

1 **INDUSTRIAL ASSISTANCE FUND**

2 **AMENDMENTS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David Clark**

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7 **LONG TITLE**

8 **General Description:**

9 This bill modifies and enacts provisions related to the Industrial Assistance Fund.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides a definition for economic opportunities;

13 ▶ provides that up to 20% of the monies in the Industrial Assistance Fund may be  
14 used for economic opportunities; and

15 ▶ provides qualifications for entities seeking Industrial Assistance Fund monies for  
16 the financing of economic opportunities.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **9-2-1202**, as last amended by Chapter 14, Laws of Utah 2003

24 **9-2-1203**, as last amended by Chapter 14, Laws of Utah 2003

25 **9-2-1204**, as last amended by Chapters 14 and 88, Laws of Utah 2003

26 **9-2-1205**, as last amended by Chapters 14 and 291, Laws of Utah 2003

27 **9-2-1205.5**, as last amended by Chapter 14, Laws of Utah 2003



28 ENACTS:

29 **9-2-1205.8**, Utah Code Annotated 1953

30 REPEALS:

31 **9-2-1206**, as renumbered and amended by Chapter 241, Laws of Utah 1992



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

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

35 **9-2-1202. Definitions.**

36 As used in this part:

37 (1) "Administrator" means the executive director of the Department of Community and  
38 Economic Development or the executive director's designee.

39 (2) "Board" means the Board of Business and Economic Development.

40 (3) "Company creating an economic impediment" means a company that discourages  
41 economic development within a reasonable radius of its location because of:

42 (a) odors;

43 (b) noise;

44 (c) pollution;

45 (d) health hazards; or

46 (e) other activities similar to those described in Subsections (3)(a) through (d).

47 (4) "Economic opportunities" means unique business situations or community  
48 circumstances which lend themselves to the furtherance of the economic interests of the state  
49 by providing a catalyst or stimulus to the growth or retention, or both, of commerce and  
50 industry in the state.

51 [~~4~~] (5) "Economically disadvantaged rural area" means a geographic area designated  
52 by the board under Section 9-2-1207.

53 [~~5~~] (6) "Fund" means the restricted account known as the Industrial Assistance Fund  
54 created in Section 9-2-1203.

55 [~~6~~] (7) "Replacement company" means a company locating its business or part of its  
56 business in a location vacated by a company creating an economic impediment.

57 [~~7~~] (8) "Targeted industry" means an industry or group of industries targeted by the  
58 board, under Section 9-2-1207, for economic development in the state.

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

60 **9-2-1203. Industrial Assistance Fund created.**

61 (1) There is created within the General Fund a restricted account known as the  
62 Industrial Assistance Fund of which:

- 63 (a) up to 50% shall be used in economically disadvantaged rural areas[-]; and
- 64 (b) up to 20% may be used to take timely advantage of economic opportunities as they
- 65 arise.

66 (2) The fund shall be administered by the administrator under the policy direction of  
67 the board.

68 (3) The administrator may hire appropriate support staff.

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

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

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

72 **9-2-1204. Loans, grants, and assistance -- Repayment -- Earned credits.**

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

76 (b) A company creating an economic impediment that qualifies under Section  
77 9-2-1205.5 may in accordance with this part receive loans, grants, or other financial assistance  
78 from the fund for the expenses of the company creating an economic impediment related to:

- 79 (i) relocation to a rural area in Utah of the company creating an economic impediment;
- 80 and
- 81 (ii) the siting of a replacement company.

82 (c) An entity offering an economic opportunity that qualifies under Section 9-2-1205.8  
83 may:

- 84 (i) receive loans, grants, or other financial assistance from the fund for expenses related
- 85 to the establishment, relocation, retention, or development of industry in the state; and
- 86 (ii) include infrastructure or other economic development precursor activities that act
- 87 as a catalyst and stimulus for economic activity likely to lead to the maintenance or
- 88 enlargement of the state's tax base.

89 (2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the

90 structure, amount, and nature of any loan, grant, or other financial assistance from the fund.

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

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

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

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

102 (A) the number of Utah jobs created;

103 (B) the increased economic activity in Utah; ~~h~~ **[and]** OR ~~h~~

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

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

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

110 (A) the number of Utah jobs created;

111 (B) the increased economic activity in Utah; ~~h~~ **[and]** OR ~~h~~

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

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

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

118 (5) (a) At the end of each fiscal year, after the transfer of surplus General Fund  
119 revenues has been made to the General Fund Budget Reserve Account as provided in Section  
120 63-38-2.5, any additional unrestricted, undesignated General Fund balance shall be earmarked

121 to the Industrial Assistance Fund in an amount equal to any credit that has accrued under this  
122 part.

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

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

126 **9-2-1205. Qualification for assistance.**

127 (1) Except as provided in Section 9-2-1205.5 or Section 9-2-1205.8, the administrator  
128 shall determine which industries, companies, and individuals qualify to receive monies from  
129 the fund. Except as provided by Subsection (2), to qualify for financial assistance from the  
130 fund, an applicant shall:

131 (a) demonstrate to the satisfaction of the administrator that the applicant will expend  
132 funds in Utah with employees, vendors, subcontractors, or other businesses in an amount  
133 proportional with monies provided from the fund at a minimum ratio of 2 to 1 per year or other  
134 more stringent requirements as established from time to time by the board for a minimum  
135 period of five years beginning with the date the loan or grant was approved;

136 (b) demonstrate to the satisfaction of the administrator the applicant's ability to sustain  
137 economic activity in the state sufficient to repay, by means of cash or appropriate credits, the  
138 loan provided by the fund; and

139 (c) satisfy other criteria the administrator considers appropriate.

140 (2) (a) The administrator may exempt an applicant from the requirements of Subsection  
141 (1)(a) or (1)(b) if:

142 (i) the financial assistance is provided to an applicant for the purpose of locating all or  
143 any portion of its operations to an economically disadvantaged rural area;

144 (ii) the applicant is part of a targeted industry; ~~or~~

145 (iii) the applicant is a quasi-public corporation organized under Title 16, Chapter 6a,  
146 Utah Revised Nonprofit Corporation Act, or Title 63E, Chapter 2, Independent Corporations  
147 Act, and its operations, as demonstrated to the satisfaction of the administrator, will provide  
148 significant economic stimulus to the growth of commerce and industry in the state[-]; or

149 (iv) the applicant is an entity offering an economic opportunity under Section  
150 9-2-1205.8.

151 (b) The administrator may not exempt the applicant from the requirement under

152 Subsection 9-2-1204(2)(b) that the loan be structured so that the repayment or return to the  
153 state equals at least the amount of the assistance together with an annual interest charge.

154 (3) The administrator shall:

155 (a) for applicants not described in Subsection (2)(a):

156 (i) make findings as to whether or not each applicant has satisfied each of the  
157 conditions set forth in Subsection (1); and

158 (ii) monitor the continued compliance by each applicant with each of the conditions set  
159 forth in Subsection (1) for five years;

160 (b) for applicants described in Subsection (2)(a), make findings as to whether the  
161 economic activities of each applicant has resulted in the creation of new jobs on a per capita  
162 basis in the economically disadvantaged rural area or targeted industry in which the applicant is  
163 located;

164 (c) monitor the compliance by each applicant with the provisions of any contract or  
165 agreement entered into between the applicant and the state as provided in Section [~~9-2-1206~~  
166 9-2-1205.1]; and

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

168 Section 5. Section **9-2-1205.5** is amended to read:

169 **9-2-1205.5. Financial assistance to companies that create economic impediments.**

170 (1) (a) The administrator may provide monies from the fund to a company creating an  
171 economic impediment if that company:

172 (i) applies to the administrator;

173 (ii) relocates to a rural area in Utah; and

174 (iii) meets the qualifications of Subsection (1)(b).

175 (b) Except as provided by Subsection (2), to qualify for financial assistance from the  
176 fund, a company creating an economic impediment shall:

177 (i) demonstrate to the satisfaction of the administrator that the company creating an  
178 economic impediment, its replacement company, or in the aggregate the company creating the  
179 economic impediment and its replacement company:

180 (A) will expend funds in Utah with employees, vendors, subcontractors, or other  
181 businesses in an amount proportional with monies provided from the fund at a minimum ratio  
182 of 2 to 1 per year or other more stringent requirements as established from time to time by the

183 board for a minimum period of five years beginning with the date the loan or grant was  
184 approved; and

185 (B) can sustain economic activity in the state sufficient to repay, by means of cash or  
186 appropriate credits, the loan provided by the fund; and

187 (ii) satisfy other criteria the administrator considers appropriate.

188 (2) (a) The administrator may exempt a company creating an economic impediment  
189 from the requirements of Subsection (1)(b)(i)(A) if:

190 (i) the financial assistance is provided to a company creating an economic impediment  
191 for the purpose of locating all or any portion of its operations to an economically disadvantaged  
192 rural area; or

193 (ii) its replacement company is part of a targeted industry.

194 (b) The administrator may not exempt a company creating an economic impediment  
195 from the requirement under Subsection 9-2-1204(2)(b) that the loan be structured so that the  
196 repayment or return to the state equals at least the amount of the assistance together with an  
197 annual interest charge.

198 (3) The administrator shall:

199 (a) make findings as to whether or not a company creating an economic impediment,  
200 its replacement company, or both, have satisfied each of the conditions set forth in Subsection  
201 (1);

202 (b) monitor the compliance by a company creating an economic impediment, its  
203 replacement company, or both, with:

204 (i) each of the conditions set forth in Subsection (1); and

205 (ii) any contract or agreement under Section [~~9-2-1206~~] 9-2-1205.1 entered into  
206 between:

207 (A) the company creating an economic impediment; and

208 (B) the state; and

209 (c) make funding decisions based upon appropriate findings and compliance.

210 Section 6. Section **9-2-1205.8** is enacted to read:

211 **9-2-1205.8. Financial assistance to entities offering economic opportunities.**

212 (1) Subject to the duties and powers of the board under Section 9-2-204, the  
213 administrator may provide monies from the fund to an entity offering an economic opportunity

214 if that entity:

215 (a) applies to the administrator; and

216 (b) meets the qualifications of Subsection (2).

217 (2) The applicant shall:

218 (a) demonstrate to the satisfaction of the administrator the nature of the economic

219 opportunity and the related benefit to the economic well-being of the state by providing

220 evidence documenting the logical and compelling linkage, either direct or indirect, between the

221 expenditure of monies necessitated by the economic opportunity and the likelihood that the

222 state's tax base will be maintained or enlarged;

223 (b) demonstrate how the funding request will act in concert with other state, federal, or

224 local agencies to achieve the economic benefit;

225 (c) demonstrate how the funding request will act in concert with free market principles;

226 (d) satisfy other criteria the administrator considers appropriate; and

227 (e) be either:

228 (i) an entity whose purpose is to exclusively or substantially promote, develop, or

229 maintain the economic welfare and prosperity of the state as a whole, regions of the state, or

230 specific components of the state; or

231 (ii) a company or individual that does not otherwise qualify under Section 9-2-1205.

232 (3) Subject to the duties and powers of the board under Section 9-2-204, the

233 administrator shall:

234 (a) make findings as to whether an applicant has satisfied each of the conditions set

235 forth in Subsection (2);

236 (b) establish benchmarks and timeframes in which progress toward the completion of

237 the agreed upon activity is to occur;

238 (c) monitor compliance by an applicant with any contract or agreement entered into by

239 the applicant and the state as provided by Section 9-2-1205.1; and

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

241 **Section 7. Repealer.**

242 This bill repeals:

243 Section **9-2-1206, Agreements.**



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**Legislative Review Note**

as of 12-29-03 2:58 PM

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note****Industrial Assistance Fund Amendments***19-Jan-04***Bill Number HB0075***9:57 AM*

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**State Impact**

Passage of this bill could potentially broaden the use of the Industrial Assistance Fund resulting in increased General Fund set asides over time. These would be offset to a certain extent by increased economic activity to the State.

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**Individual and Business Impact**

Eligible businesses could apply for grants based on increased economic activity to the state. Grant levels would be dependent on the economic benefit created.

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**Office of the Legislative Fiscal Analyst**