund a restricted account known as the "Small Business Jobs Performance Guarantee Account" that consists of deposits made under Subsection (1)(a).

(ii) The Small Business Jobs Performance Guarantee Account does not earn interest.

(iii) At the end of a fiscal year, any amount in the Small Business Jobs Performance Guarantee Account that a qualified community development entity forfeits under this section is to be transferred to the General Fund.

(iv) The office shall work with the Division of Finance to ensure that money in the Small Business Jobs Performance Guarantee Account is properly accounted for at the end of each fiscal year.

(c) A qualified community development entity shall forfeit the deposit required under Subsection (1)(a) in its entirety if:

(i) the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified equity investments certified by the office and receive cash in the total amount certified under Section 63M-1-3503; or

(ii) the qualified community development entity or any subsidiary qualified community development entity that issues a qualified equity investment certified under this part fails to make qualified low-income community investments in qualified active low-income community businesses in Utah equal to at least 85% of the purchase price of the qualified equity investment by the second credit allowance date of such qualified equity investment.

(d) The six-month cure period established under Section 63M-1-3505 is not applicable to the forfeiture of a deposit under Subsection (1)(c).

(2) A deposit required under Subsection (1) shall be paid to the office and held in the Small Business Jobs Performance Guarantee Account until such time as compliance with this Subsection (2) is established. A qualified community development entity may request a refund of the deposit from the office no sooner than 30 days after the qualified community development entity and all transferees under Subsection 63M-1-3503(7) have invested 85% of the purchase price of the qualified equity investment authority certified by the office pursuant to Subsection 63M-1-3503(3). The office has 30 days to comply with the request for a refund or give notice of noncompliance.

Enacted by Chapter 435, 2014 General Session

63M-1-3507 150% investment requirement -- Ceasing of certification.

(1)

(a) Once certified under Section 63M-1-3503, a qualified equity investment shall remain certified until all of the requirements of Subsection (2) have been met.
(b) Until such time as the qualified equity investments issued by a qualified community development entity are no longer certified, the qualified community development entity may not distribute to its equity holders or make cash payments on long-term debt securities that have been certified as qualified equity investments in an amount that exceeds the sum of:
(i) the cumulative operating income, as defined by regulations adopted under Section 45D, Internal Revenue Code, earned by the qualified community development entity since issuance of the qualified equity investment, before giving effect to any interest expense from long-term debt securities certified as qualified equity investments; and
(ii) 50% of the purchase price of the qualified equity investments issued by the qualified community development entity.
(2) Subject to the other provisions of this section, a qualified equity investment ceases to be certified when:
(a) it is beyond its seventh credit allowance date;
(b) the qualified community development entity issuing the qualified equity investment has been in compliance with Section 63M-1-3504 through its seventh credit allowance date, including any cures under Section 63M-1-3505;
(c) the qualified community development entity issuing such qualified equity investment has used the cash purchase of such qualified equity investment, together with capital returned, repaid, or redeemed or profits realized with qualified low-income community investments, to invest in qualified active low-income community businesses such that the total qualified low-income community investments made, cumulatively including reinvestments, exceeds 150% of the qualified equity investment; and
(d) the qualified community development complies with Subsection (4).
(3) For purposes of making the calculation under Subsection (2)(c), qualified low-income community investments to any one qualified active low-income community business, on a collective basis with its affiliates, in excess of $4,000,000 may not be included, unless such investments are made with capital returned or repaid from qualified low-income community investments made by the qualified community development entity in other qualified active low-income community businesses or interest earned on or profits realized from any qualified low-income community investments.
(4) A qualified community development entity shall file a request for ceasing certification of a qualified equity investment in a form, provided by the office, that establishes that the qualified community development entity has met the requirements of Subsection (2) along with evidence supporting the request for ceasing certification. Subsection (2)(b) shall be considered to be met if no recapture action has been commenced by the office as of the seventh credit allowance date.
(5)
(a) A request for ceasing certification may not be unreasonably denied and the office shall respond to the request within 30 days of the office receiving the request.
(b) Upon grant of a request for ceasing certification, the qualified community development entity is no longer subject to Section 63M-1-3510.
(c) If the request is denied for any reason, the office has the burden of proof in any administrative or legal proceeding that follows.

Enacted by Chapter 435, 2014 General Session

63M-1-3508 Limitation on fees.

(1) A qualified community development entity or purchaser of a qualified equity investment may not pay to any qualified community development entity or affiliate of a qualified community development entity any fee in connection with any activity under this part before meeting the requirements of Subsection 63M-1-3507(2) with respect to all qualified equity investments issued by such qualified community development entity and its affiliates.

(2) Subsection (1) does not prohibit the allocation or distribution of income earned by a qualified community development entity or purchaser of a qualified equity investment to the qualified community development entity's or purchaser's equity owners or the payment of reasonable interest on amounts lent to a qualified community development entity or purchaser of a qualified equity investment.

Enacted by Chapter 435, 2014 General Session

63M-1-3509 New capital requirement.

(1) A qualified active low-income community business that receives a qualified low-income community investment from a qualified community development entity that issues qualified equity investments under this part, or any affiliates of a qualified active low-income community business, may not directly or indirectly:

(a) own or have the right to acquire an ownership interest in a qualified community development entity or member or affiliate of a qualified community development entity, including a holder of a qualified equity investment issued by the qualified community development entity; or

(b) loan to or invest in a qualified community development entity or member or affiliate of a qualified community development entity, including a holder of a qualified equity investment issued by a qualified community development entity when the proceeds of the loan or investment are directly or indirectly used to fund or refinance the purchase of a qualified equity investment under this part.

(2) For purposes of this section, a qualified community development entity may not be considered an affiliate of a qualified active low-income community business solely as a result of its qualified low-income community investment in the business.

Enacted by Chapter 435, 2014 General Session

63M-1-3510 Reporting.

(1) A qualified community development entity that issues qualified equity investments shall submit a report to the office within the first five business days after the first anniversary of the initial credit allowance date that provides documentation as to the investment of 85% of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in Utah. The report shall include:

(a) a bank statement of the qualified community development entity evidencing each qualified low-income community investment; and

(b) evidence that the business was a qualified active low-income community business at the time of the qualified low-income community investment.

(2) After the initial report under Subsection (1), a qualified community development entity shall submit an annual report to the office within 60 days of the beginning of the calendar year during the compliance period. An annual report is not due before the first anniversary of the initial credit allowance date. The annual report shall include the following:

(a) the number of employment positions created and retained as a result of qualified low-income community investments;
(b) the average annual salary of positions described in Subsection (2)(a); and
(c) certification from the qualified community development entity that the grounds for recapture under Section 63M-1-3504 have not occurred.

Enacted by Chapter 435, 2014 General Session

63M-1-3511 Revenue impact assessment.
(1) Before making a qualified low-income community investment, a qualified community development entity shall submit to the office a revenue impact assessment prepared using a nationally recognized economic development model that demonstrates that the qualified low-income community investment will have a revenue positive impact on the state over 10 years against the 58% tax credit utilization over the same 10-year period.
(2) The office must notify the qualified community development entity within five business days if the qualified low-income community investment does not have a revenue positive impact on the state over 10 years against the 58% tax credit utilization over the same 10-year period using the revenue impact assessment submitted.
(3) If the office determines that the revenue impact assessment does not reflect a revenue positive qualified low-income community investment, the office may waive the requirement under this section if the office determines that the proposed qualified low-income community investment will further economic development.

Enacted by Chapter 435, 2014 General Session

63M-1-3512 Scope of part.
This part applies only to a return or report originally due on or after September 2, 2014.

Enacted by Chapter 435, 2014 General Session

Chapter 2
Utah Science Technology and Research Governing Authority Act

Part 1
General Provisions

63M-2-101 Title.
This chapter is known as the "Utah Science Technology and Research Governing Authority Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-2-102 Definitions.
As used in this chapter:

(1) "Commercialization revenues" means dividends, realized capital gains, license fees, royalty fees, and other revenues received by a university as a result of commercial applications developed from the USTAR initiative, less:
  (a) the portion of those revenues allocated to the inventor; and
  (b) expenditures incurred by the university to legally protect the intellectual property.
(2) "Executive director" means the person appointed by the governing authority under Section 63M-2-301.
(3) "Research buildings" means any of the buildings listed in Section 63M-2-201.
(4) "Research universities" means the University of Utah and Utah State University.
(5) "Technology outreach program" means the program described in Section 63M-2-202.
(6) "USTAR governing authority" means the Utah Science Technology and Research Governing Authority created in Section 63M-2-301.
(7)
  (a) "USTAR initiative" means the Utah Science Technology and Research Initiative created in Section 63M-2-301.
  (b) "USTAR initiative" includes the projects, operations, activities, programs, and services described in this chapter.

Amended by Chapter 186, 2014 General Session

Part 2
Utah Science Technology and Research Initiative

63M-2-201 Science technology research buildings.
(1) As funding becomes available from the Legislature or other sources, the USTAR governing authority shall:
  (a) construct at Utah State University:
    (i) a Bio Innovations Research Institute;
    (ii) an Infectious Disease Research Center; and
    (iii) an Informatics/Computing Research Center; and
  (b) construct at the University of Utah:
    (i) a Neuroscience and Biomedical Technology Research Building; and
    (ii) an Information Technology and Bioinformatics Research Center.
(2) The USTAR governing authority shall, subject to any restrictions or directions established by the Legislature, plan, design, and construct the buildings.
(3)
  (a) Utah State University shall provide the land for the construction of science technology and research buildings on its campus.
  (b) The University of Utah shall provide the land for the construction of science technology and research buildings on its campus.
(4) The USTAR governing authority shall hold title to the research buildings.
(5) The governing authority shall:
  (a) before approving occupancy of a building, lease each building constructed on Utah State University's campus to Utah State University and each building constructed on the University of Utah's campus to the University of Utah by entering into a written lease agreement with

each university that clearly establishes the terms for the university's use, maintenance, and ongoing rental payments for the building;

(b) require research teams to generate a certain amount of revenue from grants or other sources to contribute to the USTAR initiative; and

(c) unless prohibited by law, deposit lease payments and other money received from the universities and research teams with the state treasurer for deposit into the sinking funds created under Section 63B-1a-301 for debt service on the bonds issued to fund planning, design, and construction of the research buildings.

Amended by Chapter 186, 2014 General Session

63M-2-202 Technology outreach program.

(1) As funding becomes available from the Legislature or other sources, the USTAR governing authority shall establish a technology outreach program at up to five locations distributed strategically throughout Utah.

(2)

(a) The USTAR governing authority shall ensure that the technology outreach program acts as a resource to:

(i) broker ideas, new technologies, and services to entrepreneurs and businesses throughout a defined service area;

(ii) engage local entrepreneurs and professors at applied technology centers, colleges, and universities by connecting them to Utah's research universities;

(iii) screen business ideas and new technologies to ensure that the ones with the highest growth potential receive the most targeted services and attention;

(iv) connect market ideas and technologies in new or existing businesses or industries or in regional colleges and universities with the expertise of Utah's research universities;

(v) assist businesses, applied technology centers, colleges, and universities in developing commercial applications for their research; and

(vi) disseminate and share discoveries and technologies emanating from Utah's research universities to local entrepreneurs, businesses, applied technology centers, colleges, and universities.

(b) In designing and operating the technology outreach program, the USTAR governing authority shall:

(i) for each technology outreach program location:

(A) establish written performance standards and expectations for each location; and

(B) require reporting from each location related to those performance standards and expectations on at least an annual basis; and

(ii) work cooperatively with the Technology Commercialization Offices at Utah State University and the University of Utah.

Amended by Chapter 186, 2014 General Session

63M-2-203 Research teams.

(1) As funding becomes available from the Legislature or other sources, and subject to any restrictions or directions established by the Legislature, the USTAR governing authority shall allocate money to Utah State University and the University of Utah to provide funding for research teams to conduct science and technology research.

(2) The USTAR governing authority shall:

(a) establish written performance standards and expectations for each research team receiving USTAR initiative funding;
(b) require each research team to report on the team's performance related to those standards and expectations on at least an annual basis; and
(c) require each research team to report on the amount of funding received from sources other than USTAR initiative funding on at least an annual basis.
(3) The USTAR governing authority shall discontinue allocating money to a research team that does not provide the reporting required by Subsection (2).
(4) The USTAR governing authority may discontinue allocating money to a research team for any reason, including:
(a) when the research team is failing to meet expectations established through performance standards and expectations; and
(b) when the research team is receiving sufficient funding from other sources to no longer reasonably need USTAR initiative funding.

Amended by Chapter 186, 2014 General Session

63M-2-204 Financial participation agreement.
(1) In consideration of the money and services provided or agreed to be provided, the state of Utah, Utah State University, and the University of Utah agree that they will allocate commercialization revenues as follows:
(a) for the first $15,000,000 received:
(i) $10,000,000 to Utah State University and the University of Utah, with the money distributed proportionately based upon which university conducted the research that generated the commercialization revenues; and
(ii) $5,000,000 to the USTAR governing authority for the ongoing operations of the USTAR initiative; and
(b) for all subsequent money received:
(i) 50% to Utah State University and the University of Utah, with the money distributed proportionately based upon which university conducted the research that generated the commercialization revenues; and
(ii) 50% to the USTAR governing authority or other entity designated by the state to be used for:
(A) unless prohibited by law, deposit with the state treasurer for deposit into the sinking fund created under Section 63B-1a-301 for debt service on the bonds issued to fund planning, design, and construction of the research buildings;
(B) ongoing operations of the USTAR initiative;
(C) replacement of equipment in the research buildings;
(D) recruitment and funding of additional research teams; and
(E) construction of additional research buildings.

Amended by Chapter 186, 2014 General Session

Part 3
Utah Science Technology and Research Governing Authority

63M-2-301 The Utah Science Technology and Research Initiative and the Utah Science Technology and Research Governing Authority -- Creation -- Membership -- Meetings -- Staff.

(1) There is created the Utah Science Technology and Research Initiative.

(2) To oversee the Utah Science Technology and Research Initiative, there is created the Utah Science Technology and Research Governing Authority consisting of the state treasurer, the executive director of the Governor's Office of Economic Development, and the following eight members appointed as follows:

(a) three appointed by the governor;

(b) two appointed by the president of the Senate;

(c) two appointed by the speaker of the House of Representatives; and

(d) one appointed by the commissioner of higher education.

(3)

(a)

(i) The eight appointed members shall serve four-year staggered terms.

(ii) The appointed members may not serve more than two full consecutive terms.

(b) Notwithstanding Subsection (3)(a)(i), the terms of the first members of the governing authority shall be staggered by lot so that half of the initial members serve two-year terms and half serve four-year terms.

(4) Vacancies in the appointed positions on the governing authority shall be filled by the appointing authority with consent of the Senate for the unexpired term.

(5)

(a) The governor, with the consent of the Senate, shall select the chair of the governing authority to serve a one-year term.

(b) The executive director of the Governor's Office of Economic Development shall serve as the vice chair of the governing authority.

(6) The governing authority shall meet at least monthly and may meet more frequently at the request of a majority of the members of the governing authority.

(7) Five members of the governing authority are a quorum.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

(9)

(a) After consultation with the USTAR governing authority, the governor, with the consent of the Senate, shall appoint a full-time executive director to provide staff support for the USTAR governing authority.

(b) The executive director is an at-will employee who may be terminated without cause by the governor or by majority vote of the USTAR governing authority.

Amended by Chapter 186, 2014 General Session

63M-2-302 USTAR governing authority powers.

(1) The USTAR governing authority shall:

(a) ensure that funds appropriated and received for research and development at the research universities and for the technology outreach program are used appropriately, effectively, and efficiently in accordance with the intent of the Legislature;

(b) in cooperation with the universities' administrations, expand key research at the two research universities;
(c) enhance technology transfer and commercialization of research and technologies developed at the research universities to create high-quality jobs and new industries in the private sector in Utah;
(d) review state and local economic development plans and appropriations to ensure that the USTAR initiative and its appropriations do not duplicate existing or planned programs;
(e) establish written economic development objectives for the USTAR initiative that are measurable and verifiable, including how to maximize revenue to the USTAR initiative so that it becomes financially self-supporting;
(f) by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for allocating appropriated money for research teams and for the commercialization of new technology between Utah State University and the University of Utah;
(g) verify that the USTAR initiative is being enhanced by research grants and that it is meeting the governing authority's economic development objectives;
(h) monitor all research plans that are part of the USTAR initiative at the research universities to determine that appropriations are being spent in accordance with legislative intent and to maximize the benefit and return to the state; and
(i) develop methods and incentives to encourage investment in and contributions to the USTAR initiative from the private sector.
(2) The USTAR governing authority may:
(a) in addition to money received from the Legislature, receive contributions for the USTAR initiative from any source in the form of money, property, labor, or other things of value;
(b) subject to any restrictions imposed by the donation, appropriations, or bond authorizations, allocate money received by it among the research universities, technology outreach program, and technology transfer offices to support commercialization and technology transfer to the private sector; or
(c) enter into agreements necessary to obtain private equity investment in the USTAR initiative.

Amended by Chapter 186, 2014 General Session

63M-2-302.5 USTAR governing authority requirements.

The USTAR governing authority is subject to the requirements of an executive branch agency and is:
(1) an agency for purposes of Title 63J, Chapter 1, Budgetary Procedures Act;
(2) an executive branch procurement unit for purposes of Title 63G, Chapter 6a, Utah Procurement Code;
(3) a governmental entity for purposes of Title 63G, Chapter 2, Government Records Access and Management Act; and
(4) a public body for purposes of Title 52, Chapter 4, Open and Public Meetings Act.

Enacted by Chapter 186, 2014 General Session

63M-2-303 USTAR Governing Authority Advisory Council -- Chair -- Meetings.

(1) There is created the USTAR Governing Authority Advisory Council consisting of 12 members appointed as follows:
(a) one member appointed by the director of the Governor's Office of Economic Development;

(b) one member appointed by the Utah Technology Council;
(c) one member appointed by the Utah Nanotechnology Initiative;
(d) one member appointed by the Economic Development Corporation of Utah;
(e) one member appointed by BioUtah;
(f) one member appointed by the Salt Lake Area Chamber of Commerce;
(g) one member appointed by the Provo-Orem Chamber of Commerce;
(h) one member appointed by the Davis Area Chamber of Commerce;
(i) one member appointed by the Ogden-Weber Chamber of Commerce;
(j) one member appointed by the Cache Chamber of Commerce;
(k) one member appointed by the St. George Area Chamber of Commerce; and
(l) one member appointed by the Vernal Chamber of Commerce.
(2) The USTAR governing authority shall consult with the advisory council about the USTAR initiative.
(3) The advisory council shall select a chair from among its members to serve a two-year term.
(4) The advisory council shall convene whenever the USTAR governing authority requests a meeting for consultation.
(5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 186, 2014 General Session

Part 4
USTAR Reporting and Audit Requirements

63M-2-401 Reporting requirements.
(1) By October 1 of each year, the USTAR governing authority shall submit to the governor; the Legislature; the Business, Economic Development, and Labor Appropriations Subcommittee; and the Economic Development and Workforce Services Interim Committee an annual written report of the operations, activities, programs, and services of the governing authority and the USTAR initiative for the preceding fiscal year.
(2) For each project, operation, activity, program, or service related to the USTAR initiative or overseen or funded through the USTAR governing authority, the annual report shall include:
(a) a description of the project, operation, activity, program, or service;
(b) data selected and used by the governing authority to measure progress, performance, and scope of the project, operation, activity, program, or service, including summary data;
(c) a clear description of the methodology for any data in the report that includes an estimation;
(d) the amount and source of all USTAR initiative funding, including:
(i) funding from legislative appropriations;
(ii) funding procured outside of legislative appropriations, including a separate accounting of grants or investments contributing to research teams and other activities of the USTAR initiative from the federal government, private entities, or other sources, and an explanation of the extent to which:
(A) outside funding was contingent on or leveraged by legislative appropriations; and

(B) outside funding would continue if legislative appropriations were discontinued;
(iii) commercialization revenue, including a separate accounting of:
(A) realized commercialization revenue;
(B) unrealized and expected commercialization revenue; and
(C) commercialization revenue going to other parties attributable to USTAR initiative funding;
(iv) lease revenue from each building in which the USTAR governing authority holds title; and
(v) the amount of money deposited with the state treasurer for deposit into the sinking fund created under Section 63B-1a-301 for debt service on the bonds issued to fund planning, design, and construction of the research buildings;
(e) all expenses of the USTAR initiative, including:
(i) operational expenses;
(ii) for each employee receiving compensation from USTAR initiative funding, compensation information, including:
(A) salary expenses, benefit expenses, and travel expenses;
(B) information for each research team employee and each employee of the technology outreach program that receives compensation directly or indirectly through USTAR initiative funding; and
(C) information regarding compensation for each employee from sources other than USTAR initiative funding, including grants and compensation from a university or private entity;
(iii) for each research team, salary expenses, benefit expenses, travel expenses, and operations and maintenance expenses;
(iv) operational and maintenance expenses for each building in which the USTAR governing authority holds title;
(v) operational and maintenance expenses paid for by USTAR initiative funding for each location that has an established technology outreach program; and
(vi) each grant or other incentive given as a result of the USTAR initiative, including grants or incentives awarded through the technology outreach program;
(f) the number of jobs and the corresponding salary ranges created by the USTAR initiative, including the number of jobs where the employee is expected to be employed for at least one year and earns at least 125% of the prevailing wage of the county where the employee works;
(g) the name of each business entity receiving a grant or other incentive as a result of the USTAR initiative, including the outreach program;
(h) a list of business entities that have hired employees as a result of the USTAR initiative;
(i) the tax revenue generated as a result of the USTAR initiative, with actual revenue generated clearly separated from potential revenue;
(j) a list of intellectual property assets, including patents, generated by research teams as a result of the USTAR initiative, including a reasonable estimate of the USTAR initiative's percentage share of potential commercialization revenue that may be realized from those assets;
(k) a description of any agreements entered into regarding private equity investment in the USTAR initiative;
(l) beginning with data from the fiscal year beginning July 1, 2013, historical data from previous years for comparison with the annual data reported under this Subsection (2);
(m) goals, challenges, and achievements related to the project, operation, activity, program, or service;
(n) relevant federal and state statutory references and requirements;
(o) contact information of officials knowledgeable and responsible for each project, operation, activity, program, or service;
(p) other information determined by the USTAR governing authority that:

(i) may be needed, useful, or of historical significance; or
(ii) promotes accountability and transparency for each project, operation, activity, program, or service with the public and with elected officials;
(q) the written economic development objectives required under Subsection 63M-2-302(1)(e) and a description of any progress or challenges in meeting the objectives; and
(r) the audit report described in Section 63M-2-402.
(3) The annual report shall be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature.
(4) The governing authority shall:
(a) submit the annual report in accordance with Section 68-3-14; and
(b) make the annual report and previous annual reports accessible to the public by placing a link to the reports on the USTAR initiative's website.
(5) In addition to the annual written report described in this section:
(a) upon the request of a committee, the USTAR governing authority shall provide information and progress reports to the Economic Development and Workforce Services Interim Committee; the Business and Labor Interim Committee; and the Business, Economic Development, and Labor Appropriations Subcommittee; and
(b) on or before October 1, 2019, and every five years after October 1, 2019, the USTAR governing authority shall include with the annual report described in this section a written analysis and recommendations concerning the usefulness of the information required in the annual report and the ongoing effectiveness of the USTAR initiative, including whether:
(i) the reporting requirements are effective at measuring the performance of the USTAR initiative;
(ii) the reporting requirements should be modified; and
(iii) the USTAR initiative is beneficial to the state and should continue.

Enacted by Chapter 186, 2014 General Session

63M-2-402 Audit requirements.
(1) Each fiscal year, an audit of the activities of the USTAR initiative shall be made as described in this section.
(2)
(a) As approved by the Legislative Audit Subcommittee, the audit shall be conducted by:
(i) the legislative auditor; or
(ii) an independent auditor engaged by the legislative auditor.
(b) An independent auditor used under Subsection (2)(a)(ii) may not have a business or contractual connection, or other connection, with the USTAR initiative or the USTAR governing authority.
(3) The USTAR governing authority shall pay the costs associated with the annual audit.
(4) The annual audit shall:
(a) include a verification of the accuracy of the information required to be included in the annual report described in Section 63M-2-401; and
(b) be completed by September 1 of each year.

Enacted by Chapter 186, 2014 General Session

Chapter 3
Tar Sands Pilot Plant Act

Part 1
General Provisions

63M-3-101 Title.

This chapter is known as the "Tar Sands Pilot Plant Act."

Enacted by Chapter 382, 2008 General Session

63M-3-102 Legislative findings -- Purpose of act.

(1) The Legislature finds that:
(a) Substantial deposits of tar sands exist within lands located in various places within the state of Utah, but this is primarily a Utah phenomenon, there being no similar significant deposits within lands located elsewhere in the United States.
(b) While large known deposits of tar sands exist outside the United States, primarily in South America and Canada, only those in Canada produce commercial quantities of hydrocarbons, this having come about only after years of research and experimentation and substantial private and public investment.
(c) Significant laboratory research has been conducted, including research by the University of Utah, which demonstrates a potential for commercial production of the tar sands deposits located in the state of Utah, which potential remains to be established by the scale-up of laboratory research to a pilot plant development stage.
(d) Successful demonstration of a hydrocarbon recovery process from Utah tar sands as commercially viable at the pilot plant level of production could form the basis for the development by private industry of commercial production of a substantial volume of hydrocarbon energy fuel, thereby commensurately reducing the amount of petroleum products which are required to be imported at exorbitant cost from foreign sources to meet the needs of the citizens of this state and the United States.
(2) The purpose of this act is to stimulate and encourage the development and commercial production by private industry of hydrocarbons from the tar sands deposits lying within the state of Utah for the public good and economic well-being of the citizens of this state and the United States, and to so do by providing for the design, construction, and operation of a pilot plant to be employed for the purpose of demonstrating the commercial viability of processes for the recovery of hydrocarbons from the tar sands deposits of the state through certain funding by the state in conjunction with funding furnished from other sources, both public and private.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-3-103 Definitions.

As used in this act:
(1) "Contractor" means the parties from private industry who design, construct, or operate the pilot plant.
(2) "Council" means the state advisory council on science and technology.

(3) "Intellectual property" means the sum of knowledge contained in patents, know-how, copyrights, trade secrets, and technical information relating to the pilot plant and the research which has preceded it.
(4) "Objective period" means that period of time required for the pilot plant to achieve its design objectives.
(5) "Pilot plant" means the tar sands pilot plant which is the subject of this act.
(6) "Station" means the Utah engineering experiment station, University of Utah.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2
Contracts and Intellectual Property

63M-3-201 Contract for pilot plant -- Contents -- Financing -- Termination of contract.
(1) The council is authorized to enter into contracts with contractors to provide for the design, construction, and operation of a pilot plant to fulfill the purposes of this act.
(2) The contracts provided for in Subsection (1) shall provide, among other things, for the following:
(a) The plans and specifications for and the processes to be used in the pilot plant must be approved by the council.
(b) The station is to be the project engineer in respect to the pilot plant and is to represent the council in respect to it. As the project engineer the station has the responsibility of monitoring performance by the contractors, gathering data pertinent to the purpose for which the pilot plant is to be constructed and operated, and performing such administrative, accounting, and other duties assigned to it in respect to the pilot plant by the council. As compensation for its services the station is to receive its costs, direct and indirect, calculated in accordance with standard accounting procedures followed by the University of Utah in contracts with the United States government and its agencies; and the amount to be so paid to the station is to be considered part of the costs of design, construction, and operation of the pilot plant.
(c) The contractor shall provide all funds necessary to the design, construction, and operation of the pilot plant for the objective period which are not provided by the appropriation made to the council for purposes of this act under Section 5. To provide its portion of these funds the contractor may use both private and public sources, but that from public sources can only be used with prior approval by the council.
(d) The site for the pilot plant is subject to prior approval by the council.
(e) The pilot plant and any production from it shall be owned by the state of Utah in the proportion that its appropriation for purposes of this act under Section 5 bears to the total cost of designing, constructing, and operating the pilot plant for the objective period. This total cost does not include the cost or value of the site for the pilot plant or tar sand feedstock for the objective period.
(f) The council shall have the exclusive right to determine when the end of the objective period has been reached, at which time any contracts between the council and the contractor regarding the pilot plant shall terminate. The pilot plant is then to be sold for cash pursuant to law at competitive bidding when the sale of the pilot plant equipment is determined to be practicable by the council. The gross proceeds from the sale shall be paid to the state but not in excess of the amount of the appropriation made under Section 5 plus an interest factor of 10% per year from the date of the contracts to the sale date.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-3-202 Intellectual properties discovered or developed -- Ownership -- Patenting -- Licensing.

(1) To the extent not inconsistent with the patent laws of the United States, the intellectual properties which are newly discovered or newly developed in the course of the design, construction, and operation of the pilot plant during the objective period:
  (a) shall be owned by the state of Utah to the same extent as the pilot plant and production from it as provided for in Subsection 63M-3-201(2)(e); and
  (b) shall, if patentable, be patented in a manner appropriate to this ownership by the state and the other owners.
(2) Any intellectual properties described in Subsection (1) insofar as they are so owned by the state may be licensed for the objective period upon such terms as are approved by the council.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 4
Utah Energy Act

Part 1
General Provisions

63M-4-101 Title.

This chapter is known as the "Utah Energy Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-4-102 Definitions.

As used in this chapter:
(1) "Energy advisor" means the governor's energy advisor appointed under Section 63M-4-401.
(2) "Office" means the Office of Energy Development created in Section 63M-4-401.
(3) "State agency" means an executive branch:
  (a) department;
  (b) agency;
  (c) board;
  (d) commission;
  (e) division; or
  (f) state educational institution.

Amended by Chapter 37, 2012 General Session

Part 2
Governor's Energy Advisor

63M-4-201 Governor's energy advisor -- Duties.

(1)
(a) The governor shall appoint an energy advisor.
(b) The governor's energy advisor serves at the pleasure of the governor.
(2) The governor's energy advisor shall:
(a) advise the governor on energy-related matters;
(b) annually review and propose updates to the state's energy policy, as contained in Section 63M-4-301;
(c) promote as the governor's energy advisor considers necessary:
(i) the development of cost-effective energy resources both renewable and nonrenewable; and
(ii) educational programs, including programs supporting conservation and energy efficiency measures;
(d) coordinate across state agencies to assure consistency with state energy policy, including:
(i) working with the State Energy Program to promote access to federal assistance for energy-related projects for state agencies and members of the public;
(ii) working with the Division of Emergency Management to assist the governor in carrying out the governor's energy emergency powers under Title 53, Chapter 2a, Part 10, Energy Emergency Powers of the Governor Act;
(iii) participating in the annual review of the energy emergency plan and the maintenance of the energy emergency plan and a current list of contact persons required by Section 53-2a-902; and
(iv) identifying and proposing measures necessary to facilitate low-income consumers' access to energy services;
(e) coordinate with the Division of Emergency Management ongoing activities designed to test an energy emergency plan to ensure coordination and information sharing among state agencies and political subdivisions in the state, public utilities and other energy suppliers, and other relevant public sector persons as required by Sections 53-2a-902, 53-2a-1004, 53-2a-1008, and 53-2a-1010;
(f) coordinate with requisite state agencies to study:
(i) the creation of a centralized state repository for energy-related information;
(ii) methods for streamlining state review and approval processes for energy-related projects; and
(iii) the development of multistate energy transmission and transportation infrastructure;
(g) coordinate energy-related regulatory processes within the state;
(h) compile, and make available to the public, information about federal, state, and local approval requirements for energy-related projects;
(i) act as the state's advocate before federal and local authorities for energy-related infrastructure projects or coordinate with the appropriate state agency; and
(j) help promote the Division of Facilities Construction and Management's measures to improve energy efficiency in state buildings.
(3) The governor's energy advisor has standing to testify on behalf of the governor at the Public Service Commission created in Section 54-1-1.

Amended by Chapter 295, 2013 General Session

63M-4-202 Agency cooperation.

A state agency shall provide the state energy officer with any energy-related information requested by the governor's energy advisor if the governor's energy advisor's request is consistent with other law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-4-203 Reports.

(1) The governor's energy advisor shall report annually to:
  (a) the governor; and
  (b) the Natural Resources, Agriculture, and Environment Interim Committee.
(2) The report required in Subsection (1) shall:
  (a) summarize the status and development of the state's energy resources;
  (b) address the governor's energy advisor's activities under this part; and
  (c) recommend any energy-related executive or legislative action the governor's energy advisor considers beneficial to the state, including updates to the state energy policy under Section 63M-4-301.

Amended by Chapter 37, 2012 General Session

Part 3
State Energy Policy

63M-4-301 State energy policy.

(1) It is the policy of the state that:
  (a) Utah have adequate, reliable, affordable, sustainable, and clean energy resources;
  (b) Utah will promote the development of:
    (i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and tar sands; and
    (ii) renewable energy resources, including geothermal, solar, wind, biomass, biodiesel, hydroelectric, and ethanol;
  (c) Utah will promote the study of nuclear power generation;
  (d) Utah will promote the development of resources and infrastructure sufficient to meet the state's growing demand, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources;
  (e) Utah will allow market forces to drive prudent use of energy resources, although incentives and other methods may be used to ensure the state's optimal development and use of energy resources in the short- and long-term;
  (f) Utah will pursue energy conservation, energy efficiency, and environmental quality;
  (g)
    (i) state regulatory processes should be streamlined to balance economic costs with the level of review necessary to ensure protection of the state's various interests; and
    (ii) where federal action is required, Utah will encourage expedited federal action and will collaborate with federal agencies to expedite review;
  (h) Utah will maintain an environment that provides for stable consumer prices that are as low as possible while providing producers and suppliers a fair return on investment, recognizing that:
    (i) economic prosperity is linked to the availability, reliability, and affordability of consumer energy supplies; and

(ii) investment will occur only when adequate financial returns can be realized; and
(i) Utah will promote training and education programs focused on developing a comprehensive understanding of energy, including programs addressing:
(i) energy conservation;
(ii) energy efficiency;
(iii) supply and demand; and
(iv) energy related workforce development.
(2) State agencies are encouraged to conduct agency activities consistent with Subsection (1).
(3) A person may not file suit to challenge a state agency's action that is inconsistent with Subsection (1).

Renumbered and Amended by Chapter 382, 2008 General Session

63M-4-302 Legislative committee review.

The Natural Resources, Agriculture, and Environment Interim Committee and the Public Utilities and Technology Interim Committee shall review the state energy policy annually and propose any changes to the Legislature.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 4
Office of Energy Development

63M-4-401 Creation of Office of Energy Development -- Director -- Purpose -- Rulemaking regarding confidential information.

(1) There is created an Office of Energy Development.
(2)
(a) The governor's energy advisor shall appoint a director of the office.
(b) The director shall report to the governor's energy advisor and may appoint staff as funding within existing budgets allows.
(c) The office may consolidate energy staff and functions existing in the State Energy Program.
(3) The purposes of the office are to:
(a) serve as the primary resource for advancing energy development in the state; and
(b) implement:
(i) the state energy policy under Section 63M-4-301; and
(ii) the governor's energy goals and objectives.
(4) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:
(a) seek federal grants or loans;
(b) seek to participate in federal programs; and
(c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.
(5) The office shall perform the duties required by Sections 59-7-614.7 and 59-10-1029 and Part 5, Alternative Energy Development Tax Credit Act.
(6)

(a) For purposes of administering this section, the office may make rules, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to maintain as confidential, and not as a public record, information that the office receives from any source.
(b) The office shall maintain information the office receives from any source at the level of confidentiality assigned by the source.

Amended by Chapter 37, 2012 General Session
Amended by Chapter 410, 2012 General Session

63M-4-402 In-state generator need -- Merchant electric transmission line.
(1) As used in this section:
(a) "Capacity allocation process" means the process outlined by the Federal Energy Regulatory Commission in its final policy statement dated January 17, 2013, "Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant-Funded Transmission," 142 F.E.R.C. P61,038 (2013).
(b) "Certificate of in-state need" means a certificate issued by the office in accordance with this section identifying an in-state generator that meets the requirements and qualifications of this section.
(c) "Expression of need" means a document prepared and submitted to the office by an in-state merchant generator that describes or otherwise documents the transmission needs of the in-state merchant generator in conformance with the requirements of this section.
(d) "In-state merchant generator" means an electric power provider that generates power in Utah and does not provide service to retail customers within the boundaries of Utah.
(e) "Merchant electric transmission line" means a transmission line that does not provide electricity to retail customers within the boundaries of Utah.
(f) "Office" means the Office of Energy Development established in Section 63M-4-401.
(g) "Open solicitation notice" means a document prepared and submitted to the office by a merchant electric transmission line regarding the commencement of the line's open solicitation in compliance with 142 F.E.R.C. P61,038 (2013).
(2) As part of the capacity allocation process, a merchant electric transmission line shall file an open solicitation notice with the office containing a description of the merchant electric transmission line, including:
(a) the proposed capacity;
(b) the location of potential interconnection for in-state merchant generators;
(c) the planned date for commencement of construction; and
(d) the planned commercial operations date.
(3) Upon receipt of the open solicitation notice, the office shall:
(a) publish the notice on the Utah Public Notice Website created under Section 63F-1-701;
(b) include in the notice contact information; and
(c) provide the deadline date for submission of an expression of need.
(4)
(a) In response to the open solicitation notice published by the office, and no later than 30 days after publication of the notice, an in-state merchant generator may submit an expression of need to the office.
(b) An expression of need submitted under Subsection (4)(a) shall include:
(i) a description of the in-state merchant generator; and

(ii) a schedule of transmission capacity requirement provided in megawatts, by point of receipt and point of delivery and by operating year.
(5) No later than 60 days after notice is published under Subsection (3), the office shall prepare a certificate of in-state need identifying the in-state merchant generators.
(6) Within five days of preparing the certificate of in-state need, the office shall:
(a) publish the certificate on the Utah Public Notice Website created under Section 63F-1-701; and
(b) provide the certificate to the merchant electric transmission line for consideration in the capacity allocation process.
(7) The merchant electric transmission line shall:
(a) provide the Federal Energy Regulatory Commission with a copy of the certificate of in-state need; and
(b) certify that the certificate is being provided to the Federal Energy Regulatory Commission in accordance with the requirements of this section, including a citation to this section.
(8) At the conclusion of the capacity allocation process, and unless prohibited by a contractual obligation of confidentiality, the merchant electric transmission line shall report to the office whether a merchant in-state generator reflected on the certificate of in-state need has entered into a transmission service agreement with the merchant electric transmission line.
(9) This section may not be interpreted to:
(a) create an obligation of a merchant electric transmission line to pay for, or construct any portion of, the transmission line on behalf of an in-state merchant generator; or
(b) preempt, supersede, or otherwise conflict with Federal Energy Regulatory Commission rules and regulations applicable to a commercial transmission agreement, including agreements, or terms of agreements, as to cost, terms, transmission capacity, or key rates.
(10) Subsections (2) through (9) do not apply to a project entity as defined in Section 11-13-103.

Enacted by Chapter 294, 2014 General Session

Part 5
Alternative Energy Development Tax Credit Act

63M-4-501 Title.
This part is known as the "Alternative Energy Development Tax Credit Act."

Enacted by Chapter 410, 2012 General Session

63M-4-502 Definitions.
As used in this part:
(1) "Alternative energy" is as defined in Section 59-12-102.
(2)
(a) "Alternative energy entity" means a person that:
(i) conducts business within the state; and
(ii) enters into an agreement with the office that qualifies the person to receive a tax credit.
(b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (2)(a).

(3) "Alternative energy project" means a project produced by an alternative energy entity if that project involves:
(a) a new or expanding operation in the state; and
(b)
(i) utility-scale alternative energy generation; or
(ii) the extraction of alternative fuels.
(4) "New incremental job within the state" means, with respect to an alternative energy entity, an employment position that:
(a) did not exist within the state before:
(i) the alternative energy entity entered into an agreement with the office in accordance with Section 63M-4-503; and
(ii) the alternative energy project began;
(b) is not shifted from one location in the state to another location in the state; and
(c) is established to the satisfaction of the office, including by amounts paid or withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax Act.
(5) "New state revenues" means an increased amount of tax revenues generated as a result of an alternative energy project by an alternative energy entity or a new incremental job within the state under the following:
(a)Title 59, Chapter 7, Corporate Franchise and Income Taxes;
(b)Title 59, Chapter 10, Individual Income Tax Act; and
(c)Title 59, Chapter 12, Sales and Use Tax Act.
(6) "Office" is as defined in Section 63M-4-401.
(7) "Tax credit" means a tax credit under Section 59-7-614.7 or 59-10-1029.
(8) "Tax credit applicant" means an alternative energy entity that applies to the office to receive a tax credit certificate under this part.
(9) "Tax credit certificate" means a certificate issued by the office that:
(a) lists the name of the tax credit certificate recipient;
(b) lists the tax credit certificate recipient's taxpayer identification number;
(c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and
(d) includes other information as determined by the office.
(10) "Tax credit certificate recipient" means an alternative energy entity that receives a tax credit certificate for a tax credit in accordance with this part.

Enacted by Chapter 410, 2012 General Session

63M-4-503 Tax credits.
(1)
(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules establishing standards an alternative energy entity shall meet to qualify for a tax credit.
(b) Before the office enters into an agreement described in Subsection (2) with an alternative energy entity, the office, in consultation with other state agencies as necessary, shall certify:
(i) that the alternative energy entity plans to produce in the state at least:
(A) two megawatts of electricity;
(B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent production; or
(C) 250 barrels per day if the alternative energy project is a biomass energy fuel production;

(ii) that the alternative energy project will generate new state revenues;
(iii) the economic life of the alternative energy project produced by the alternative energy entity;
(iv) that the alternative energy entity meets the requirements of Section 63M-4-504; and
(v) that the alternative energy entity has received a Certificate of Good Standing from the Division of Corporations and Commercial Code.

(2) If an alternative energy entity meets the requirements of this part to receive a tax credit, the office shall enter into an agreement with the alternative energy entity to authorize the tax credit in accordance with Subsection (3).

(3)
(a) Subject to Subsection (3)(b), if the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is 20 years or more:
(i) the office shall grant a tax credit for the lesser of:
(A) the economic life of the alternative energy project; or
(B) 20 years; and
(ii) the tax credit is equal to 75% of new state revenues generated by the alternative energy project.
(b) For a taxable year, a tax credit under this section may not exceed the new state revenues generated by an alternative energy project during that taxable year.

(4) An alternative energy entity that seeks to receive a tax credit or has entered into an agreement described in Subsection (2) with the office shall:
(a) annually file a report with the office showing the new state revenues generated by the alternative energy project during the taxable year for which the alternative energy entity seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029;
(b) subject to Subsection (5), annually file a report with the office prepared by an independent certified public accountant verifying the new state revenue described in Subsection (4)(a);
(c) subject to Subsection (5), file a report with the office at least every four years prepared by an independent auditor auditing the new state revenue described in Subsection (4)(a);
(d) provide the office with information required by the office to certify the economic life of the alternative energy project produced by the alternative energy entity, which may include a power purchase agreement, a lease, or a permit; and
(e) retain records supporting a claim for a tax credit for at least four years after the alternative energy entity claims a tax credit under Section 59-7-614.7 or 59-10-1029.

(5) An alternative energy entity for which a report is prepared under Subsection (4)(b) or (c) shall pay the costs of preparing the report.

(6) The office shall annually certify the new state revenues generated by an alternative energy project for a taxable year for which an alternative energy entity seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029.

Amended by Chapter 414, 2014 General Session

63M-4-504 Qualifications for tax credit -- Procedure.

(1) The office shall certify an alternative energy entity's eligibility for a tax credit as provided in this section.

(2) A tax credit applicant shall provide the office with:
(a) an application for a tax credit certificate;

(b) documentation that the tax credit applicant meets the standards and requirements described in Section 63M-4-503 to the satisfaction of the office for the taxable year for which the tax credit applicant seeks to claim a tax credit; and
(c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit applicant's returns and other information concerning the tax credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.
(3)
(a) The office shall submit the documentation described in Subsection (2)(c) to the State Tax Commission.
(b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (2)(c) requested by the office that the tax credit applicant directed and authorized the State Tax Commission to provide to the office.
(4) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is not substantially accurate, the office shall:
(a) deny the tax credit; or
(b) inform the tax credit applicant that the documentation supporting the tax credit applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new documentation.
(5) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is substantially accurate, the office shall, on the basis of that documentation:
(a) enter into the agreement described in Section 63M-4-503;
(b) issue a tax credit certificate to the tax credit applicant; and
(c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b) to the State Tax Commission.
(6) An alternative energy entity may not claim a tax credit under this part unless the alternative energy entity is a tax credit certificate recipient.
(7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 63M-4-503(4).

Enacted by Chapter 410, 2012 General Session

63M-4-505 Report to the Legislature.

The office shall report annually to the Public Utilities and Technology Interim Committee and the Revenue and Taxation Interim Committee describing:
(1) its success in attracting alternative energy projects to the state and the resulting increase in new state revenues under this part;
(2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
(3) the economic impact on the state by comparing new state revenues to tax credits that have been or will be granted under this part.

Enacted by Chapter 410, 2012 General Session

Chapter 5
Resource Development Act

Part 1
General Provisions

63M-5-101 Title.

This chapter is known as the "Resource Development Act."

Enacted by Chapter 382, 2008 General Session

63M-5-102 Policy -- Legislative recognition.

(1) The Legislature declares that the policy of this state is:
  (a) to encourage industrial development and the development and utilization of the natural resources in this state in order to promote the economic development of this state and to provide benefits to the citizens of this state and other states; and
  (b) to encourage co-operation between the state and its agencies and political subdivisions with individuals, firms, and business organizations to provide for industrial development and the development and utilization of the natural resources of this state.
(2) The Legislature recognizes that:
  (a) industrial development and the development and utilization of the natural resources in this state, particularly in rural areas, may have a significant financial impact on state agencies and units of local government unless adequate financing is made available to these state agencies and units of local government to enable them to provide necessary public works and improvements and public services prior to completion of natural resource and industrial facilities; and
  (b) because of the time lag between the financial impact on affected units of government and the normal beginning of the receipt of additional tax revenues from this development normally begins, it may be necessary and in the public interest of this state and its political subdivisions to provide through utilization of ad valorem taxes funds for these necessary public works and improvements; and
  (c) these necessary public works and improvements may in part be of benefit primarily to the industrial developer or the person developing or utilizing the natural resources in this state.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-103 Definitions.

As used in this chapter:
(1) "Commencement of construction" means any clearing of land, excavation, or construction but does not include preliminary site review, including soil tests, topographical surveys, exploratory drilling, boring or mining, or other preliminary tests.
(2) "Developer" means any person engaged or to be engaged in industrial development or the development or utilization of natural resources in this state through a natural resource or industrial facility, including owners, contract purchases of owners, and persons who, as a lessee or under an agreement, are engaged or to be engaged in industrial development or

the development or utilization of natural resources in this state through a natural resource or industrial facility.

(3) "Major developer" means any developer whose proposed new or additional natural resource facility or industrial facility is projected:

(a) To employ more than 500 people; or

(b) To cause the population of an affected unit of local government to increase by more than 5%, the increase to include the primary work force of the facility and their dependents and the work force and dependents attributable to commercial and public service employment created by the presence of the facility.

(4) "Natural resource facility" or "industrial facility" means any land, structure, building, plant, mine, road, installation, excavation, machinery, equipment, or device, or any addition to, reconstruction, replacement, or improvement of, land or an existing structure, building, plant, mine, road, installation, excavation, machinery, or device reasonably used, erected, constructed, acquired, or installed by any person, if a substantial purpose of or result of the use, erection, construction, acquisition, rental, lease, or installation is related to industrial development or the development or utilization of the natural resources in this state.

(5) "Person" includes any individual, firm, co-partnership, joint venture, corporation, estate, trust, business trust, syndicate, or any group or combination acting as a unit.

(6) "Unit of local government" means any county, municipality, school district, local district, special service district, or any other political subdivision of the state.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2
Prepayments

63M-5-201 Prepayment of ad valorem property taxes on natural resources or industrial facility.

The developer also may prepay, with the consent of the governing bodies of the units of local government affected, to the county treasurer, or to other persons authorized by the governing body of a unit of local government under Section 63M-5-306, a portion of the ad valorem property taxes which the developer anticipates will be imposed by the unit of local government under Title 59, Chapter 2, Part 9, Levies, in connection with the natural resources or industrial facility. Ad valorem property taxes prepaid under this chapter may not act as an abatement of the ad valorem property tax but rather shall be construed as a prepayment for which, notwithstanding Section 59-2-1321 or any statute of limitations to the contrary, a credit will be given the developer making the prepayment at the time the ad valorem property taxes become due and otherwise payable.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3
Use of Funds

63M-5-301 State Board of Education and Department of Transportation to prepare budget and submit to governor.

The State Board of Education and the Department of Transportation shall prepare and submit to the governor, to be included in the governor's budget to the Legislature, a budget of the requirements for carrying out the provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-302 Appropriations for use of funds -- Board of Education and Department of Transportation -- Repayment by Board of Education -- Board of Education and Transportation Commission requirements.

(1) The funds needed for construction of schools and highways and any of their related facilities as a result of industrial development or as a result of development or utilization of natural resources in this state through natural resource or industrial facilities shall be made available from the Prepaid Sales and Use Tax Construction Account through appropriations by the Legislature.

(2) Appropriations will be made to the State Board of Education and the Department of Transportation for specific public facilities related to a specific natural resource or industrial facility.

(3)

(a) Appropriations made to the State Board of Education for schools and related facilities shall be repaid to the General Fund through property tax assessments by the school district within whose boundary the natural resource or industrial facility is located.

(b) The repayment shall be made within a period of six years from the date of substantial completion of the natural resource or industrial facility or from the date the school district has a taxable value exceeding $50,000,000, whichever occurs first.

(c) A refund shall be made to the developer of the natural resource or industrial facility to the extent of sales and use taxes prepaid by the developer in accordance with this chapter and appropriated by the Legislature for the specific public school facility, which have not been credited against sales and use taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act.

(4) The State Board of Education shall:

(a) determine school facility needs as respective communities develop by consulting with the school district within whose boundary the development project is located; and

(b) recommend to the Legislature the amount to be appropriated at each session of the Legislature.

(5) The Transportation Commission shall:

(a) determine highway needs in the area of the natural resource or industrial facility;

(b) determine whether the highway should be a part of the state highway system; and

(c) recommend to the Legislature the amounts to be appropriated to the Department of Transportation for use on the highways.

(6)

(a) The State Board of Education and the Department of Transportation shall assess and determine in connection with each public facility the portion of each facility of benefit primarily to the industrial developer or the person developing or utilizing the natural resources.

(b) The assessment shall be reported to the Legislature to be used in determining the amount to be appropriated subject to this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-303 Public facility -- Prepayment of sales and use tax in installments.

Notwithstanding anything to the contrary contained in this chapter, prepaid sales or use taxes sufficient to construct a particular public facility need not be prepaid in one sum but may be prepaid in installments as may be required by the state or any of its agencies or political subdivisions in fulfilling contractual commitments for the construction of the public facility if the state receives assurance that the funds for the agreed project will be prepaid to the State Tax Commission at the time or times for which the state or any of its agencies or political subdivisions have made contractual commitments for the disbursement of these funds for the public facility. In no event shall the total accumulated prepayment be less than the amount of sales and use taxes due for the calendar quarters for which returns are required to be filed under Section 59-12-107.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-304 Department of Transportation and county executives -- Cooperation in development or utilization -- Written agreements authorized -- Survey and location work.

(1) The Department of Transportation and county executives shall cooperate with persons engaged in industrial development or the development of or utilization of natural resources in this state through a natural resource or industrial facility who desire to assist this state or its counties in obtaining financing through prepaid sales or use taxes for improvements to existing state or county roads or the construction of new state or county roads which are necessary to provide access to areas of natural resource or industrial facilities.

(2) Where it is determined that the improvements or construction referred to cannot be financed with existing public funds or when the necessary improvement or construction would be unduly delayed by postponing the improvements or construction until funds are otherwise available and the Legislature has appropriated the necessary funds pursuant to Section 63M-5-302, the Department of Transportation or any county executive may enter into written agreements with the person engaged or to be engaged in industrial development or the development or utilization of natural resources through a natural resource or industrial facility providing for the necessary improvements or construction if that person agrees to the prepayment of sales or use taxes as provided in this chapter to the extent necessary to provide the funds needed to finance the necessary improvements or construction.

(3) The agreements shall include the assurances necessary to provide the state or the county adequate funds for the payment of all obligations incurred by the state or county for the necessary improvements or construction and for the transfer of funds and all necessary adjustments, if the funds prepaid exceed the actual expenditures made for the improvements or construction.

(4) If the actual expenditures made by the state, its agencies, or political subdivisions for the improvements or construction exceed the amount of prepaid sales and use taxes actually imposed by Title 59, Chapter 12, Sales and Use Tax Act, then no refund shall be allowed for the excess amount prepaid as sales or use taxes.

(5) Initial survey and location work by the Department of Transportation or a county may proceed prior to the execution of any agreements if otherwise authorized and funded.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-305 Tax Commission -- Rules and regulations.

For the purpose of more efficiently administering this act the State Tax Commission is authorized in its discretion to formulate, amend, or cancel rules and regulations establishing

procedures regarding matters pertaining to the prepayment of sales or use taxes as provided in this act and the credit against sales or use taxes as the same become due and otherwise payable.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-306 Financial impact statement -- Alleviation plan -- Filing required -- Contents -- Payments credited against tax -- Provisions neither exclusive nor mandatory.

(1)
- (a) A developer desiring to prepay ad valorem property taxes under Section 63M-5-201 shall first prepare and file with the Governor's Office of Economic Development and all units of local government likely to be affected with a significant financial impact due to a natural resource or industrial facility a financial impact statement together with a plan for alleviating these impacts.
- (b) The impact statement and the alleviation plan shall be prepared in cooperation with and after consultation with the Governor's Office of Economic Development and the affected units of local government.
- (c) The financial impact statement shall assess the projected financial impact on state agencies and units of local government, including the impact on transportation systems, culinary water systems, waste treatment facilities, public safety, schools, public health, housing, planning and zoning, and general government administration.
- (d) The alleviation plan shall set out proposals for alleviating the impact and may include payments to local units of government or direct expenditures by the developer to alleviate the impact.
- (e) The impact statement and the alleviation plan may be amended by the developer in cooperation with and after consultation with the Governor's Office of Economic Development and those units of local government affected by the amendment.

(2) At least 90 days prior to commencement of construction of an industrial facility or natural resources facility by a major developer, an impact statement and alleviation plan as described in Subsection (1) shall be filed by the major developer whether or not the major developer desires to prepay ad valorem property taxes.

(3)
- (a) Upon the filing of the financial impact statement and alleviation plan, a developer may apply to the governing body of the affected unit of local government for authorization to prepay a portion of the anticipated ad valorem property taxes to be expended consistent with the alleviation plan.
- (b) This authorization may provide that only a portion of the amounts so prepaid can be applied against the ad valorem property taxes due in any given year.
- (c) In addition to payments directly to the affected unit of local government, an affected unit of local government may authorize a tax credit on anticipated ad valorem property taxes for expenditures made by the developer to other persons so long as the expenditure is consistent with the alleviation plan.

(4)
- (a) This chapter is designed to provide an additional mechanism for the alleviation of impacts on units of local government and is not intended to discourage the use of other mechanisms as may be available.
- (b) Nothing in this chapter requires a developer to prepay ad valorem property taxes or to make any other expenditure not otherwise required by law.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 6
Military Base Easements Act

Part 1
General Provisions

63M-6-101 Title.

This chapter is known as the "Military Base Easements Act."

Enacted by Chapter 382, 2008 General Session

Part 2
Easements and Improvements

63M-6-201 Acquisition of easements -- Restrictions -- Resale.

(1)
(a) The Governor's Office of Economic Development shall acquire, by purchase or condemnation, easements for the establishment, maintenance, and operation of a restrictive use area for the operation of aircraft to and from Hill Air Force Base because:
(i) Hill Air Force Base is a military installation of vital importance to security of the United States of America and to the economic well-being of the citizens of Utah;
(ii) there are certain portions of land around the entire base that are being developed for residential and other uses that are incompatible with current and future operations of the base because of noise, health, safety, and accident reasons; and
(iii) it is the purpose of this chapter for the state to acquire those easements restricting the use of those lands and the air space above them in order to assure the continued operation of Hill Air Force Base as an active military base and to protect the health, safety, and economic well-being of the citizens of Utah.
(b) The Governor's Office of Economic Development may delegate its power to purchase or condemn easements under this subsection to other state agencies if the department ensures that those agencies comply with the procedures and requirements of this chapter.
(2)
(a) The Governor's Office of Economic Development shall ensure that the easements restrict the land from those uses identified in the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as amended, dated October, 1982, as not being acceptable.
(b) The Governor's Office of Economic Development may allow certain other uses not prohibited by those guidelines if those uses are consistent with the purpose of this chapter.
(c) Nothing in this chapter may be construed to authorize the Governor's Office of Economic Development or any other state agency to:
(i) acquire any ownership interest in real property other than an easement restricting the land from future uses inconsistent with the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as amended, dated October 1982;

(ii) purchase businesses; or
(iii) require people to relocate or move from their property.
(d) To calculate the purchase price for the easements, the Governor's Office of Economic Development shall subtract the market value of the real property and its improvements after the acquisition of the easements from the market value of the real property and its improvements before the acquisition of the easements.
(e) When the Hill Air Force Base runways have not been used for seven years to accommodate the arrival and departure of airplanes, the Governor's Office of Economic Development shall:
(i) notify by certified mail each current owner of the property to which each easement is attached;
(ii) inform that owner that the owner may purchase the easement from the state for the same price that the state paid for it originally or for the market value of the easement at the time of the buyback, whichever is smaller; and
(iii) sell the easement to the owner of the property to which the easement is attached if the owner tenders the purchase price.
(f) In addition to purchasing the easements required by this chapter, the Governor's Office of Economic Development may provide reasonable relocation expenses to all churches, businesses, and schools that, as of March 1, 1994, were located either within the north Hill Air Force Base accident potential zone (APZ) identified in Subsection 63M-6-202(1)(a) or within the south Hill Air Force Base accident potential zone (APZ) identified in Subsection 63M-6-202(1)(b) if those churches, businesses, and schools can reasonably demonstrate that expansion of the use would have been permitted before acquisition of the easements but is now prohibited because of the easement.
(3)
(a) The Governor's Office of Economic Development may take action to enforce the provisions of this chapter.
(b) The attorney general shall represent the Governor's Office of Economic Development in that action.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-6-202 Location of easements.
(1) The Governor's Office of Economic Development or its designees may acquire easements on the land within the following boundaries:
(a) beginning on the north Hill Air Force Base accident potential zone (APZ) at a point which is North 1,089,743.170 meters and East 459,346.946 meters based on the North zone, State of Utah, NAD 83 coordinates and runs north to North 63 degrees 10 minutes 44 seconds, East 457.109 meters, North 26 degrees 49 minutes 16 seconds, West 3,352.129 meters, South 63 degrees 10 minutes 44 seconds, West 914.217 meters, South 26 degrees 49 minutes 16 seconds, East 3,352.129 meters, North 63 degrees 10 minutes 44 seconds, East 457.109 meters back to the point of beginning; and
(b) beginning on the south Hill Air Force Base APZ which is North 1,086,065.786 meters and East 461,206.222 meters based on the North zone, State of Utah, NAD 83 coordinates and runs South 63 degrees 10 minutes 44 seconds, West 457.109 meters, South 26 degrees 49 minutes 16 seconds, East 502.179 meters, South 0 degrees 20 minutes 35 seconds, West 1,722.227 meters, South 89 degrees 39 minutes 25 seconds, East 883.743 meters, North 63 degrees 10 minutes 44 seconds, East 914.217 meters, North 26 degrees 49 minutes 16

seconds, West 2,437.912 meters, South 63 degrees 10 minutes 44 seconds, West 457.109 meters back to the point of beginning.

(2) The Governor's Office of Economic Development or its designees may acquire easements on the following land that is located inside the 75 and 80 level day-night (LDN) noise contour as identified in the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as amended, dated October, 1982:
  (a) in the west half of Section 3, T4NR1W;
  (b) in the east half of Section 4, T4NR1W;
  (c) in the northeast quarter of Section 8, T4NR1W;
  (d) within all of Section 9, T4NR1W;
  (e) in the northwest quarter of Section 10, T4NR1W;
  (f) within the southwest quarter of Section 19, T5NR1W;
  (g) in the south half of Section 20, T5NR1W;
  (h) within the southwest quarter of Section 28, T5NR1W; and
  (i) within Section 29, T5NR1W.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-6-203 Certain improvements, alterations, and expansions prohibited.

(1) A person or entity may not begin to develop, or authorize development, on any land identified in this chapter until the Governor's Office of Economic Development has affirmatively authorized the development of the land because the development is consistent with those uses identified in the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as amended, dated October 1982.

(2) Nothing in this chapter prohibits any property owner from improving, altering, or expanding any existing residential or commercial use of the property owner's property so long as the improvement, alteration, or expansion does not materially increase the human density of that present use.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 7
Criminal Justice and Substance Abuse

Part 1
General Provisions

63M-7-101 Title.

This chapter is known as "Criminal Justice and Substance Abuse."

Enacted by Chapter 382, 2008 General Session

Part 2
Commission on Criminal and Juvenile Justice

63M-7-201 Creation -- Purpose.

(1) The State Commission on Criminal and Juvenile Justice is created within the governor's office.
(2) The commission's purpose is to:
  (a) promote broad philosophical agreement concerning the objectives of the criminal and juvenile justice system in Utah;
  (b) provide a mechanism for coordinating the functions of the various branches and levels of government concerned with criminal and juvenile justice to achieve those objectives;
  (c) coordinate statewide efforts to reduce crime and victimization in Utah; and
  (d) accomplish the duties enumerated in Section 63M-7-204.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-202 Composition -- Appointments -- Ex officio members -- Terms -- U.S. Attorney as nonvoting member.

(1) The commission on criminal and juvenile justice shall be composed of 21 voting members as follows:
  (a) the chief justice of the supreme court, as the presiding officer of the judicial council, or a judge designated by the chief justice;
  (b) the state court administrator;
  (c) the executive director of the Department of Corrections;
  (d) the director of the Division of Juvenile Justice Services;
  (e) the commissioner of the Department of Public Safety;
  (f) the attorney general;
  (g) the president of the chiefs of police association or a chief of police designated by the association's president;
  (h) the president of the sheriffs' association or a sheriff designated by the association's president;
  (i) the chair of the Board of Pardons and Parole or a member designated by the chair;
  (j) the chair of the Utah Sentencing Commission;
  (k) the chair of the Utah Substance Abuse Advisory Council;
  (l) the chair of the Utah Board of Juvenile Justice;
  (m) the chair of the Utah Council on Victims of Crime or the chair's designee;
  (n) the director of the Division of Substance Abuse and Mental Health; and
  (o) the following members designated to serve four-year terms:
    (i) a juvenile court judge, appointed by the chief justice, as presiding officer of the Judicial Council;
    (ii) a representative of the statewide association of public attorneys designated by the association's officers;
    (iii) one member of the House of Representatives who is appointed by the speaker of the House of Representatives; and
    (iv) one member of the Senate who is appointed by the president of the Senate.
(2) The governor shall appoint the remaining three members to four-year staggered terms as follows:
  (a) one criminal defense attorney appointed from a list of three nominees submitted by the Utah State Bar Association;
  (b) one representative of public education; and
  (c) one citizen representative.

(3) In addition to the members designated under Subsections (1) and (2), the United States Attorney for the district of Utah may serve as a nonvoting member.
(4) In appointing the members under Subsection (2), the governor shall take into account the geographical makeup of the commission.

Amended by Chapter 39, 2010 General Session

63M-7-203 Executive director -- Qualifications -- Compensation -- Appointment -- Functions.
(1) The governor, with the consent of the Senate, shall appoint a person experienced in the field of criminal justice and in administration as the executive director of the Commission on Criminal and Juvenile Justice. The governor shall establish the executive director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
(2)
(a) The executive director, under the direction of the commission, shall administer the duties of the commission and act as the governor's advisor on national, state, regional, metropolitan, and local government planning as it relates to criminal justice.
(b) This chapter does not derogate the planning authority conferred on state, regional, metropolitan, and local governments by existing law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-204 Duties of commission.
The State Commission on Criminal and Juvenile Justice administration shall:
(1) promote the commission's purposes as enumerated in Section 63M-7-201;
(2) promote the communication and coordination of all criminal and juvenile justice agencies;
(3) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;
(4) study, evaluate, and report on policies, procedures, and programs of other jurisdictions which have effectively reduced crime;
(5) identify and promote the implementation of specific policies and programs the commission determines will significantly reduce crime in Utah;
(6) provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;
(7) provide analysis, accountability, recommendations, and supervision for state and federal criminal justice grant money;
(8) provide public information on the criminal and juvenile justice system and give technical assistance to agencies or local units of government on methods to promote public awareness;
(9) promote research and program evaluation as an integral part of the criminal and juvenile justice system;
(10) provide a comprehensive criminal justice plan annually;
(11) review agency forecasts regarding future demands on the criminal and juvenile justice systems, including specific projections for secure bed space;
(12) promote the development of criminal and juvenile justice information systems that are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:

(a) developing and maintaining common data standards for use by all state criminal justice agencies;
(b) annually performing audits of criminal history record information maintained by state criminal justice agencies to assess their accuracy, completeness, and adherence to standards;
(c) defining and developing state and local programs and projects associated with the improvement of information management for law enforcement and the administration of justice; and
(d) establishing general policies concerning criminal and juvenile justice information systems and making rules as necessary to carry out the duties under this Subsection (12) and Subsection (10);
(13) allocate and administer grants, from money made available, for approved education programs to help prevent the sexual exploitation of children; and
(14) allocate and administer grants funded from money from the Law Enforcement Operations Account created in Section 51-9-411 for law enforcement operations and programs related to reducing illegal drug activity and related criminal activity.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-205 Annual report by the commission.
(1) The commission shall annually prepare and publish a report directed to the governor, the Legislature, and the Judicial Council.
(2) The report shall describe how the commission fulfilled its statutory purposes and duties during the year.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-206 Election of chair -- Meetings.
The membership of the Commission on Criminal and Juvenile Justice by simple majority vote of those in attendance shall annually elect one of their number to serve as chair. The chair is responsible for the call and conduct of meetings. Meetings shall be called and held at least bimonthly. One of the bimonthly meetings shall be held while the Legislature is convened in its annual session. Additional meetings may be called upon request by a majority of the commission's members.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-207 Members serve without pay -- Reimbursement for expenses.
(1) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
(2) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

Part 3
Utah Substance Abuse Advisory Council

63M-7-301 Definitions -- Creation of council -- Membership -- Terms.

(1)
- (a) As used in this part, "council" means the Utah Substance Abuse Advisory Council created in this section.
- (b) There is created within the governor's office the Utah Substance Abuse Advisory Council.

(2) The council shall be comprised of the following voting members:
- (a) the attorney general or the attorney general's designee;
- (b) a county commissioner designated by the Utah Association of Counties;
- (c) the commissioner of public safety or the commissioner's designee;
- (d) the director of the Division of Substance Abuse and Mental Health or the director's designee;
- (e) the state superintendent of public instruction or the superintendent's designee;
- (f) the director of the Department of Health or the director's designee;
- (g) the executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee;
- (h) the governor or the governor's designee;
- (i) the executive director of the Department of Corrections or the executive director's designee;
- (j) the director of the Division of Juvenile Justice Services or the director's designee;
- (k) the executive director of the private nonprofit Utah Domestic Violence Council or the executive director's designee;
- (l) the director of the Division of Indian Affairs or the director's designee;
- (m) the state court administrator or the state court administrator's designee;
- (n) the following members designated to serve four-year terms:
  - (i) a member of the House of Representatives designated by the speaker of the House of Representatives;
  - (ii) a member of the Senate designated by the president of the Senate; and
  - (iii) a representative designated by the Utah League of Cities and Towns;
- (o) the following members appointed by the governor to serve four-year terms:
  - (i) a representative of the Utah National Guard;
  - (ii) one resident of the state who has been personally affected by alcohol or other drug abuse; and
  - (iii) one citizen representative;
- (p) in addition to the voting members described in Subsections (2)(a) through (o), the following voting members may be appointed by a majority of the members described in Subsections (2)(a) through (o) to serve four-year terms:
  - (i) a person knowledgeable in criminal justice issues;
  - (ii) a person knowledgeable in substance abuse treatment issues;
  - (iii) a person knowledgeable in substance abuse prevention issues; and
  - (iv) a person knowledgeable in judiciary issues; and
- (q) in addition to the voting members described in Subsections (2)(a) through (p), one or more chairs or co-chairs of a committee established by the council under Subsection 63M-7-302(5) may be appointed as a voting member by a majority of the members described in Subsections (2)(a) through (p).

(3) A person other than a person described in Subsection (2) may not be appointed as a voting member of the council.

Amended by Chapter 212, 2012 General Session

63M-7-302 Chair -- Vacancies -- Quorum -- Expenses.

(1) The Utah Substance Abuse Advisory Council shall annually select one of its members to serve as chair and one of its members to serve as vice chair.
(2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the position was originally filled.
(3) A majority of the members of the council constitutes a quorum.
(4)
  (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
    (i) Section 63A-3-106;
    (ii) Section 63A-3-107; and
    (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
  (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
(5) The council may establish committees as needed to assist in accomplishing its duties under Section 63M-7-303.

Amended by Chapter 387, 2014 General Session

63M-7-303 Duties of council.

(1) The Utah Substance Abuse Advisory Council shall:
  (a) provide leadership and generate unity for Utah's ongoing efforts to combat substance abuse;
  (b) recommend and coordinate the creation, dissemination, and implementation of a statewide substance abuse policy;
  (c) facilitate planning for a balanced continuum of substance abuse prevention, treatment, and justice services;
  (d) promote collaboration and mutually beneficial public and private partnerships;
  (e) coordinate recommendations made by any committee created under Section 63M-7-302;
  (f) analyze and provide an objective assessment of all proposed legislation concerning alcohol and other drug issues;
  (g) coordinate the implementation of Section 77-18-1.1 and related provisions in Subsections 77-18-1(5)(b)(iii) and (iv), as provided in Section 63M-7-305; and
  (h) comply with Section 32B-2-306.
(2) The council shall meet quarterly or more frequently as determined necessary by the chair.
(3) The council shall report its recommendations annually to the commission, governor, the Legislature, and the Judicial Council.

Amended by Chapter 120, 2014 General Session

63M-7-304 Chair -- Vacancies -- Quorum -- Expenses.

(1) The members of each committee established by the council shall annually select a chair or co-chairs from among the members of the committee.
(2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the position was originally filled.

(3) A majority of the members of a committee constitutes a quorum for the transaction of business by the committee.
(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 39, 2010 General Session
Amended by Chapter 286, 2010 General Session

63M-7-305 Drug Offender Reform Act -- Coordination.
(1) As used in this section:
(a) "Council" means the Utah Substance Abuse Advisory Council.
(b) "Drug Offender Reform Act" and "act" mean the screening, assessment, substance abuse treatment, and supervision provided to convicted offenders under Subsection 77-18-1.1(2) to:
(i) determine offenders' specific substance abuse treatment needs as early as possible in the judicial process;
(ii) expand treatment resources for offenders in the community;
(iii) integrate treatment of offenders with supervision by the Department of Corrections; and
(iv) reduce the incidence of substance abuse and related criminal conduct.
(c) "Substance abuse authority" has the same meaning as in Section 17-43-201.
(2) The council shall provide ongoing oversight of the implementation, functions, and evaluation of the Drug Offender Reform Act.
(3) The council shall develop an implementation plan for the Drug Offender Reform Act. The plan shall:
(a) identify local substance abuse authority areas where the act will be implemented, in cooperation with the Division of Substance Abuse and Mental Health, the Department of Corrections, and the local substance abuse authorities;
(b) include guidelines on how funds appropriated under the act should be used;
(c) require that treatment plans under the act are appropriate for criminal offenders;
(d) include guidelines on the membership of local planning groups;
(e) include guidelines on the membership of the Department of Corrections' planning group under Subsection (5); and
(f) provide guidelines for the Commission on Criminal and Juvenile Justice to conduct an evaluation of the implementation, impact, and results of the act.
(4)
(a) Each local substance abuse authority designated under Subsection (3) to implement the act shall establish a local planning group and shall submit a plan to the council detailing how the authority proposes to use the act funds. The uses shall be in accordance with the guidelines established by the council under Subsection (3).
(b) Upon approval of the plan by the council, the Division of Substance Abuse and Mental Health shall allocate the funds.
(c) Local substance abuse authorities shall annually, on or before October 1, submit to the Division of Substance Abuse and Mental Health and to the council reports detailing use of the funds and the impact and results of the use of the funds during the prior fiscal year ending June 30.
(5)

(a) The Department of Corrections shall establish a planning group and shall submit a plan to the council detailing how the department proposes to use the act funds. The uses shall be in accordance with the guidelines established by the council under Subsection (3).
(b) The Department of Corrections shall annually, before October 1, submit to the council a report detailing use of the funds and the impact and results of the use of the funds during the prior fiscal year ending June 30.
(6) The council shall monitor the progress and evaluation of the act and shall provide a written report on the implementation, impact, and results of the act to the Law Enforcement and Criminal Justice and the Health and Human Services legislative interim committees annually before November 1.

Amended by Chapter 51, 2011 General Session

63M-7-306 Staffing.
The Commission on Criminal and Juvenile Justice shall provide staff to the council and any committee established by the council.

Amended by Chapter 39, 2010 General Session

Part 4
Sentencing Commission

63M-7-401 Creation -- Members -- Appointment -- Qualifications.
(1) There is created a state commission to be known as the Sentencing Commission composed of 27 members. The commission shall develop by-laws and rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and elect its officers.
(2) The commission's members shall be:
(a) two members of the House of Representatives, appointed by the speaker of the House and not of the same political party;
(b) two members of the Senate, appointed by the president of the Senate and not of the same political party;
(c) the executive director of the Department of Corrections or a designee appointed by the executive director;
(d) the director of the Division of Juvenile Justice Services or a designee appointed by the director;
(e) the executive director of the Commission on Criminal and Juvenile Justice or a designee appointed by the executive director;
(f) the chair of the Board of Pardons and Parole or a designee appointed by the chair;
(g) the chair of the Youth Parole Authority or a designee appointed by the chair;
(h) two trial judges and an appellate judge appointed by the chair of the Judicial Council;
(i) two juvenile court judges designated by the chair of the Judicial Council;
(j) an attorney in private practice who is a member of the Utah State Bar, experienced in criminal defense, and appointed by the Utah Bar Commission;
(k) an attorney who is a member of the Utah State Bar, experienced in the defense of minors in juvenile court, and appointed by the Utah Bar Commission;
(l) the director of Salt Lake Legal Defenders or a designee appointed by the director;

(m) the attorney general or a designee appointed by the attorney general;
(n) a criminal prosecutor appointed by the Statewide Association of Public Attorneys;
(o) a juvenile court prosecutor appointed by the Statewide Association of Public Attorneys;
(p) a representative of the Utah Sheriff's Association appointed by the governor;
(q) a chief of police appointed by the governor;
(r) a licensed professional appointed by the governor who assists in the rehabilitation of adult offenders;
(s) a licensed professional appointed by the governor who assists in the rehabilitation of juvenile offenders;
(t) two members from the public appointed by the governor who exhibit sensitivity to the concerns of victims of crime and the ethnic composition of the population; and
(u) one member from the public at large appointed by the governor.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-402 Terms of members -- Vacancies -- Reappointment.
(1)
(a) Except as required by Subsection (1)(b), as terms of current commission members expire, the appointing authority shall appoint each new member or reappointed member to a four-year term.
(b) Notwithstanding the requirements of Subsection (1)(a), the appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.
(2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(3) All members of the commission, including those appointed before July 1, 1995, shall be eligible for reappointment one time.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-403 Vacancies.
If a commission member no longer holds a qualifying position, resigns, or is unable to serve, the vacancy shall be filled by the appointing authority.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-404 Purpose -- Duties.
The purpose of the commission shall be to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council about the sentencing and release of juvenile and adult offenders in order to:
(1) respond to public comment;
(2) relate sentencing practices and correctional resources;
(3) increase equity in criminal sentencing;
(4) better define responsibility in criminal sentencing; and
(5) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-405 Compensation of members -- Reports to the Legislature, the courts, and the governor.

(1)
(a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
(i) Section 63A-3-106;
(ii) Section 63A-3-107; and
(iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
(2) The commission shall submit to the Legislature, the courts, and to the governor at least 60 days prior to the annual general session of the Legislature its reports and recommendations for sentencing guidelines and amendments. It is intended that the commission utilize existing data and resources from state criminal justice agencies. The commission is authorized to employ professional assistance and other staff members as it considers necessary or desirable.
(3) The commission shall be responsive to all three branches of government, but be part of the Commission on Criminal and Juvenile Justice for coordination on criminal and juvenile justice issues, budget, and administrative support.

Amended by Chapter 387, 2014 General Session

63M-7-406 Publication of reports.

The commission shall also be authorized to prepare, publish, and distribute from time to time reports of its studies, recommendations, and statements.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 5
Utah Office for Victims of Crime

63M-7-501 Title.

This part is known as the "Utah Office for Victims of Crime" and may be abbreviated as the "UOVC."

Amended by Chapter 131, 2011 General Session

63M-7-502 Definitions.

As used in this chapter:
(1) "Accomplice" means a person who has engaged in criminal conduct as defined in Section 76-2-202.
(2) "Board" means the Crime Victim Reparations and Assistance Board created under Section 63M-7-504.
(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
(4) "Claim" means:

(a) the victim's application or request for a reparations award; and
(b) the formal action taken by a victim to apply for reparations pursuant to this chapter.
(5) "Claimant" means any of the following claiming reparations under this chapter:
(a) a victim;
(b) a dependent of a deceased victim;
(c) a representative other than a collateral source; or
(d) the person or representative who files a claim on behalf of a victim.
(6) "Child" means an unemancipated person who is under 18 years of age.
(7) "Collateral source" means the definition as provided in Section 63M-7-513.
(8) "Contested case" means a case which the claimant contests, claiming the award was either inadequate or denied, or which a county attorney, a district attorney, a law enforcement officer, or other individual related to the criminal investigation proffers reasonable evidence of the claimant's lack of cooperation in the prosecution of a case after an award has already been given.
(9)
(a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:
(i) is or would be subject to prosecution in this state under Section 76-1-201;
(ii) occurs or is attempted;
(iii) causes, or poses a substantial threat of causing, bodily injury or death;
(iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct possessed the capacity to commit the conduct; and
(v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as any offense chargeable as driving under the influence of alcohol or drugs.
(b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism" does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.
(10) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support and includes a child of the victim born after the victim's death.
(11) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.
(12) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.
(13) "Director" means the director of the Utah Office for Victims of Crime.
(14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person:
(a) convicted of a crime;
(b) found delinquent; or
(c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.
(15) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and

dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.

(16) "Elderly victim" means a person 60 years of age or older who is a victim.

(17) "Fraudulent claim" means a filed claim based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible as provided in Section 63M-7-510.

(18) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

(19) "Law enforcement officer" means a law enforcement officer as defined in Section 53-13-103.

(20) "Medical examination" means a physical examination necessary to document criminally injurious conduct but does not include mental health evaluations for the prosecution and investigation of a crime.

(21) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct. The definition of mental health counseling is subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(22) "Misconduct" as provided in Subsection 63M-7-512(1)(b) means conduct by the victim which was attributable to the injury or death of the victim as provided by rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(23) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this chapter.

(24) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this chapter.

(25) "Offender" means a person who has violated the criminal code through criminally injurious conduct regardless of whether the person is arrested, prosecuted, or convicted.

(26) "Offense" means a violation of the criminal code.

(27) "Perpetrator" means the person who actually participated in the criminally injurious conduct.

(28) "Reparations officer" means a person employed by the office to investigate claims of victims and award reparations under this chapter, and includes the director when the director is acting as a reparations officer.

(29) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but the benefit of the injured person or the injured person's dependents if the injured person had not been injured.

(30) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of a person but does not include service providers.

(31) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.

(32) "Secondary victim" means a person who is traumatically affected by the criminally injurious conduct subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(33) "Service provider" means a person or agency who provides a service to crime victims for a monetary fee except attorneys as provided in Section 63M-7-524.

(34) "Utah Office for Victims of Crime" or "office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this chapter.

(35)

(a) "Victim" means a person who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Section 76-5b-201 if the person is a minor.
(b) "Victim" does not include a person who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule.
(c) "Victim" includes a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.
(36) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake.

Amended by Chapter 369, 2012 General Session

63M-7-503 Restitution -- Reparations not to supplant restitution -- Assignment of claim for restitution judgment to Reparations Office.
(1) A reparations award may not supplant restitution as established under Title 77, Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions.
(2) The court may not reduce an order of restitution based on a reparations award.
(3) If, due to reparation payments to a victim, the Utah Office for Victims of Crime is assigned under Section 63M-7-519 a claim for the victim's judgment for restitution or a portion of the restitution, the office may file with the sentencing court a notice of the assignment. The notice of assignment shall be signed by the victim and a reparations officer and shall contain an affidavit detailing the specific amounts of pecuniary damages paid on behalf of the victim. A copy of the notice of assignment and affidavit shall be mailed by certified mail to the defendant at his last known address 20 days prior to sentencing, entry of any judgment or order of restitution, or modification of any existing judgment or order of restitution. Any objection by the defendant to the imposition or amount of restitution shall be made at the time of sentencing or in writing within 20 days of the receipt of notice, to be filed with the court and a copy mailed to the office. Upon the filing of the objection, the court shall allow the defendant a full hearing on the issue as provided by Subsection 77-38a-302(4).
(4) If no objection is made or filed by the defendant, then upon conviction and sentencing, the court shall enter a judgment for complete restitution pursuant to the provisions of Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of the assigned portion of the judgment and order of restitution.
(5) If the notice of assignment is filed after sentencing but during the term of probation or parole, the court or Board of Pardons shall modify any existing civil judgment and order of restitution to include expenses paid by the office on behalf of the victim and identify the office as the assignee of the assigned portion of the judgment and order of restitution. If no judgment or order of restitution has been entered, the court shall enter a judgment for complete restitution and court ordered restitution pursuant to the provisions of Sections 77-38a-302 and 77-38a-401.

Amended by Chapter 131, 2011 General Session

63M-7-504 Crime Victim Reparations and Assistance Board -- Members.
(1)

(a) A Crime Victim Reparations and Assistance Board is created, consisting of seven members appointed by the governor with the consent of the Senate.
(b) The membership of the board shall consist of:
(i) a member of the bar of this state;
(ii) a victim of criminally injurious conduct;
(iii) a licensed physician;
(iv) a representative of law enforcement;
(v) a mental health care provider;
(vi) a victim advocate; and
(vii) a private citizen.
(c) The governor may appoint a chair of the board who shall serve for a period of time prescribed by the governor, not to exceed the length of the chair's term. The board may elect a vice chair to serve in the absence of the chair.
(d) The board may hear appeals from administrative decisions as provided in rules adopted pursuant to Section 63M-7-515.
(2)
(a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
(c) A member may be reappointed to one successive term in addition to a member's initial full-term appointment.
(3)
(a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(b) A member resigning from the board shall serve until the member's successor is appointed and qualified.
(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(5) The board shall meet at least once quarterly but may meet more frequently as necessary.

Amended by Chapter 131, 2011 General Session

63M-7-505 Board and office within Commission on Criminal and Juvenile Justice.
(1) The Crime Victim Reparations and Assistance Board and the Utah Office for Victims of Crime are placed within the Commission on Criminal and Juvenile Justice for the provision by the commission of administrative and support services.
(2) The board or the director may request assistance from the Commission on Criminal and Juvenile Justice, the Department of Public Safety, and other state agencies in conducting research or monitoring victims' programs.

Amended by Chapter 131, 2011 General Session

63M-7-506 Functions of board.

(1) The Crime Victim Reparations and Assistance Board shall:
(a) adopt a description of the organization and prescribe the general operation of the board;
(b) prescribe policy for the Utah Office for Victims of Crime;
(c) adopt rules to implement and administer this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this chapter, and establishing of rules governing attorney fees;
(d) prescribe forms for applications for reparations;
(e) review all awards made by the reparations staff, although the board may not reverse or modify awards authorized by the reparations staff;
(f) render an annual report to the governor and the Legislature regarding the staff's and the board's activities;
(g) cooperate with the director and the director's staff in formulating standards for the uniform application of Section 63M-7-509, taking into consideration the rates and amounts of reparation payable for injuries and death under other laws of this state and the United States;
(h) allocate money available in the Crime Victim Reparations Fund to victims of criminally injurious conduct for reparations claims;
(i) allocate money available to other victim services as provided by administrative rule once a sufficient reserve has been established for reparation claims; and
(j) approve the allocation and disbursement of funds made available to the office by the United States, the state, foundations, corporations, or other entities or individuals to subgrantees from private, non-profit, and governmental entities operating qualified statewide assistance programs.
(2) All rules, or other statements of policy, along with application forms specified by the board, are binding upon the director, the reparations officers, assistance officers, and other staff.

Amended by Chapter 131, 2011 General Session

63M-7-507 Director -- Appointment and functions.

The executive director of the Commission on Criminal and Juvenile Justice, after consulting with the board, shall appoint a director to carry out the provisions of this chapter. The director shall be an experienced administrator with a background in at least one of the following fields: social work, psychology, criminal justice, law, or a related field. The director shall demonstrate an understanding of the needs of crime victims and of services to victims. The director shall devote the director's time and capacity to the director's duties. The director shall:
(1) hire staff, including reparations and assistance officers, as necessary;
(2) act when necessary as a reparations officer in deciding initial claims;
(3) possess the same investigation and decision-making authority as the reparations officers;
(4) hear appeals from the decisions of the reparations officers, unless the director acted as a reparations officer on the initial claim;
(5) serve as a liaison between the Utah Office for Victims of Crime and the board;
(6) serve as the public relations representative of the office;
(7) provide for payment of all administrative salaries, fees, and expenses incurred by the staff of the board, to be paid out of appropriations from the fund;
(8) cooperate with the state treasurer and the state Division of Finance in causing the funds in the trust fund to be invested and its investments sold or exchanged and the proceeds and income collected;

(9) apply for, receive, allocate, disburse, and account for, subject to approval and in conformance with policies adopted by the board, all grant funds made available by the United States, the state, foundations, corporations, and other businesses, agencies, or individuals;
(10) obtain and utilize the services of other governmental agencies upon request; and
(11) act in any other capacity or perform any other acts necessary for the office or board to successfully fulfill its statutory duties and objectives.

Amended by Chapter 131, 2011 General Session

63M-7-508 Reparations officers.

The reparations officers shall in addition to any assignments made by the director of the Utah Office for Victims of Crime:
(1) hear and determine all matters relating to claims for reparations and reinvestigate or reopen claims without regard to statutes of limitation or periods of prescription;
(2) obtain from prosecuting attorneys, law enforcement officers, and other criminal justice agencies, investigations and data to enable the reparations officer to determine whether and to what extent a claimant qualifies for reparations;
(3) as determined necessary by the reparations officers, hold hearings, administer oaths or affirmations, examine any person under oath or affirmation, issue subpoenas requiring the attendance and giving of testimony of witnesses, require the production of any books, papers, documents, or other evidence which may contribute to the reparations officer's ability to determine particular reparation awards;
(4) determine who is a victim or dependent;
(5) award reparations or other benefits determined to be due under this chapter and the rules of the board;
(6) take notice of judicially recognized facts and general, technical, and scientific facts within their specialized knowledge;
(7) advise and assist the board in developing policies recognizing the rights, needs, and interests of crime victims;
(8) render periodic reports as requested by the board concerning:
(a) the officers' activities; and
(b) the manner in which the rights, needs, and interests of crime victims are being addressed by the state's criminal justice system;
(9) establish priorities for assisting elderly victims of crime or those victims facing extraordinary hardships;
(10) cooperate with the Commission on Criminal and Juvenile Justice to develop information regarding crime victims' problems and programs; and
(11) assist the director in publicizing the provisions of the Utah Office for Victims of Crime, including the procedures for obtaining reparation, and in encouraging law enforcement agencies, health providers, and other related officials to take reasonable care to ensure that victims are informed about the provisions of this chapter and the procedure for applying for reparation.

Amended by Chapter 131, 2011 General Session

63M-7-509 Grounds for eligibility.

In order to be eligible for a reparations award under this chapter:
(1) The claimant shall be:

(a) a victim of criminally injurious conduct;
(b) a dependent of a deceased victim of criminally injurious conduct; or
(c) a representative acting on behalf of one of the above.
(2)
(a) The criminally injurious conduct shall have occurred in Utah, except as provided in Subsection (2)(b).
(b) If a Utah resident suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country which does not provide a crime victims' compensation program, that person shall receive the same consideration under this chapter as if the criminally injurious conduct occurred in this state.
(3) The application shall be made in writing in a form that conforms substantially to that prescribed by the board.
(4) The criminally injurious conduct shall be reported to a law enforcement officer, in the law enforcement officer's capacity as a law enforcement officer, or other federal or state investigative agencies.
(5)
(a) The claimant or victim shall cooperate with the appropriate law enforcement agencies and prosecuting attorneys in their efforts to apprehend or convict the perpetrator of the alleged offense.
(b) An award to a victim may be made whether any person is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to the claim.
(6) The criminally injurious conduct shall have occurred after December 31, 1986.

Amended by Chapter 339, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-510 Ineligible persons -- Fraudulent claims -- Penalties.
(1) The following individuals are not eligible to receive an award of reparations:
(a) persons who do not meet all of the provisions set forth in Section 63M-7-509;
(b) the offender;
(c) an accomplice of the offender;
(d) any person whose receipt of an award would unjustly benefit the offender, accomplice, or other person reasonably suspected of participating in the offense;
(e) the victim of a motor vehicle injury who was the owner or operator of the motor vehicle and was not at the time of the injury in compliance with the state motor vehicle insurance laws;
(f) any convicted offender serving a sentence of imprisonment in any prison or jail or residing in any other correctional facility;
(g) all persons who are on probation or parole if the circumstances surrounding the offense of which they are victims constitute a violation of their parole or probation; and
(h) any person whose injuries are the result of criminally injurious conduct that occurred in a prison, jail, or any other correctional facility while the person was incarcerated.
(2) A person who knowingly submits a fraudulent claim for reparations or who knowingly misrepresents material facts in making a claim, and who receives an award based on that claim, is guilty of an offense, based on the following award amounts:
(a) for value under $500, a class B misdemeanor;
(b) for value equal to or greater than $500, but less than $1,500, a class A misdemeanor;
(c) for value equal to or greater than $1,500, but less than $5,000, a third degree felony; and
(d) for value equal to or greater than $5,000, a second degree felony.

(3) A person who submits a claim described in Subsection (2) but receives no award based on that claim is guilty of a class B misdemeanor.
(4) The state attorney general may prosecute violations under this section or may make arrangements with county attorneys for the prosecution of violations under this section when the attorney general cannot conveniently prosecute.
(5) The state may also bring a civil action against a claimant who receives reparation payments that are later found to be unjustified and who does not return to the Crime Victim Reparations Fund the unjustified amount.

Amended by Chapter 118, 2013 General Session

63M-7-511 Compensable losses and amounts.

A reparations award under this chapter may be made if:
(1) the reparations officer finds the claim satisfies the requirements for the award under the provisions of this chapter and the rules of the board;
(2) money is available in the fund;
(3) the person for whom the award of reparations is to be paid is otherwise eligible under this part; and
(4) the claim is for an allowable expense incurred by the victim, as follows:
(a) reasonable and necessary charges incurred for products, services, and accommodations;
(b) inpatient and outpatient medical treatment and physical therapy, subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(c) mental health counseling which:
(i) is set forth in a mental health treatment plan which has been approved prior to any payment by a reparations officer; and
(ii) qualifies within any further rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(d) actual loss of past earnings and anticipated loss of future earnings because of a death or disability resulting from the personal injury at a rate not to exceed 66-2/3% of the person's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation statute;
(e) care of minor children enabling a victim or spouse of a victim, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board;
(f) funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(g) loss of support to the dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute, whichever is less;
(h) personal property necessary and essential to the health or safety of the victim as defined by rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
(i) medical examinations as defined in Section 63M-7-502, subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may allow for exemptions from Sections 63M-7-509, 63M-7-512, and 63M-7-513.

Amended by Chapter 342, 2011 General Session

63M-7-511.5 Limitation of awards.

(1)
- (a) Except as provided in Subsection (1)(b), an award of reparations may not exceed $25,000 in the aggregate.
- (b)
  - (i) In claims involving homicide, attempted homicide, aggravated assault, or DUI offenses, an award of reparations may not exceed $50,000 in the aggregate.
  - (ii) Reparations for nonmedical expenses incurred as a result of the homicide, attempted homicide, aggravated assault, or DUI may not exceed $25,000.

(2)
- (a) Awards of reparations to secondary victims shall be paid from the victims' maximum award amount provided in Subsection (1).
- (b) When it appears that allowable expenses for the victim and secondary victims will exceed the maximum award amount provided in Subsection (1), the expenses of the victim shall be paid first unless otherwise requested by the claimant.
- (c) Priority of payment among multiple secondary victims on a single claim shall be determined by the reparations officer.

Enacted by Chapter 339, 2008 General Session

63M-7-512 Reparations reduction.

(1) Reparations otherwise payable to a claimant may be reduced or denied as follows:
- (a) the economic loss upon which the claim is based has been or could be recouped from other persons, including collateral sources;
- (b) the reparations officer considers the claim unreasonable because of the misconduct of the claimant or of a victim through whom the claimant claims; or
- (c) the victim did not use a facility or health care provider which would be covered by a collateral source.

(2) When two or more dependents are entitled to an award as a result of a victim's death, the award shall be apportioned by the reparations officer among the dependents.

Amended by Chapter 339, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-513 Collateral sources.

(1) Collateral source shall include any source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to the victim from:
- (a) the offender;
- (b) the insurance of the offender;
- (c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs;
- (d) social security, Medicare, and Medicaid;
- (e) state-required temporary nonoccupational income replacement insurance or disability income insurance;

(f) workers' compensation;
(g) wage continuation programs of any employer;
(h) proceeds of a contract of insurance payable to the victim for the loss the victim sustained because of the criminally injurious conduct;
(i) a contract providing prepaid hospital and other health care services or benefits for disability; or
(j) veteran's benefits, including veteran's hospitalization benefits.

(2)
(a) An order of restitution shall not be considered readily available as a collateral source.
(b) Receipt of an award of reparations under this chapter shall be considered an assignment of the victim's rights to restitution from the offender.

(3) The victim shall not discharge a claim against a person or entity without the state's written permission and shall fully cooperate with the state in pursuing its right of reimbursement, including providing the state with any evidence in the victim's possession.
(4) The state's right of reimbursement applies regardless of whether the victim has been fully compensated for the victim's losses.
(5) Notwithstanding the collateral source provisions in Subsection (1) and Subsection 63M-7-512(1)(a), a victim of a sexual offense who requests testing of himself may be reimbursed for the costs of the HIV test only as provided in Subsection 76-5-503(4).

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-514 Notification of claimant -- Suspension of proceedings.

(1) The Utah Office for Victims of Crime shall immediately notify the claimant in writing of any award and shall forward to the Division of Finance a certified copy of the award and a warrant request for the amount of the award. The Division of Finance shall pay the claimant the amount submitted to the division, out of the fund. If money in the fund is temporarily depleted, claimants approved to receive awards shall be placed on a waiting list and shall receive their awards as funds are available in the order in which their awards were approved.
(2) The reparations officer may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent.

Amended by Chapter 131, 2011 General Session
Amended by Chapter 342, 2011 General Session

63M-7-515 Rules for contested claims -- Exemption from Administrative Procedures Act.

(1) Rules for procedures for contested determinations by a reparations officer shall be adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(2) The Utah Office for Victims of Crime is exempt from Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 131, 2011 General Session

63M-7-516 Waiver of privilege.

(1) A victim filing a claim under the provisions of this chapter shall be considered to have waived any privilege as to communications or records relevant to an issue of the physical, mental, or emotional conditions of the victim except for the attorney-client privilege. The waiver shall apply only to reparations officers, the director, the board, and legal counsel.

(2) The claimant may be required to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.
(3) The reparations officer hearing a claim or an appeal from a claim shall make available to the claimant a copy of the report. If the victim is deceased, the director or the director's appointee, on request, shall furnish the claimant a copy of the report unless dissemination of that copy is prohibited by law.

Amended by Chapter 131, 2011 General Session

63M-7-517 Additional testing.
(1) If the mental, physical, or emotional condition of a victim is material to a claim, the reparations officer, director, or chair of the board who hears the claim or the appeal may order the claimant to submit to a mental or physical examination by a physician or psychologist and may recommend to the court to order an autopsy of a deceased victim.
(2) Any order for additional examination shall be for good cause shown and shall provide notice to the person to be examined and the person's representative.
(3) All reports from additional examinations shall set out findings, including results of all tests made, diagnoses, prognoses, other conclusions, and reports of earlier examinations of the same conditions.
(4) A copy of the report shall be made available to the victim or the representative of the victim unless dissemination of that copy is prohibited by law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-518 Failure to comply.
If a person refuses to comply with an order under this chapter or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the director or reparations officer may make any appropriate determination including denial of the claim.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-519 Assignment of recovery -- Reimbursement.
(1) By accepting an award of reparations, the victim automatically assigns to the state, subject to the provisions of Subsection (2), all claims against any third party to the lesser of:
  (a) the amount paid by the state; or
  (b) the amount recovered from the third party.
(2) The board, with the concurrence of the director, may reduce the state's right of reimbursement if it is determined that:
  (a) the reduction will benefit the fund; or
  (b) the victim has ongoing expenses related to the offense upon which the claim is based and the benefit to the victim of reducing the state's right of reimbursement exceeds the benefit to the state of receiving full reimbursement.
(3) The state reserves the right to make a claim for reimbursement on behalf of the victim and the victim may not impair the state's claim or the state's right of reimbursement.

Amended by Chapter 339, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-521 Award -- Payment methods -- Claims against the award.

(1) The reparations officer may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award of allowable expense that would accrue after an initial award is made may not be paid in a lump sum. Except as provided in Subsection (2), the part of an award that may not be paid in a lump sum shall be paid in installments.

(2) At the request of the claimant, the reparations officer may convert future economic loss installment payments, other than allowable expense, to a lump sum payment, discounted to present value, but only upon a finding by the officer that the award in a lump sum will promote the interests of the claimant.

(3) An award for future economic loss payable in installments may be made only for a period for which the reparations officer can reasonably determine future economic loss. The reparations officer may reconsider and modify an award for future economic loss payable in installments, upon the reparations officer's finding that a material and substantial change of circumstances has occurred.

(4) An award is not subject to execution, attachment, or garnishment, except that an award for allowable expense is not exempt from a claim of a creditor to the extent that the creditor provided products, services, or accommodations, the costs of which are included in the award.

(5) An assignment or agreement to assign an award of reparations for loss accruing in the future is unenforceable, except:

(a) an assignment of an award of reparations for work loss to secure payment of alimony, maintenance, or child support;

(b) an assignment of an award of reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee; or

(c) an assignment to repay a loan obtained to pay for the obligations or expenses described in Subsection (5)(a) or (b).

Amended by Chapter 339, 2008 General Session
Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-521.5 Payments to medical providers.

(1) Except as provided in Subsection (2), a medical service provider who accepts payment from the office shall agree to accept payments as payment in full on behalf of the victim or claimant. The medical service provider may not attempt to collect further payment from the victim or the claimant for services for which the office has made payment.

(2) In the event the office is unable to make full payment in accordance with its rules, the medical service provider may collect from the victim or claimant, but not more than the amount the provider would have received from the office.

(3) The office may:

(a) use the fee schedule utilized by the Utah Public Employees Health Plan or any other fee schedule adopted by the board; and

(b) make rules necessary to implement the fee schedule adopted in accordance with this section.

Enacted by Chapter 339, 2008 General Session

63M-7-522 Emergency award.

If the reparations officer determines that the claimant will suffer financial hardship unless an emergency award is made, and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award. The board may limit emergency awards to any amount it considers necessary.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-523 Review of award decision.

The reparations officer shall review at least annually every award being paid in installments. An order on review of an award does not require refund of amounts previously paid unless the award was obtained by fraud or a material mistake of fact.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-524 Attorney fees.

(1) The claims procedures shall be sufficiently simple that the assistance of an attorney is unnecessary, and no attorney fees shall be paid for the assistance of an attorney or any other representative in filing the claim or providing information to the reparations officer.
(2) Attorney fees may be granted in the following circumstances and shall be paid out of the reparations award not to exceed 15% of the amount of the reparations award:
  (a) when an award has been denied and, after a hearing, the decision to deny is overturned; or
  (b) when minor dependents of a deceased victim require assistance in establishing a trust or determining a guardian.
(3) An attorney or any other person providing assistance in a reparations claim, who contracts for or receives sums not allowed under this chapter, is guilty of a class B misdemeanor. This provision shall not extend to attorneys who assist the victim in filing a civil action against the perpetrator.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-525 Purpose -- Not entitlement program.

(1) The purpose of the Utah Office for Victims of Crime is to assist victims of criminally injurious conduct who may be eligible for assistance from the Crime Victim Reparations Fund. Reparation to a victim is limited to the money available in the fund.
(2) This program is not an entitlement program. Awards may be limited or denied as determined appropriate by the board. Failure to grant an award does not create a cause of action against the Utah Office for Victims of Crime, the state, or any of its subdivisions. There is no right to judicial review over the decision whether or not to grant an award.
(3) A cause of action based on a failure to give or receive the notice required by this chapter does not accrue to any person against the state, any of its agencies or local subdivisions, any of their law enforcement officers or other agents or employees, or any health care or medical provider or its agents or employees. The failure does not affect or alter any requirement for filing or payment of a claim.

Amended by Chapter 131, 2011 General Session

Part 6
Utah Council on Victims of Crime

63M-7-601 Creation -- Members -- Chair.
(1) There is created within the governor's office the Utah Council on Victims of Crime.
(2) The Utah Council on Victims of Crime shall be composed of 24 voting members as follows:
(a) a representative of the Commission on Criminal and Juvenile Justice appointed by the executive director;
(b) a representative of the Department of Corrections appointed by the executive director;
(c) a representative of the Board of Pardons and Parole appointed by the chair;
(d) a representative of the Department of Public Safety appointed by the commissioner;
(e) a representative of the Division of Juvenile Justice Services appointed by the director;
(f) a representative of the Utah Office for Victims of Crime appointed by the director;
(g) a representative of the Office of the Attorney General appointed by the attorney general;
(h) a representative of the United States Attorney for the district of Utah appointed by the United States Attorney;
(i) a professional or volunteer working in the area of violence against women and families appointed by the governor;
(j) the chair of each judicial district's victims' rights committee;
(k) the following members appointed to serve four-year terms:
(i) a representative of the Statewide Association of Public Attorneys appointed by that association;
(ii) a representative of the Utah Chiefs of Police Association appointed by the president of that association;
(iii) a representative of the Utah Sheriffs' Association appointed by the president of that association;
(iv) a representative of a Children's Justice Center appointed by the Advisory Board on Children's Justice; and
(v) a citizen representative appointed by the governor; and
(l) the following members appointed by the members in Subsections (2)(a) through (2)(k) to serve four-year terms:
(i) an individual who works professionally with victims of crime; and
(ii) a victim of crime.
(3) The council shall annually elect one member to serve as chair.

Amended by Chapter 131, 2011 General Session

63M-7-602 Reappointment -- Vacancies.
(1) Members appointed to serve four-year terms shall be eligible for reappointment one time.
(2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-603 Duties.
(1) The council shall:

(a) make recommendations to the Legislature, the governor, and the Judicial Council on the following:
(i) enforcing existing rights of victims of crime;
(ii) enhancing rights of victims of crime;
(iii) the role of victims of crime in the criminal justice system;
(iv) victim restitution;
(v) educating and training criminal justice professionals on the rights of victims of crime; and
(vi) enhancing services to victims of crimes;
(b) provide training on the rights of victims of crime; and
(c) establish a subcommittee to consider complaints not resolved by the Victims' Rights Committee established in Section 77-37-5.
(2) The council:
(a) shall advocate the adoption, repeal, or modification of laws or proposed legislation in the interest of victims of crime;
(b) may establish additional subcommittees to assist in accomplishing its duties; and
(c) shall select and appoint persons pursuant to the provisions of Section 77-37-5 to act as chairpersons of the judicial district victims' rights committees and provide assistance to the committees in their operations.

Amended by Chapter 82, 2010 General Session

63M-7-604 Member expenses.

A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(1) Section 63A-3-106;
(2) Section 63A-3-107; and
(3) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Repealed and Re-enacted by Chapter 286, 2010 General Session

63M-7-605 Staffing.

The Commission on Criminal and Juvenile Justice shall provide staff to the council and any subcommittees established by the council.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 10
Serious Habitual Offender Comprehensive Action Program (SHOCAP) Act

Part 1
General Provisions

63M-10-101 Title.

This chapter is known as the "Serious Habitual Offender Comprehensive Action Program (SHOCAP) Act."

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2
Serious Habitual Offender Comprehensive Action Program

63M-10-201 Creation -- Purpose -- Administration -- Access.

(1) There is created the Serious Habitual Offender Comprehensive Action Program (SHOCAP) to establish a SHOCAP Database to identify and track youthful offenders in order to assist agencies in providing collaborative and comprehensive services to them.
(2) The database shall be administered by the Administrative Office of the Courts with information contributed by the following agencies:
  (a) the State Office of Education, including all school districts;
  (b) the Department of Health;
  (c) the Department of Human Services, including all county mental health agencies;
  (d) the Department of Public Safety;
  (e) all county and municipal law enforcement agencies; and
  (f) all county and district attorney offices.
(3) The database shall be maintained in accordance with guidelines established by the Administrative Office of the Courts so that the agencies listed in Subsection (2) can efficiently access the database.
(4) Information provided by schools in compliance with the provisions of this chapter is authorized under the Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99.
(5) Information in the database provided by an agency to the database is considered to be the property of the agency providing the information and retains any classification given it under Title 63G, Chapter 2, Government Records Access and Management Act.
(6) Any person who knowingly releases or discloses information from the database for a purpose other than authorized by this chapter or to a person who is not entitled to it is guilty of a class B misdemeanor.
(7) Neither the state nor the courts are liable to any person for gathering, managing, or using the information in the database as provided in this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-10-202 Establishment of local oversight committees -- Interagency information sharing.

(1) The Commission on Criminal and Juvenile Justice shall administer the statewide SHOCAP oversight committee and provide periodic review of the programs.
(2) Counties or municipalities implementing SHOCAP shall form a local oversight committee composed of the following persons, or their designees:
  (a) the district juvenile court administrator;
  (b) the superintendent of the local school district;
  (c) the local county attorney;
  (d) a member of the local county or municipal legislative body;
  (e) the local county sheriff;
  (f) a local chief of police;
  (g) the local chief of probation for the Juvenile Court;

(h) the regional director of the Division of Juvenile Justice Services;
(i) the regional director of the Division of Child and Family Services;
(j) a representative of a local public mental health provider; and
(k) any additional members considered appropriate by the local oversight committee.
(3) The local oversight committee shall develop, implement, and periodically review the following:
(a) standardized criteria as developed by the statewide SHOCAP oversight committee for determining who is a serious habitual offender (SHO);
(b) what information is needed on each offender for inclusion in the program;
(c) who will have access to the database;
(d) who will maintain the database and manage the information in the program;
(e) what the information in the database is to be used for; and
(f) penalties for improper use of the information in the database.
(4) The local oversight committee shall develop a written interagency information sharing agreement to be signed by the chief executive officer of each of the agencies represented on the oversight committee. The sharing agreement shall include the provisions requiring that:
(a) all records pertaining to a SHO be kept confidential;
(b) when a SHO is included in the SHOCAP program for the purposes of tracking and providing coordinated services, the local law enforcement agency or an agency designated by the interagency agreement shall as soon as reasonably possible notify the SHO and the parent or guardian of the SHO;
(c) the disclosure of information to other staff members of signatory agencies be made only to those staff members who provide direct services or supervision to the SHO; and
(d) all staff members of signatory agencies receiving confidential information concerning a SHO be subject to the confidentiality requirements of this chapter.
(5) Notwithstanding any other statutory provision, staff members of signatory agencies who provide direct services or supervision to SHOCAP youth may distribute photographs of SHOCAP youth to other staff members of signatory agencies who provide direct services or supervision to SHOCAP youth.
(6) The local oversight committee shall develop a program capable of maintaining the information determined to be necessary under Subsection (3).

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 11
Utah Commission on Aging

Part 1
General Provisions

63M-11-101 Title.
This chapter is known as "Utah Commission on Aging."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-102 Creation -- Purpose.

(1) In accordance with this chapter, there is created within the governor's office the Utah Commission on Aging.
(2) The commission's purpose is to:
(a) increase public and government understanding of the current and future needs of the state's aging population and how those needs may be most effectively and efficiently met;
(b) study, evaluate, and report on the projected impact that the state's increasing aging population will have on:
(i) government services;
(ii) health services;
(iii) social services;
(iv) the economy; and
(v) society in general;
(c) identify and recommend implementation of specific policies, procedures, and programs to respond to the needs and impact of the aging population relating to:
(i) government services;
(ii) health services;
(iii) social services;
(iv) the economy; and
(v) society in general;
(d) facilitate coordination of the functions of public and private entities concerned with the aging population; and
(e) accomplish the duties enumerated in Section 63M-11-203.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-103 Definitions.
As used in this chapter:
(1) "Aging" and "aged" are as defined in Section 62A-3-101.
(2) "Center on Aging" means the Center on Aging within the University of Utah.
(3) "Commission" means the Utah Commission on Aging, created in Section 63M-11-102.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2
Commission

63M-11-201 Composition -- Appointments -- Terms -- Removal.
(1) The commission shall be composed of 21 voting members as follows:
(a) one senator, appointed by the president of the Senate;
(b) one representative, appointed by the speaker of the House of Representatives;
(c) the executive director of the Department of Health;
(d) the executive director of the Department of Human Services;
(e) the executive director of the Governor's Office of Economic Development;
(f) the executive director of the Department of Workforce Services; and
(g) 15 voting members, appointed by the governor, representing each of the following:
(i) the Utah Association of Area Agencies on Aging;

(ii) higher education in Utah;
(iii) the business community;
(iv) the Utah Association of Counties;
(v) the Utah League of Cities and Towns;
(vi) charitable organizations;
(vii) the health care provider industry;
(viii) financial institutions;
(ix) the legal profession;
(x) the public safety sector;
(xi) public transportation;
(xii) ethnic minorities;
(xiii) the industry that provides long-term care for the elderly;
(xiv) organizations or associations that advocate for the aging population; and
(xv) the general public.

(2)
(a) A member appointed under Subsection (1)(g) shall serve a two-year term.
(b) Notwithstanding the term requirements of Subsection (2)(a), the governor may adjust the length of the initial commission members' terms to ensure that the terms are staggered so that approximately 1/2 of the members appointed under Subsection (1)(g) are appointed each year.
(c) When, for any reason, a vacancy occurs in a position appointed by the governor under Subsection (1)(g), the governor shall appoint a person to fill the vacancy for the unexpired term of the commission member being replaced.
(d) Members appointed under Subsection (1)(g) may be removed by the governor for cause.
(e) A member appointed under Subsection (1)(g) shall be removed from the commission and replaced by the governor if the member is absent for three consecutive meetings of the commission without being excused by the chair of the commission.

(3) In appointing the members under Subsection (1)(g), the governor shall:
(a) take into account the geographical makeup of the commission; and
(b) strive to appoint members who are knowledgeable or have an interest in issues relating to the aging population.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-202 Executive director -- Qualifications -- Appointment -- Functions.

(1)
(a) Subject to Subsections (1)(b) and (c), the executive director of the Center on Aging shall appoint an executive director of the commission.
(b) The executive director appointed under Subsection (1)(a) shall be a person knowledgeable and experienced in matters relating to:
(i) management; and
(ii) the aging population.
(c) The appointment described in Subsection (1)(a) is not effective until ratified by the governor.

(2) The executive director of the commission, under the direction of the commission and the executive director of the Center on Aging, shall administer the duties of the commission.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-203 Duties and powers of commission.

(1) The commission shall:
(a) fulfill the commission's purposes as listed in Section 63M-11-102;
(b) facilitate the communication and coordination of public and private entities that provide services to the aging population;
(c) study, evaluate, and report on the status and effectiveness of policies, procedures, and programs that provide services to the aging population;
(d) study and evaluate the policies, procedures, and programs implemented by other states that address the needs of the aging population;
(e) facilitate and conduct the research and study of issues related to aging;
(f) provide a forum for public comment on issues related to aging;
(g) provide public information on the aging population and the services available to the aging population;
(h) facilitate the provision of services to the aging population from the public and private sectors; and
(i) encourage state and local governments to analyze, plan, and prepare for the impacts of the aging population on services and operations.
(2) To accomplish its duties, the commission may:
(a) request and receive from any state or local governmental agency or institution, summary information relating to the aging population, including:
(i) reports;
(ii) audits;
(iii) projections; and
(iv) statistics;
(b) apply for and accept grants or donations for uses consistent with the duties of the commission from public or private sources; and
(c) appoint special committees to advise and assist the commission.
(3) All funds received under Subsection (2)(b) shall be:
(a) accounted for and expended in compliance with the requirements of federal and state law; and
(b) continuously available to the commission to carry out the commission's duties.
(4)
(a) Members of a special committee described in Subsection (2)(c):
(i) shall be appointed by the commission;
(ii) may be:
(A) members of the commission; or
(B) individuals from the private or public sector; and
(iii) notwithstanding Section 63M-11-206, shall not receive any reimbursement or pay for any work done in relation to the special committee.
(b) A special committee described in Subsection (2)(c) shall report to the commission on the progress of the special committee.
(5) This chapter does not diminish the planning authority conferred on state, regional, and local governments by existing law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-204 Annual report by the commission.

(1) The commission shall annually prepare and publish a report directed to the:

(a) governor; and
(b) Health and Human Services Interim Committee.
(2) The report described in Subsection (1) shall:
(a) describe how the commission fulfilled its statutory purposes and duties during the year; and
(b) contain recommendations on how the state should act to address issues relating to the aging population.

Amended by Chapter 323, 2010 General Session

63M-11-205 Appointment of chair -- Meetings.
(1) The governor shall appoint a member of the commission to serve as chair.
(2)
(a) Subject to the other provisions of this Subsection (2), the chair is responsible for the call and conduct of meetings.
(b) The chair shall call and hold meetings of the commission at least bimonthly.
(c) One of the bimonthly meetings described in Subsection (2)(b) shall be held while the Legislature is convened in its annual session.
(d) One or more additional meetings may be called upon request by a majority of the commission's members.
(3)
(a) A majority of the members of the commission constitute a quorum.
(b) The action of a majority of a quorum constitutes the action of the commission.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-206 Members serve without pay -- Reimbursement for expenses.
(1) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
(2) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

63M-11-207 Oversight -- Executive director salary -- Staff support -- Use of funds.
(1) The Center on Aging shall:
(a) pay the salary, and oversee the performance of, the executive director of the commission;
(b) provide staff support for the executive director of the commission and the commission; and
(c) provide office space, furnishings, and supplies to the commission, the executive director of the commission, and support staff.
(2) The funds appropriated by the Legislature for the commission may only be used for the purposes described in this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 12
Advisory Council on Optimizing and Streamlining State Government Act

Part 1
General Provisions

Part 2
Commission Members

Part 3
Duties