

**COMMUNITY AND ECONOMIC DEVELOPMENT
AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

AN ACT RELATING TO COMMUNITY AND ECONOMIC DEVELOPMENT; REPEALING THE CAPITAL ACCESS FUND; EXPANDING SCOPE OF THE COMMUNITY ECONOMIC DEVELOPMENT PROJECT FUND; AMENDING ALLOCATION PROVISIONS OF THE PRIVATE ACTIVITY BOND VOLUME CAP; PROVIDING FOR THE DISPOSITION OF MONEYS IN THE CAPITAL ACCESS FUND; TRANSFERRING UP TO \$200,000 FROM THE CAPITAL ACCESS FUND TO THE COMMUNITY ECONOMIC DEVELOPMENT FUND; TRANSFERRING BALANCE OF THE FUND TO THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT FOR USE IN THE CUSTOM FIT TRAINING PROGRAM; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

- 9-2-1203**, as last amended by Chapter 335, Laws of Utah 1997
- 9-2-1501**, as enacted by Chapter 301, Laws of Utah 1996
- 9-2-1502**, as last amended by Chapter 391, Laws of Utah 1998
- 9-2-1504**, as last amended by Chapter 391, Laws of Utah 1998
- 9-2-1505**, as enacted by Chapter 301, Laws of Utah 1996
- 9-2-1506**, as last amended by Chapter 391, Laws of Utah 1998
- 9-4-505**, as last amended by Chapter 24, Laws of Utah 1999
- 9-4-506**, as last amended by Chapters 192 and 208, Laws of Utah 1997

REPEALS:

- 9-2-1301**, as renumbered and amended by Chapter 241, Laws of Utah 1992
- 9-2-1302**, as last amended by Chapter 206, Laws of Utah 1993
- 9-2-1303**, as last amended by Chapter 76, Laws of Utah 1999
- 9-2-1304**, as last amended by Chapter 6, Laws of Utah 1996

9-2-1305, as last amended by Chapter 206, Laws of Utah 1993

9-2-1306, as last amended by Chapter 76, Laws of Utah 1999

9-2-1307, as repealed and reenacted by Chapter 206, Laws of Utah 1993

9-2-1308, as repealed and reenacted by Chapter 206, Laws of Utah 1993

9-2-1309, as renumbered and amended by Chapter 241, Laws of Utah 1992

9-2-1310, as last amended by Chapter 6, Laws of Utah 1996

9-2-1311, as last amended by Chapter 76, Laws of Utah 1999

9-2-1312, as last amended by Chapter 206, Laws of Utah 1993

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

Section 1. Section **9-2-1203** is amended to read:

9-2-1203. Industrial Assistance Fund created.

There is created within the General Fund a restricted account known as the Industrial Assistance Fund of which up to 50% shall be used in economically disadvantaged rural areas. The fund shall be administered by the administrator under the direction of the board. Interest accrued from investment of monies in the fund shall remain in the fund. [~~Up to \$375,000 from the fund shall be deposited in the Utah Capital Access Fund.~~] The administrator may hire appropriate support staff. The cost of administering the fund shall be paid from monies in the fund.

Section 2. Section **9-2-1501** is amended to read:

9-2-1501. Title.

(1) This part is known as the "Community Economic Development Project Fund."

(2) The purpose of this part is to achieve the critical public purposes of fostering growth of the state's economy and creating jobs throughout the state by encouraging:

(a) local governments and nonprofit economic development organizations to develop projects that enhance the economic strengths of their communities; and

(b) the development of small businesses in Utah.

Section 3. Section **9-2-1502** is amended to read:

9-2-1502. Definitions.

As used in this part:

- (1) "Administrator" means the Department of Community and Economic Development.
- (2) "Board" means the Board of Business and Economic Development.
- (3) "Fund" means the Community Economic Development Project Fund created in Section 9-2-1503.

(4) "Qualified small business" means a small business that:

(a) has one or more locations within Utah;

(b) is of a size that may be eligible for Small Business Administration loans under 13 C.F.R. 121.101 et seq.; and

(c) (i) prior to application for a loan or grant under this chapter, has not engaged in business activities in Utah except for activities incidental to starting a business; or

(ii) intends to expand its operations in Utah.

~~[(4)]~~ (5) "Rural" means those communities located in the areas of the state defined by the board in Title 9, Chapter 2, Part 12, Industrial Assistance Fund, as economically disadvantaged rural ~~[targeted]~~ areas.

~~[(5)]~~ (6) "Urban" means communities located within a standard metropolitan statistical area, as designated by the United States Bureau of the Census.

Section 4. Section **9-2-1504** is amended to read:

9-2-1504. Distribution of fund moneys.

(1) The administrator shall:

(a) establish criteria and procedures for the grant and loan process as provided in Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) determine the order in which ~~[projects will be funded]~~ grants or loans will be issued; and

(c) make grants and loans from the fund:

(i) to any of the entities authorized by Section 9-2-1505; and

(ii) in accordance with Subsection (3).

(2) Two percent of the fund moneys may be used by the executive director for purposes consistent with this chapter, including the payment of reasonable loan processing fees, but may not be used to offset department or board administrative expenses.

(3) (a) Fund moneys remaining after distribution as provided in Subsection (2) shall be distributed as follows:

(i) at least 50% of the moneys shall be distributed as loans to be repaid to the fund by the entity receiving ~~[them, with]~~ the moneys;

(ii) at least 50% of ~~[those]~~ the required amount of loans under Subsection (3)(a)(i) shall be distributed to:

(A) rural communities [meeting the requirements for enterprise zones in Section 9-2-404];

or

(B) a qualified small business located in a rural community; and

~~[(ii)]~~ (iii) moneys not distributed as loans under Subsection (3)(a)(i) shall be distributed as grants with:

(A) [fifty percent] 50% distributed to:

(I) rural communities [meeting the requirements for enterprise zones in Section 9-2-404];

[and] or

(II) a qualified small business located in a rural community; and

(B) [fifty percent] 50% distributed to communities [not meeting the requirements for enterprise zones in Section 9-2-404] or entities that do not meet the requirements of Subsection (3)(a)(iii)(A).

(b) No more than 50% of the fund ~~[monies]~~ moneys distributed as grants or loans under Subsection (3)(a) may be distributed to urban areas of the state.

Section 5. Section **9-2-1505** is amended to read:

9-2-1505. Entities authorized to receive fund moneys.

The administrator, with advice of the board, may make ~~[grants]~~ a grant or ~~[loans]~~ loan to:

(1) a local [governments] government; [and]

(2) a regional or statewide nonprofit economic development [organizations:] organization;

or

(3) a qualified small business.

Section 6. Section **9-2-1506** is amended to read:

9-2-1506. Application process and priorities.

(1) For a grant or loan to a qualified small business, the administrator:

(a) may accept applications for a loan or grant from a qualified small business at any time;

(b) may not issue a grant or loan to a qualified small business in excess of \$15,000; and

(c) as a condition of issuing the grant or loan, shall require that the qualified small business use the grant or loan solely for the acquisition of any of the following intended to have long-term beneficial use:

(i) furniture;

(ii) fixtures; or

(iii) equipment.

(2) For a grant or loan to a local government or regional or statewide nonprofit economic development organization, the administrator shall:

~~[(1)]~~ (a) ~~(i)~~ ~~[At]~~ at least once in each calendar year that moneys are available from the fund for use by the administrator, ~~[the administrator shall]~~ provide notice of a grant and loan application period to interested entities~~[-]; and~~

~~[(b)]~~ ~~(ii)~~ ~~[The administrator shall]~~ accept applications for at least ~~[90]~~ 45 days~~[-]; and~~

~~[(2)]~~ (b) ~~[The administrator shall]~~ give preference to applications that demonstrate:

~~[(a)]~~ ~~(i)~~ substantial leverage with other sources of financing;

~~[(b)]~~ ~~(ii)~~ substantial contributions to total project costs, including allied contributions from other sources, such as professional, craft and trade services, and community organizations;

~~[(c)]~~ ~~(iii)~~ substantial local government project contributions in the form of infrastructure improvements or other assistance;

~~[(d)]~~ ~~(iv)~~ projects that encourage ownership, management, and other project-related opportunities;

~~[(e)]~~ ~~(v)~~ projects that demonstrate a strong probability of serving the original target group or income level for a period of at least 15 years;

~~[(f)]~~ ~~(vi)~~ projects where the applicant has demonstrated the ability, stability, and resources to complete the project;

~~[(g)]~~ (vii) projects that appear to serve the greatest need of the target group;
~~[(h)]~~ (viii) projects that demonstrate economic development benefits for the state;
~~[(i)]~~ (ix) projects that allow integration into a local government economic development plan;
~~[(j)]~~ (x) projects or businesses located in any part of the state that create new jobs in or measurable positive economic impact on a rural area;
~~[(k)]~~ (xi) projects or programs ~~[which]~~ that require specialized training; and
~~[(l)]~~ (xii) recreational or cultural projects ~~[which]~~ that enhance the economic vitality of or tourism in a community.

Section 7. Section **9-4-505** is amended to read:

9-4-505. 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 9-4-506.

(b) The board of review may distribute up to 50% of each increase in the volume cap that occurs after the effective date of this Subsection (1)(b) 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 9-4-506.

(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) 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. In making an allocation of volume cap the board of review shall consider the following:

- (a) the principal amount of the bonds proposed to be issued;
- (b) the nature and the location of the project or the type of program;
- (c) the likelihood that the bonds will be sold and the timeframe of bond issuance;
- (d) whether the project or program could obtain adequate financing without an allocation of volume cap;
- (e) the degree to which an allocation of volume cap is required for the project or program

to proceed or continue;

(f) the social, health, economic, and educational effects of the project or program on the local community and state as a whole;

(g) the anticipated economic development created or retained within the local community and the state as a whole;

~~(g)~~ (h) the anticipated number of jobs, both temporary and permanent, created or retained within the local community and the state as a whole;

~~(h)~~ (i) if the project is a residential rental project, the degree to which the residential rental project targets lower income populations; and

~~(i)~~ (j) 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 9-4-507.

(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.

Section 8. Section **9-4-506** is amended to read:

9-4-506. 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; or
 - (ii) qualified exempt facility bonds for qualified residential rental projects under Section 142(d) of the code;
 - (d) the Exempt Facilities Account, for which eligible issuing authorities are those authorized under the code and state statute to issue 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 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, all unallocated volume cap shall be transferred into the Pool Account.
- (e) Unallocated volume cap or allocated volume cap for which bonds have not been issued prior to the third Saturday of December shall be transferred on that date 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 ~~such~~ that allotment account to any other allotment account.

Section 9. Repealer.

This act repeals:

Section 9-2-1301, Short title.

Section 9-2-1302, Definitions.

Section 9-2-1303, Utah Capital Access Fund.

Section 9-2-1304, Lender's fund reserve accounts.

Section 9-2-1305, Conditions for match -- Special loan portfolios.

Section 9-2-1306, Premiums -- Administrative costs -- Transfers.

Section 9-2-1307, Enrolling.

Section 9-2-1308, Loan losses -- Claims.

Section 9-2-1309, Restrictions on loans.

Section 9-2-1310, Termination -- Withdrawal.

Section 9-2-1311, Reports -- Audits.

Section 9-2-1312, State agency support.

Section 10. Disposition of the Capital Access Fund.

(1) As used in this section:

(a) "Capital Access Act" means Title 9, Chapter 2, Part 13, Utah Capital Access Act;

(b) "corporation" means the Utah Technology Finance Corporation;

(c) "fund" means the Capital Access Fund;

(d) "fund balance" means an amount calculated by subtracting from the total amount in the fund as of the last day of the state's fiscal year 1999-2000, the monies obligated under Subsection (3) for pre-repeal loans;

(e) "participating lender" has the same meaning as under Section 9-2-1302; and

(f) "pre-repeal loan" means a loan enrolled by the corporation under the Capital Access Act:

(i) before May 1, 2000; or

(ii) in accordance with Subsection (2)(b).

(2) (a) Except as provided in Subsection (2)(b) and notwithstanding the notice requirements of Section 9-2-1310, the corporation may not enroll a loan under the Capital Access Act on or after May 1, 2000.

(b) The corporation may enroll a loan under the Capital Access Act on or after May 1, 2000 but no later than June 30, 2000 if:

(i) the loan is issued by a participating lender who is a participating lender on or before June 30, 2000;

(ii) the application for the loan is filed with the participating lender on or before May 10, 2000; and

(iii) the participating lender shows that it did not receive notice of the termination of the corporation's authority to enroll a loan prior to the date the loan was issued.

(c) The corporation shall notify each participating lender by no later than May 10, 2000 of the termination of the corporation's authority under the Capital Access Act to enroll loans.

(3) (a) Notwithstanding the repeal of the Capital Access Act and the termination of the corporation's authority to enroll a loan, for each participating lender that holds a pre-repeal loan:

(i) the Capital Access Act in effect as of April 30, 1999, shall apply to the pre-repeal loan;

(ii) the corporation shall maintain the participating lender's fund reserve account for the life of the pre-repeal loan; and

(iii) the state treasurer shall maintain a separate state fund reserve account within the fund in accordance with the Capital Access Act for the life of the pre-repeal loans held by the participating lender.

(b) Notwithstanding Subsection (3)(a), if a loan described in Subsection (3)(a) is refinanced, the amount of the loan covered under the Capital Access Act may not be increased beyond the amount of the loan on the later of:

(i) May 1, 2000; or

(ii) the date the loan is enrolled by the corporation.

(4) By no later than 90 days after fiscal year 1999-2000, the Division of Finance shall transfer

from the fund:

(a) to the Community Economic Development Project Fund created in Section 9-2-1503, an amount equal to the lesser of:

(i) the fund balance; or

(ii) \$200,000; and

(b) if the fund balance exceeds \$200,000, to the Department of Community and Economic Development for use in the custom-fit-training program that the Department of Community and Economic Development administers, an amount equal to the difference between:

(i) the fund balance; and

(ii) the funds transferred under Subsection (4)(a).

(5) The Division of Finance shall notify the Business, Labor, and Economic Development Interim Committee by no later than the committee's November interim meeting:

(a) that the transfers required under Subsection (4) have been made; and

(b) the amount of each transfer required under Subsection (4).

(6) When moneys obligated under Subsection (3) are no longer obligated under the Capital Access Act, the state treasurer shall transfer the moneys including any interest on the moneys to the corporation.