

Representative Steve Barth proposes to substitute the following bill:

**LOANS FOR BUSINESSES IMPACTED BY
MAJOR HIGHWAY CONSTRUCTION**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Steve Barth

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; CREATING
THE MAJOR HIGHWAY CONSTRUCTION BUSINESS IMPACT ACT INCLUDING AN
ADVISORY BOARD; PROVIDING FOR FINANCIAL ASSISTANCE TO BUSINESS
IMPACTED BY MAJOR HIGHWAY CONSTRUCTION; APPROPRIATING \$5,000,000
FROM THE BUDGET RESERVE ACCOUNT; MAKING TECHNICAL CORRECTIONS;
AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-38-2.5, as last amended by Chapter 6, Laws of Utah 1996, Second Special Session

63-55-209, as last amended by Chapters 8, 10, 15 and 134, Laws of Utah 1997

ENACTS:

9-2-1801, Utah Code Annotated 1953

9-2-1802, Utah Code Annotated 1953

9-2-1803, Utah Code Annotated 1953

9-2-1804, Utah Code Annotated 1953

9-2-1805, Utah Code Annotated 1953

9-2-1806, Utah Code Annotated 1953

9-2-1807, Utah Code Annotated 1953

9-2-1808, Utah Code Annotated 1953

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

1 Section 1. Section **9-2-1801** is enacted to read:

2 **Part 18. Major Highway Construction Business Impact Act**

3 **9-2-1801. Title.**

4 This part is known as the "Major Highway Construction Business Impact Act."

5 Section 2. Section **9-2-1802** is enacted to read:

6 **9-2-1802. Definitions.**

7 As used in this part:

8 (1) "Board" means the Major Highway Construction Business Impact Advisory Board
9 created under Section 9-2-1803.

10 (2) "Branch" means a location of a business other than its main office at which the
11 business conducts business activities.

12 (3) "Business" means a person that for compensation provides goods or services for lawful
13 purposes.

14 (4) "Fund" means the restricted account known as the Major Highway Construction
15 Business Impact Fund.

16 (5) "Major highway construction" means construction, as defined by Section 27-12-2:

17 (a) on a state highway, as defined in Section 27-12-2; and

18 (b) having a total budget equal to or exceeding \$5,000,000.

19 (6) "Seriously impacted business" means a business designated as seriously impacted
20 under Section 9-2-1805.

21 (7) "Threshold period" means the period specified under Subsection 9-2-1805(4).

22 Section 3. Section **9-2-1803** is enacted to read:

23 **9-2-1803. Major Highway Construction Business Impact Advisory Board.**

24 (1) There is created within the department the "Major Highway Construction Business
25 Impact Advisory Board" consisting of:

26 (a) a representative of the Salt Lake Chamber of Commerce appointed by the Salt Lake
27 Chamber of Commerce;

28 (b) a representative of seriously impacted businesses appointed by the governor; and

29 (c) the executive director of the department or the executive director's designee.

30 (2) (a) Except as required by Subsection (2)(b), a member appointed under Subsection
31 (1)(a) or (b) shall serve for a four-year term.

1 (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment or
2 reappointment, adjust the length of terms to ensure that the terms of board members are staggered
3 so that at least one member of the board is appointed every two years.

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

6 (3) (a) (i) Members who are not government employees shall receive no compensation or
7 benefits for their services, but may receive per diem and expenses incurred in the performance of
8 the member's official duties at the rates established by the Division of Finance under Sections
9 63A-3-106 and 63A-3-107.

10 (ii) Members may decline to receive per diem and expenses for their service.

11 (b) (i) State government officer and employee members who do not receive salary, per
12 diem, or expenses from their agency for their service may receive per diem and expenses incurred
13 in the performance of their official duties from the board at the rates established by the Division
14 of Finance under Sections 63A-3-106 and 63A-3-107.

15 (ii) State government officer and employee members may decline to receive per diem and
16 expenses for their service.

17 (4) The department shall provide clerical and professional staff and services to the board.

18 (5) The board shall:

19 (a) advise the department concerning issues unique to seriously impacted businesses;

20 (b) recommend any regulatory or statutory changes needed to encourage the stability of
21 seriously impacted businesses;

22 (c) provide a public forum at which the views of seriously impacted businesses may be
23 represented to state government; and

24 (d) advise the department regarding the administration of the fund.

25 Section 4. Section **9-2-1804** is enacted to read:

26 **9-2-1804. Major Highway Construction Business Impact Fund.**

27 (1) (a) There is created within the General Fund a restricted account known as the "Major
28 Highway Construction Business Impact Fund."

29 (b) The fund consists of:

30 (i) legislative appropriations; and

31 (ii) repayment on loans made from the fund.

1 (c) (i) The fund shall earn interest.

2 (ii) All interest earned on fund monies shall be deposited into the fund.

3 (d) Any unallocated balance in the fund at the end of a fiscal year shall be nonlapsing.

4 (2) (a) The fund shall be administered by the department to provide seriously impacted
5 businesses with financial assistance in the form of grants or loans.

6 (b) The department may use fund monies for the administration of the fund, but this
7 amount may not exceed 2% of the annual receipts to the fund.

8 Section 5. Section **9-2-1805** is enacted to read:

9 **9-2-1805. Designation of business as seriously impacted.**

10 (1) (a) A business seeking designation of the business as a whole or any of its branches
11 as a seriously impacted business shall file an application with the department that:

12 (i) specifies whether the business is seeking designation as a seriously impacted business
13 of:

14 (A) the business as a whole; or

15 (B) a branch of the business;

16 (ii) provides evidence that:

17 (A) if the business seeks designation of the business as whole, the business meets the
18 criteria described in Subsection (2); or

19 (B) if the business seeks designation of a branch of the business, the branch meets the
20 criteria described in Subsection (3);

21 (iii) is in the form and filed in accordance with procedures established by the department;

22 and

23 (iv) includes any information required by the department.

24 (b) A business that under Subsection (1)(a) applies for designation of the business as a
25 whole or any of its branches as a seriously impacted business shall pay to the department an
26 application fee determined under Section 63-38-3.2.

27 (2) The department shall designate a business as a seriously impacted business if the
28 business meets the following criteria:

29 (a) the gross revenue of the business for the six-month period preceding the month in
30 which the business files its application is 30% lower than the gross revenue of the business for the
31 threshold period; and

1 (b) the reduction in gross revenue is likely the result of major highway construction.

2 (3) The department shall designate a branch of a business as a seriously impacted business
3 if the branch meets the following criteria:

4 (a) the branch files an individual income tax or a corporate franchise or income tax return
5 separate from the business;

6 (b) the gross revenue of the branch for the six-month period preceding the month in which
7 the business files its application is 30% lower than the gross revenue of the branch for the
8 threshold period;

9 (c) the reduction in gross revenue is likely the result of major highway construction.

10 (4) (a) If a business seeks designation as a seriously impacted business because of a major
11 highway construction project, the department shall designate a six-month period as the threshold
12 period for the major highway construction project.

13 (b) The threshold period shall be the six-month period preceding substantial
14 commencement of construction on the major highway construction project.

15 (c) The department shall use the identical threshold period for all applicants seeking
16 designation as a seriously impacted business because of the same major highway construction
17 project.

18 Section 6. Section **9-2-1806** is enacted to read:

19 **9-2-1806. Loans and assistance -- Repayment -- Credits.**

20 (1) (a) In accordance with this part, a seriously impacted business may receive loans or
21 other financial assistance from the fund for expenses related to impacts of major highway
22 construction.

23 (b) In determining which seriously impacted businesses may receive loans or other
24 financial assistance, the department shall give priority to small businesses as defined by the
25 department.

26 (2) (a) The department shall determine the structure, amount, and nature of any loan or
27 other financial assistance from the fund.

28 (b) Notwithstanding Subsection (2)(a), ^h [if] **WHEN** ^h a loan or other financial assistance is

28a ^h [intended

29 to be] ^h repaid to the fund, the repayment to the fund shall equal at least the sum of:

30 (i) the amount of the financial assistance; and

31 (ii) an annual interest rate determined by the department as necessary to cover the costs

1 of providing the financial assistance.

2 (c) Notwithstanding Subsection (2)(a), the department may not require a seriously
3 impacted business that obtains a loan under this chapter to:

4 (i) make any payment on the loan before substantial completion of the major highway
5 construction project, as defined by the department; or

6 (ii) make a single payment that equals all or a substantial portion of the loan.

7 (3) Loan repayments shall be deposited in cash, including any interest, into the fund.

8 (4) As part of the administration of the fund, the department shall deliver to the custodial
9 officer within the Division of Finance in accordance with Section 63-65-4 any evidences of
10 indebtedness owned by the department related to a loan issued under this chapter.

11 Section 7. Section **9-2-1807** is enacted to read:

12 **9-2-1807. Qualification for assistance.**

13 (1) The department shall determine which seriously impacted businesses qualify to receive
14 financial assistance from the fund, except to qualify for assistance from the fund an applicant shall:

15 (a) demonstrate to the satisfaction of the department that the applicant is able to sustain
16 economic activity in the state sufficient to:

17 (i) repay, by means of cash, the assistance provided by the fund; or

18 (ii) if the financial assistance is not conditioned on repayment, justify providing the
19 financial assistance; and

20 (b) satisfy other criteria the department considers appropriate.

21 (2) The department shall:

22 (a) prior to providing financial assistance, make findings as to whether or not each
23 applicant has satisfied each of the conditions set forth in Subsection (1);

24 (b) monitor the continued compliance by each applicant with each of the conditions set
25 forth in Subsection (1);

26 (c) monitor the compliance by each applicant with the provisions of the agreement entered
27 into between the applicant and the state as provided in Section 9-2-1808; and

28 (d) make funding decisions based upon appropriate findings and compliance.

29 Section 8. Section **9-2-1808** is enacted to read:

30 **9-2-1808. Agreements.**

31 (1) The department shall enter into a written agreement with an applicant that the

1 department determines qualifies for assistance under Section 9-2-1807.

2 (2) The agreement described in Subsection (1) shall include, if applicable:

3 (a) the specific terms and conditions of each loan or assistance, including a repayment
4 schedule;

5 (b) interest rates;

6 (c) specific economic activity required to qualify for the loan or assistance;

7 (d) collateral or security, if any; and

8 (e) other terms and conditions considered appropriate by the department.

9 Section 9. Section **63-38-2.5** is amended to read:

10 **63-38-2.5. Establishing a Budget Reserve Account -- Providing for deposits and**
11 **expenditures from the account.**

12 (1) There is created within the General Fund a restricted account to be known as the
13 Budget Reserve Account, which is designated to receive the surplus revenue required by this
14 section.

15 (2) (a) Beginning June 30, 1993, at the end of any fiscal year in which the Division of
16 Finance, in conjunction with the completion of the annual audit by the state auditor, determines
17 that there is a General Fund surplus, 25% of the surplus shall be transferred to the Budget Reserve
18 Account, except that the amount in the Budget Reserve Account may not exceed 8% of the
19 General Fund appropriation amount for the fiscal year in which the surplus occurred.

20 (b) The amount to be transferred to the Budget Reserve Account shall be determined
21 before any other contingency appropriation using surplus funds.

22 (3) (a) [Any] Except as provided under Subsection (3)(c), any appropriation made by the
23 Legislature from the Budget Reserve Account may only be used to cover operating deficits or
24 retroactive tax refunds.

25 (b) The Budgetary Reserve Account is available for appropriation to fund operating
26 deficits in public education appropriations.

27 (c) The Legislature may appropriate monies from the Budget Reserve Account to the
28 Major Highway Construction Business Impact Fund created in Section 9-2-1804.

29 (4) All interest generated from investments of money in the Budget Reserve Account shall
30 be deposited into the account.

31 Section 10. Section **63-55-209** is amended to read:

1 **63-55-209. Repeal dates, Title 9.**

2 (1) Title 9, Chapter 1, Part 8, Utah Commission on Volunteers, is repealed July 1, 1999.

3 (2) Title 9, Chapter 2, Part 3, Small Business Advisory Council, is repealed July 1, 1999.

4 (3) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

5 (4) Title 9, Chapter 2, Part 7, Utah Technology Finance Corporation Act, is repealed July
6 1, 2002.

7 (5) Section 9-2-1208 regarding waste tire recycling loans is repealed July 1, 2000.

8 (6) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed July
9 1, 2000, Sections 59-7-608 and 59-10-108.7 are repealed for tax years beginning on or after
10 January 1, 2001.

11 (7) Title 9, Chapter 2, Part 18, Major Highway Construction Business Impact Act, is
12 repealed July 1, 2003. If Title 9, Chapter 2, Part 18, Major Highway Construction, is repealed, the
13 assets of the fund shall be transferred to the Budget Reserve Account created in Section 63-38-2.5.

14 ~~[(7)]~~ (8) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed
15 July 1, 1999.

16 ~~[(8)]~~ (9) Title 9, Chapter 4, Part 4, Disaster Relief, is repealed July 1, 1999.

17 ~~[(9)]~~ (10) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act, is repealed July
18 1, 2006.

19 **Section 11. Appropriation.**

20 There is appropriated from the Budget Reserve Account for fiscal year 1998-99,
21 \$5,000,000 to the restricted account Major Highway Construction Business Impact Fund for
22 administration by the Department of Community and Economic Development in accordance with
23 Title 9, Chapter 2, Part 18, Major Highway Construction Business Impact Act.

24 **Section 12. Effective date.**

25 This act takes effect on July 1, 1998.