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**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

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:

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

Part 18. Major Highway Construction Business Impact Act

9-2-1801. Title.

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

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

3 **9-2-1802. Definitions.**

4 As used in this part:

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

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

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

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

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

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

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

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

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

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

20 **9-2-1803. Major Highway Construction Business Impact Advisory Board.**

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

23 (a) a representative of the Salt Lake Chamber of Commerce appointed by the Salt Lake
24 Chapter of Commerce;

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

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

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

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

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

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

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

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

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

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

15 (5) The board shall:

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

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

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

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

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

23 **9-2-1804. Major Highway Construction Business Impact Fund.**

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

26 (b) The fund consists of:

27 (i) legislative appropriations; and

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

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

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

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

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

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

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

6 **9-2-1805. Designation of business as seriously impacted.**

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

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

11 (A) the business as a whole; or

12 (B) a branch of the business;

13 (ii) verifies that:

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

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

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

19 and

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

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

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

26 (a) the gross revenue of the business for the 12-month period proceeding the month in
27 which the business files its application is 30% lower than the gross revenue of the business for the
28 threshold year;

29 (b) the traffic count on the road that provides access to the business or a branch of the
30 business is reduced by 50% from the traffic count as of the beginning of the threshold year; and

31 (c) the reduction in traffic count is likely the result of major highway construction.

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

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

5 (b) the gross revenue of the branch for the 12-month period proceeding the month in which
6 the business files its application is 30% lower than the gross revenue of the branch for the
7 threshold year;

8 (c) the traffic count on the road that provides access to the branch is reduced by 50% from
9 the traffic count as a beginning of the threshold year; and

10 (d) the reduction in traffic count is likely the result of major highway construction.

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

14 (b) The threshold year shall be the 12-month period preceding substantial commencement
15 of construction on the major highway construction project.

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

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

20 **9-2-1806. Loans and assistance -- Repayment -- Credits.**

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

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

25 (b) Notwithstanding Subsection (2)(a), if a loan or other financial assistance is intended
26 to be repaid to the fund, the repayment to the fund, including cash or credit, shall equal at least the
27 sum of:

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

29 (ii) an annual interest rate determined by the department as necessary to cover the costs
30 of providing the financial assistance.

31 (3) (a) The department may provide for a system of credits that may be used in lieu of cash

1 repayment of a fund loan.

2 (b) The value of the credits described in Subsection (3)(a) shall be based on factors
3 determined by the department, including:

4 (i) the number of new jobs created;

5 (ii) any increased economic activity; and

6 (iii) other events and activities that occur as a result of the loan.

7 (4) (a) If a loan repayment is in cash, the loan repayment shall be deposited, including any
8 interest, into the fund.

9 (b) If the repayment is in the form of credits as provided in Subsection (3), the department
10 and the Division of Finance shall determine the manner of recognizing and accounting for the
11 credits.

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

13 **9-2-1807. Qualification for assistance.**

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

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

18 (i) repay, by means of cash or appropriate credits, the assistance provided by the fund; or

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

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

22 (2) The department shall:

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

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

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

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

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

31 **9-2-1808. Agreements.**

1 (1) The department shall enter into a written agreement with an applicant that the
2 department determines qualifies for assistance under Section 9-2-1807.

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

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

6 (b) interest rates;

7 (c) specific economic activity required to qualify for:

8 (i) the loan or assistance; or

9 (ii) repayment credits;

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

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

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

13 **63-38-2.5. Establishing a Budget Reserve Account -- Providing for deposits and**
14 **expenditures from the account.**

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

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

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

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

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

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

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

3 Section 10. **Appropriation.**

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

8 Section 11. **Effective date.**

9 This act takes effect on July 1, 1998.

Legislative Review Note
as of 1-28-98 5:02 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel