

ECONOMIC INCENTIVE REVISIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Ron Bigelow

LONG TITLE

General Description:

This bill modifies procedures, requirements, and economic incentives relating to certain new economic development projects in Utah.

Highlighted Provisions:

This bill:

- ▶ reenacts and modifies statutes governing the Governor's Office of Economic Development's process and criteria for granting economic incentives to business entities for new commercial projects in Utah;
- ▶ replaces economic incentives in the form of cash payments with economic incentives in the form of tax credits to business entities that qualify;
- ▶ requires certain reports to legislative interim committees and details their contents;
- ▶ requires a study by the Utah Tax Review Commission and details its requirements;
- ▶ repeals conflicting sections contained in existing law; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date and provides for retrospective operation.

Utah Code Sections Affected:

ENACTS:

59-7-614.2, Utah Code Annotated 1953

59-10-1107, Utah Code Annotated 1953

- 30 **63M-1-2401**, Utah Code Annotated 1953
- 31 **63M-1-2402**, Utah Code Annotated 1953
- 32 **63M-1-2403**, Utah Code Annotated 1953
- 33 **63M-1-2404**, Utah Code Annotated 1953
- 34 **63M-1-2405**, Utah Code Annotated 1953
- 35 **63M-1-2406**, Utah Code Annotated 1953
- 36 **63M-1-2407**, Utah Code Annotated 1953
- 37 **63M-1-2408**, Utah Code Annotated 1953

38 REPEALS:

- 39 **63-38f-1301**, as renumbered and amended by Laws of Utah 2005, Chapter 148
- 40 **63-38f-1302**, as renumbered and amended by Laws of Utah 2005, Chapter 148
- 41 **63-38f-1303**, as last amended by Laws of Utah 2005, Chapter 3 and renumbered and
- 42 amended by Laws of Utah 2005, Chapter 148
- 43 **63-38f-1304**, as last amended by Laws of Utah 2006, Chapter 52
- 44 **63-38f-1305**, as last amended by Laws of Utah 2006, Chapter 52
- 45 **63-38f-1306**, as renumbered and amended by Laws of Utah 2005, Chapter 148
- 46 **63-38f-1307**, as last amended by Laws of Utah 2006, Chapter 52
- 47 **63-38f-1308**, as renumbered and amended by Laws of Utah 2005, Chapter 148
- 48 **63-38f-1309**, as last amended by Laws of Utah 2005, Chapter 272 and renumbered and
- 49 amended by Laws of Utah 2005, Chapter 148
- 50 **63-38f-1701**, as enacted by Laws of Utah 2005, Chapter 272
- 51 **63-38f-1702**, as enacted by Laws of Utah 2005, Chapter 272
- 52 **63-38f-1703**, as enacted by Laws of Utah 2005, Chapter 272
- 53 **63-38f-1704**, as enacted by Laws of Utah 2005, Chapter 272
- 54 **63-38f-1705**, as enacted by Laws of Utah 2005, Chapter 272
- 55 **63-38f-1706**, as enacted by Laws of Utah 2005, Chapter 272

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

58 Section 1. Section **59-7-614.2** is enacted to read:

59 **59-7-614.2. Refundable economic development tax credit.**

60 (1) As used in this section:

61 (a) "Business entity" means a taxpayer that meets the definition of "business entity" as
62 defined in Section 63M-1-2403.

63 (b) "Office" means the Governor's Office of Economic Development.

64 (2) For taxable years beginning on or after January 1, 2008, a business entity may claim
65 a refundable tax credit for economic development.

66 (3) The tax credit under this section is the amount listed as the tax credit amount on the
67 tax credit certificate that the office issues to the business entity for the taxable year.

68 (4) (a) In accordance with any rules prescribed by the commission under Subsection
69 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under this
70 section if the amount of the tax credit exceeds the business entity's tax liability for a taxable
71 year.

72 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
73 commission may make rules providing procedures for making a refund to a business entity as
74 required by Subsection (4)(a).

75 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
76 Utah Tax Review Commission shall study the tax credit allowed by this section and make
77 recommendations to the Revenue and Taxation Interim Committee and the Workforce Services
78 and Community and Economic Development Interim Committee concerning whether the tax
79 credit should be continued, modified, or repealed.

80 (b) For purposes of the study required by this Subsection (5), the office shall provide
81 the following information to the Utah Tax Review Commission:

82 (i) the amount of tax credit that the office grants to each business entity for each
83 calendar year;

84 (ii) the criteria that the office uses in granting a tax credit;

85 (iii) the new state revenues generated by each business entity for each calendar year;

86 (iv) the information contained in the office's latest report to the Legislature under
87 Section 63M-1-2406; and

88 (v) any other information that the Utah Tax Review Commission requests.

89 (c) The Utah Tax Review Commission shall ensure that its recommendations under
90 Subsection (5)(a) include an evaluation of:

91 (i) the cost of the tax credit to the state;

92 (ii) the purpose and effectiveness of the tax credit; and

93 (iii) the extent to which the state benefits from the tax credit.

94 Section 2. Section **59-10-1107** is enacted to read:

95 **59-10-1107. Refundable economic development tax credit.**

96 (1) As used in this section:

97 (a) "Business entity" means a claimant, estate, or trust that meets the definition of
98 "business entity" as defined in Section 63M-1-2403.

99 (b) "Office" means the Governor's Office of Economic Development.

100 (2) For taxable years beginning on or after January 1, 2008, a business entity may claim
101 a refundable tax credit for economic development.

102 (3) The tax credit under this section is the amount listed as the tax credit amount on the
103 tax credit certificate that the office issues to the business entity for the taxable year.

104 (4) (a) In accordance with any rules prescribed by the commission under Subsection
105 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under this
106 section if the amount of the tax credit exceeds the business entity's tax liability for a taxable
107 year.

108 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
109 commission may make rules providing procedures for making a refund to a business entity as
110 required by Subsection (4)(a).

111 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
112 Utah Tax Review Commission shall study the tax credit allowed by this section and make
113 recommendations to the Revenue and Taxation Interim Committee and the Workforce Services

114 and Community and Economic Development Interim Committee concerning whether the tax
115 credit should be continued, modified, or repealed.

116 (b) For purposes of the study required by this Subsection (5), the office shall provide
117 the following information to the Utah Tax Review Commission:

118 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;

119 (ii) the criteria the office uses in granting a tax credit;

120 (iii) the new state revenues generated by each taxpayer for each calendar year;

121 (iv) the information contained in the office's latest report to the Legislature under

122 Section 63M-1-2406; and

123 (v) any other information that the Utah Tax Review Commission requests.

124 (c) The Utah Tax Review Commission shall ensure that its recommendations under
125 Subsection (5)(a) include an evaluation of:

126 (i) the cost of the tax credit to the state;

127 (ii) the purpose and effectiveness of the tax credit; and

128 (iii) the extent to which the state benefits from the tax credit.

129 Section 3. Section **63M-1-2401** is enacted to read:

130 **Part 24. Economic Development Incentives Act**

131 **63M-1-2401. Title.**

132 This part is known as the "Economic Development Incentives Act."

133 Section 4. Section **63M-1-2402** is enacted to read:

134 **63M-1-2402. Findings.**

135 (1) The Legislature finds that:

136 (a) to foster and develop industry in Utah is a public purpose necessary to assure
137 adequate employment for, and the welfare of, Utah's citizens and the growth of the state's
138 economy;

139 (b) Utah loses prospective high paying jobs, new economic growth, and corresponding
140 incremental new state and local revenues to competing states because of a wide variety of
141 competing economic incentives offered by those states; and

142 (c) economic development initiatives and interests of state and local economic
143 development officials should be aligned and united in the creation of higher paying jobs that will
144 lift the wage levels of the communities in which those jobs will be created.

145 (2) This part is enacted to:

146 (a) address the loss of prospective high paying jobs, the loss of new economic growth,
147 and the corresponding loss of incremental new state and local revenues by providing tax credits
148 to attract new commercial projects in economic development zones in the state; and

149 (b) provide a cooperative and unified working relationship between state and local
150 economic development efforts.

151 Section 5. Section **63M-1-2403** is enacted to read:

152 **63M-1-2403. Definitions.**

153 As used in this part:

154 (1) "Business entity" means a person that enters into an agreement with the office to
155 initiate a new commercial project in Utah that will qualify the person to receive a tax credit
156 under Section 59-7-614.2 or 59-10-1107.

157 (2) "Development zone" means an economic development zone created under Section
158 63M-1-2404.

159 (3) "High paying jobs" means the annual wages of employment positions in a business
160 entity that compare favorably against the average wage of a community in which the
161 employment positions will exist.

162 (4) (a) "New commercial project" means an economic development opportunity that
163 involves new or expanded industrial, manufacturing, distribution, or business services in Utah.

164 (b) "New commercial project" does not include retail business.

165 (5) "New incremental jobs" means employment positions that are:

166 (a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and

167 (b) created in addition to the baseline count of employment positions that existed within
168 the business entity before the new commercial project.

169 (6) "New state revenues" means:

- 170 (a) incremental new state sales and use tax revenues that a business entity pays under
171 Title 59, Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a
172 development zone;
- 173 (b) incremental new state tax revenues, if any, that a business entity pays as a result of a
174 new commercial project in a development zone under:
- 175 (i) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and
176 Information;
- 177 (ii) Title 59, Chapter 10, Part 2, Trusts and Estates;
178 (iii) Title 59, Chapter 10, Part 4, Withholding of Tax;
179 (iv) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
180 (v) a combination of Subsections (6)(b)(i) through (iv);
- 181 (c) incremental new state tax revenues paid as individual income taxes under Title 59,
182 Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by
183 employees of the new commercial project as evidenced by payroll records that indicate the
184 amount of employee income taxes withheld and transmitted to the State Tax Commission by the
185 business entity; or
- 186 (d) a combination of Subsections (6)(a) through (c).
- 187 (7) "Office" means the Governor's Office of Economic Development.
- 188 (8) "Tax credit" means an economic development tax credit created by Section
189 59-7-614.2 or 59-10-1107.
- 190 (9) "Tax credit amount" means the amount the office lists as a tax credit on a tax credit
191 certificate for a taxable year.
- 192 (10) "Tax credit certificate" means a certificate issued by the office that:
- 193 (a) lists the name of the applicant;
194 (b) lists the applicant's taxpayer identification number;
195 (c) lists the amount of tax credit that the office awards the applicant for the taxable
196 year; and
- 197 (d) may include other information as determined by the office.

198 Section 6. Section **63M-1-2404** is enacted to read:

199 **63M-1-2404. Creation of economic development zones -- Tax credits.**

200 (1) The office, with advice from the board, may create an economic development zone
201 in the state that satisfies all of the following requirements:

202 (a) the area is zoned commercial, industrial, manufacturing, business park, research
203 park, or other appropriate use in a community-approved master plan; and

204 (b) the request to create a development zone has been forwarded to the office after first
205 being approved by an appropriate local government entity that has committed or will commit to
206 provide local incentives.

207 (2) (a) By following the procedures and requirements of Title 63, Chapter 46a, Utah
208 Administrative Rulemaking Act, the office shall make rules establishing the conditions that a
209 business entity must meet to qualify for a tax credit under this part.

210 (b) The office shall ensure that those conditions include the following requirements:

211 (i) the new commercial project must be within the development zone;

212 (ii) the new commercial project includes direct investment within the geographic
213 boundaries of the development zone;

214 (iii) the new commercial project brings new incremental jobs to Utah;

215 (iv) the new commercial project includes significant capital investment, the creation of
216 high paying jobs, or significant purchases from Utah vendors and providers, or any combination
217 of these three economic factors;

218 (v) the new commercial project generates new state revenues; and

219 (vi) the business entity qualifying for the tax credit meets the requirements of Section
220 63M-1-2405.

221 (3) (a) The office, with advice from the board, may enter into an agreement with a
222 business entity authorizing a tax credit to a business entity that meets the standards established
223 under Subsection (2).

224 (b) The office may not authorize or commit to authorize a tax credit to a business entity
225 if that tax credit exceeds:

226 (i) 50% of the new state revenues from the business entity's new commercial project in
227 any given year; or

228 (ii) 30% of the new state revenues from the business entity's new commercial project
229 over the life of a new commercial project or 20 years, whichever is less.

230 (4) The office shall ensure that the agreement with the business entity that is described
231 in Subsection (3):

232 (a) details the requirements that the business entity must meet to qualify for a tax credit
233 under this part;

234 (b) specifies the maximum amount of tax credit that the business entity may earn for a
235 taxable year and over the life of the new commercial project;

236 (c) establishes the length of time the business entity may claim a tax credit;

237 (d) requires the business entity to retain records supporting its claim for a tax credit for
238 at least four years after the business entity claims a tax credit under this part; and

239 (e) requires the business entity to submit to audits for verification of the tax credit
240 claimed.

241 Section 7. Section **63M-1-2405** is enacted to read:

242 **63M-1-2405. Qualifications for tax credit -- Procedure.**

243 (1) The office shall certify a business entity's eligibility for a tax credit as provided in
244 this section.

245 (2) A business entity seeking to receive a tax credit shall provide the office with:

246 (a) an application for a tax credit certificate;

247 (b) documentation of the new state revenues from the business entity's new commercial
248 project that were paid during the preceding calendar year; and

249 (c) a document that expressly directs and authorizes the State Tax Commission to
250 disclose the business entity's returns and other information concerning the business entity that
251 would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal
252 Revenue Code, to the office.

253 (3) (a) The office shall submit the document described in Subsection (2)(c) to the State

254 Tax Commission.

255 (b) Upon receipt of the document described in Subsection (2)(c), the State Tax
256 Commission shall provide the office with the information requested by the office that the
257 business entity directed or authorized the State Tax Commission to provide to the office in the
258 document described in Subsection (2)(c).

259 (4) If, after review of the information provided by the State Tax Commission, the office
260 determines that the documentation provided by the business entity is inadequate to provide a
261 reasonable justification for authorizing a tax credit, the office shall either:

262 (a) deny the tax credit; or

263 (b) inform the business entity that the documentation was inadequate and ask the
264 business entity to submit new documentation.

265 (5) If after review of the information provided by the State Tax Commission, the office
266 determines that the documentation provided by the business entity provides reasonable
267 justification for authorizing a tax credit, the office shall, based upon the documentation:

268 (a) determine the amount of the tax credit to be granted to the business entity;

269 (b) issue a tax credit certificate to the business entity; and

270 (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.

271 (6) A business entity may not claim a tax credit unless the business entity has a tax
272 credit certificate issued by the office.

273 (7) (a) A business entity may claim a tax credit in the amount listed on the tax credit
274 certificate on its tax return.

275 (b) A business entity that claims a tax credit under this section shall retain the tax credit
276 certificate in accordance with Section 59-7-614.2 or 59-10-1107.

277 Section 8. Section **63M-1-2406** is enacted to read:

278 **63M-1-2406. Report to the Legislature.**

279 The office shall report annually to the Legislature's Workforce Services and Community
280 and Economic Development Interim Committee and the Utah Tax Review Commission
281 describing:

282 (1) its success in attracting new commercial projects to development zones under this
283 part and the corresponding increase in new incremental jobs;

284 (2) the estimated amount of tax credit commitments made by the office and the period
285 of time over which tax credits will be paid; and

286 (3) the economic impact on the state related to generating new state revenues and
287 providing tax credits under this part.

288 Section 9. Section **63M-1-2407** is enacted to read:

289 **63M-1-2407. Reports of new state revenues, partial rebates, and tax credits.**

290 (1) Before December 1 of each year, the office shall submit a report to the Governor's
291 Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the Division of
292 Finance identifying:

293 (a) (i) the total estimated amount of new state revenues created from new commercial
294 projects in the development zones; and

295 (ii) the estimated amount of new state revenues from new commercial projects in the
296 development zones that will be generated from:

297 (A) sales tax;

298 (B) income tax; and

299 (C) corporate franchise and income tax;

300 (b) (i) the total estimated amount of partial rebates as defined in Section 63M-1-2408
301 that the office projects will be required to be paid in the next fiscal year; and

302 (ii) the estimated amount of partial rebates as defined in Section 63M-1-2408 that are
303 attributable to:

304 (A) sales tax;

305 (B) income tax; and

306 (C) corporate franchise and income tax; and

307 (c) the total estimated amount of tax credits that the office projects that business
308 entities will qualify to claim under this part.

309 (2) By the first business day of each month, the office shall submit a report to the

310 Governor's Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the
311 Division of Finance identifying:

312 (a) each new agreement entered into by the office since the last report;

313 (b) the estimated amount of new state revenues that will be generated under each
314 agreement; and

315 (c) the estimated amount of tax credits that a business entity could qualify for under
316 each agreement.

317 Section 10. Section **63M-1-2408** is enacted to read:

318 **63M-1-2408. Transition clause -- Renegotiation of agreements -- Payment of**
319 **partial rebates.**

320 (1) As used in this section, "partial rebate" means an agreement between the office and
321 a business entity under which the state agrees to pay back to the business entity a portion of
322 new state revenues generated by a business entity's new commercial project.

323 (2) (a) Unless modified or renegotiated as provided in Subsection (2)(b), the Division of
324 Finance shall make partial rebate payments due under agreements entered into by the office
325 before May 5, 2008 as provided in this section.

326 (b) By January 1, 2009, the office shall:

327 (i) contact each business entity with whom the office entered into an agreement under
328 former Section 63-38f-1304 or 63-38f-1704; and

329 (ii) subject to the limits established in Subsection 63M-1-2404(3)(b), seek to modify
330 those agreements for the sole purpose of providing the incentives in the form of tax credits
331 under this part rather than partial rebates.

332 (c) The office shall:

333 (i) for each modified agreement granting tax credits, follow the procedures and
334 requirements of Section 63M-1- 2405;

335 (ii) for each agreement that still requires the state to pay partial rebates to the business
336 entity, follow the procedures and requirements of this section; and

337 (iii) provide a report to the Executive Appropriations Committee and the Legislative

338 Fiscal Analyst by December 1, 2008, about the progress of its efforts to modify agreements
339 reached before May 5, 2008.

340 (3) (a) There is created a restricted account in the General Fund known as the
341 Economic Incentive Restricted Account.

342 (b) The account shall consist of monies transferred into the account by the Division of
343 Finance from the General Fund as provided in this section.

344 (c) The Division of Finance shall make payments from the account as required by this
345 section.

346 (4) (a) Each business entity seeking a partial rebate shall follow the procedures and
347 requirements of this Subsection (4) to obtain a partial rebate.

348 (b) Within 90 days of the end of each calendar year, a business entity seeking a partial
349 rebate shall:

350 (i) provide the office with documentation of the new state revenues that the business
351 entity generated during the preceding calendar year; and

352 (ii) ensure that the documentation includes:

353 (A) the types of taxes and corresponding amounts of taxes paid directly to the State
354 Tax Commission; and

355 (B) the sales taxes paid to Utah vendors and suppliers that were indirectly paid to the
356 State Tax Commission.

357 (c) The office shall:

358 (i) audit or review the documentation for accuracy;

359 (ii) based upon its analysis of the documentation, determine the amount of partial
360 rebates that the business entity earned under the agreement; and

361 (iii) submit to the Division of Finance:

362 (A) a request for payment of partial rebates to the business entity;

363 (B) the name and address of the payee; and

364 (C) any other information requested by the Division of Finance.

365 (5) Upon receipt of a request for payment of partial rebates from the office, the Division

366 of Finance shall:

367 (a) transfer from the General Fund to the restricted account the amount contained in the
368 request for payment of partial rebates after reducing the amount transferred by any
369 unencumbered balances in the restricted account; and

370 (b) notwithstanding Subsections 51-5-3(23)(b) and 63-38-9(4)(c), after receiving a
371 request for payment of partial rebates and making the transfer required by Subsection (5)(a), the
372 Division of Finance shall pay the partial rebates from the account.

373 Section 11. **Repealer.**

374 This bill repeals:

375 Section **63-38f-1301, Purpose.**

376 Section **63-38f-1302, Definitions.**

377 Section **63-38f-1303, Creation of development zones.**

378 Section **63-38f-1304, Development incentives.**

379 Section **63-38f-1305, Qualifications for credits and rebates.**

380 Section **63-38f-1306, Payment procedure.**

381 Section **63-38f-1307, Office's authority.**

382 Section **63-38f-1308, Coordination with Industrial Assistance Fund.**

383 Section **63-38f-1309, Establishment of the Economic Incentive Restricted Account.**

384 Section **63-38f-1701, Title.**

385 Section **63-38f-1702, Findings.**

386 Section **63-38f-1703, Definitions.**

387 Section **63-38f-1704, Creation of economic development zones -- Incentives.**

388 Section **63-38f-1705, Qualifications for rebates -- Payment procedure.**

389 Section **63-38f-1706, Office's authority -- Report to Legislature.**

390 Section 12. **Effective date -- Retrospective operation.**

391 (1) Subject to Subsection (2), this bill takes effect on May 5, 2008.

392 (2) The amendments to Sections 59-7-614.2 and 59-10-1107 have retrospective
393 operation for taxable years beginning on or after January 1, 2008.

