

**INDUSTRIAL ASSISTANCE FUND
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Beverly Ann Evans

This act modifies the qualifications for applicants to receive financial assistance from the Industrial Assistance Fund, including applicant companies creating an economic impediment. This act provides for grants to be made from the fund, requires agreements with specific terms and conditions between the administrator of the fund and successful applicants, and makes certain technical changes.

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

AMENDS:

9-2-1202, as last amended by Chapter 242, Laws of Utah 2000

9-2-1203, as last amended by Chapter 95, Laws of Utah 2000

9-2-1204, as last amended by Chapter 242, Laws of Utah 2000

9-2-1205, as last amended by Chapter 242, Laws of Utah 2000

9-2-1205.5, as enacted by Chapter 242, Laws of Utah 2000

9-2-1207, as last amended by Chapter 242, Laws of Utah 2000

ENACTS:

9-2-1205.1, Utah Code Annotated 1953

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

Section 1. Section **9-2-1202** is amended to read:

9-2-1202. Definitions.

As used in this part:

(1) "Administrator" means the executive director of the Department of Community and Economic Development or the executive 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) "Economically disadvantaged rural area" means a geographic area designated by the board under Section 9-2-1207.

(5) "Fund" means the restricted account known as the Industrial Assistance Fund created in Section 9-2-1203.

(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) "Targeted industry" means an industry or group of industries targeted by the board, under Section 9-2-1207, for economic development in the state.

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

9-2-1203. Industrial Assistance Fund created.

(1) 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.

(2) The fund shall be administered by the administrator under the policy direction of the board. [~~Interest accrued from investment of monies in the fund shall remain in the fund.~~]

(3) The administrator may hire appropriate support staff.

(4) The cost of administering the fund shall be paid from monies in the fund.

(5) Interest accrued from investment of monies in the fund shall remain in the fund.

Section 3. Section **9-2-1204** is amended to read:

9-2-1204. Loans, grants, and assistance -- Repayment -- Earned credits.

(1) (a) A company that qualifies under Section 9-2-1205 may receive loans, grants, or other financial assistance from the fund for expenses related to establishment, relocation, or development of industry in Utah.

(b) A company creating an economic impediment that qualifies under Section 9-2-1205.5

may in accordance with this part receive loans, grants, or other financial assistance from the fund 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.

(2) (a) Subject to Subsection (2)(b), the administrator [~~shall have the~~] has authority to determine the structure, amount, and nature of any loan, grant, or other financial assistance from the fund.

(b) [~~The form of financial assistance determined~~] 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 [~~rate of 10%~~] charge as negotiated by the administrator.

(c) Payments resulting from grants awarded from the fund 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 fund 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; and
- (C) other events and activities that occur as a result of the fund [~~loan~~] 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 fund loan [~~that is issued~~] 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; and
- (C) other events and activities that occur as a result of the fund ~~[loan]~~ assistance.

(4) (a) ~~[If loan repayments are in cash, the repayments]~~ A cash loan repayment or other cash recovery from a company receiving assistance under this section, including interest, shall be deposited~~[, including any interest,]~~ into the fund.

(b) ~~[If the repayments are in the form of credits as provided in Subsection (3), the]~~ 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) At the end of each fiscal year, after the transfer of surplus General Fund revenues has been made to the Budget Reserve Account as provided in Section 63-38-2.5, any additional unrestricted, undesignated General Fund balance~~[, except the first \$10,000,000 of additional unrestricted, undesignated General Fund balance on June 30, 1992,]~~ shall be earmarked to the Industrial Assistance Fund in an amount equal to any credit that has accrued under this part.

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

Section 4. Section **9-2-1205** is amended to read:

9-2-1205. Qualification for assistance.

(1) Except as provided in Section 9-2-1205.5, the administrator shall determine which industries, companies, and individuals qualify to receive monies from the fund. Except as provided by Subsection (2), to qualify for financial assistance from the fund, an applicant shall:

(a) demonstrate to the satisfaction of the administrator that the applicant will expend funds in Utah with employees, vendors [and], subcontractors, or other businesses in an amount proportional with monies provided from the fund at a minimum ratio of ~~[5-7]~~ 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 that the applicant will expend at~~

least \$10,000,000 annually in Utah over the base level of an applicant's prior year's expenditures in the state;]

~~[(c)]~~ (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 ~~[assistance]~~ loan provided by the fund; and

~~[(d)]~~ (c) satisfy other criteria the administrator considers appropriate.

(2) (a) The administrator may exempt an applicant from ~~[either]~~ the requirements of Subsection (1)(a) or (1)(b)~~[, or both,]~~ 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; or

~~[(ii) the applicant is solely owned by or is a cooperative consisting solely of persons who reside in an economically disadvantaged rural area; or]~~

~~[(iii)]~~ (ii) the applicant is part of a targeted industry.

(b) The administrator may not exempt the applicant from the requirement under Subsection 9-2-1204(2)(b) that the loan ~~[or financial assistance]~~ be structured so that the repayment or return to the state equals at least the amount of the assistance together with an annual interest ~~[rate of 10%]~~ charge.

(3) The administrator shall:

(a) for applicants not described in Subsection (2)(a)~~[(ii)]~~:

(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)~~[(ii) who are cooperatives]~~, make findings as to whether the economic activities of each applicant has resulted in ~~[a reduction in the federal poverty rate]~~ 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) for applicants described in Subsection (2)(a)(ii) who are not cooperatives, make~~

findings as to whether the economic activities of each applicant has resulted in the creation of new jobs on a per capita basis, instead of a set standard, in the economically disadvantaged rural area in which the applicant is located;]

~~[(d)]~~ (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 9-2-1206; and

~~[(e)]~~ (d) make funding decisions based upon appropriate findings and compliance.

Section 5. Section **9-2-1205.1** is enacted to read:

9-2-1205.1. 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.

Section 6. Section **9-2-1205.5** is amended to read:

9-2-1205.5. Financial assistance to companies that create economic impediments.

(1) (a) The administrator may provide monies from the fund 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 fund, 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 [~~and~~], subcontractors, or other businesses in an amount proportional with monies provided from the fund at a minimum ratio of [5:7] 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) will expend at least \$10,000,000 annually in Utah over the base level of the company creating the economic impediment's prior year's expenditures in the state; and]~~

~~[(C)]~~ (B) can sustain economic activity in the state sufficient to repay, by means of cash or appropriate credits, the [~~assistance~~] loan provided by the fund; 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) [~~or (1)(b)(i)(B), or both,~~] 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 9-2-1204(2)(b) that the loan [~~or financial assistance~~] be structured so that the repayment or return to the state equals at least the amount of the assistance together with an annual interest [~~rate of 10%~~] 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 9-2-1206 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.

Section 7. Section **9-2-1207** is amended to read:

9-2-1207. Annual board policy considerations.

(1) [~~For purposes of this part, the~~] The board shall determine annually which industries or groups of industries shall be targeted industries as defined in Section 9-2-1202.

(2) In designating an economically disadvantaged rural area[~~-(a)~~], the board shall consider the average agricultural and nonagricultural wage, personal income, unemployment, and employment in the area[~~-and~~].

[~~(b)~~] (3) In evaluating the economic impact of applications for assistance, the board [may] shall use an econometric cost-benefit model or models adopted by the Governor's Office of Planning 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 9-2-1205(1)(a) or 9-2-1205.5(1)(b)(i)(A).