

**ECONOMIC INCENTIVE REVISIONS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions governing economic incentives to companies and individuals for new commercial projects in Utah.

**Highlighted Provisions:**

This bill:

- ▶ places financial limits on the agreements that the Governor's Office of Economic Development may enter into;
- ▶ voids any agreement that violates those financial limits;
- ▶ requires legislative appropriation from the Economic Incentive Restricted Account to the Division of Finance before partial rebates may be made;
- ▶ requires the Governor's Office of Economic Development to submit the total amount of partial rebates required to be paid in a fiscal year to the governor for inclusion in the governor's budget and to the Legislature; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



- 28           **63-38f-1304**, as last amended by Laws of Utah 2006, Chapter 52
- 29           **63-38f-1306**, as renumbered and amended by Laws of Utah 2005, Chapter 148
- 30           **63-38f-1307**, as last amended by Laws of Utah 2006, Chapter 52
- 31           **63-38f-1309**, as last amended by Laws of Utah 2005, Chapter 272 and renumbered and
- 32 amended by Laws of Utah 2005, Chapter 148
- 33           **63-38f-1705**, as enacted by Laws of Utah 2005, Chapter 272

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

36           Section 1. Section **63-38f-1304** is amended to read:

37           **63-38f-1304. Development incentives.**

38           (1) ~~[The]~~ (a) Subject to the limits provided in Subsections (1)(b) and (c), the office,  
39 with advice from the board, may enter into agreements providing for partial rebates of new  
40 state revenues generated by new commercial projects to companies or individuals that create  
41 new economic growth within the development zone.

42           (b) The office may not enter into agreements with companies or individuals under  
43 Subsection (1) that authorize partial rebates of new state revenues if the estimated partial  
44 rebates based upon the agreements entered into in any fiscal year would require the state to:

45           (i) commit to pay more than \$10,000,000 in estimated partial rebates based upon all of  
46 the new agreements entered into during that fiscal year;

47           (ii) commit to pay more than \$3,000,000 in estimated partial rebates to any one  
48 company or individual in the fiscal year; or

49           (iii) commit to pay cumulative estimated partial rebates totaling more than  
50 \$150,000,000 in any fiscal year.

51           (c) The office shall include in the agreement notice to the company or individual that  
52 partial rebates earned will be paid by the July 1 of the second year after the calendar year in  
53 which the partial rebates were earned.

54           (2) In no event may the partial rebates be in excess of 50% of the new state revenues in  
55 any given year.

56           (3) (a) The partial rebates may not exceed 30% of the new state revenues generated  
57 over the life of a new commercial project.

58           (b) For purposes of this part, the life of a new commercial project is limited to 20

59 years.

60 (4) Partial rebates are subject to any other limitations adopted by board rule made in  
61 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

62 (5) Any agreement entered into by the office that violates this section is void.

63 Section 2. Section **63-38f-1306** is amended to read:

64 **63-38f-1306. Payment procedure.**

65 [~~Any payment of partial rebates of new state revenues shall be made in accordance with~~  
66 ~~procedures adopted by the office with the advice of the board, to include the following:~~]

67 (1) Within 60 days of the end of each calendar year, the office shall submit a list of  
68 companies and individuals that might have qualified for a partial rebate to the State Tax  
69 Commission.

70 (2) Within 90 days of the end of each calendar year, the State Tax Commission shall  
71 submit to the office the amounts of taxes paid directly to the State Tax Commission by the  
72 company or individual.

73 [~~(1) within~~] (3) Within 90 days of the end of each calendar year, [any] a company or  
74 individual that has entered into an agreement with the office under this part shall provide the  
75 office with documentation of the new state revenues it claims to have generated during that  
76 calendar year[; the documentation to include] including:

77 (a) the types of taxes and corresponding amounts of taxes paid directly to the Utah  
78 State Tax Commission[;]; and

79 (b) sales taxes paid to Utah vendors and suppliers that are indirectly paid to the Utah  
80 State Tax Commission[;].

81 [~~(2) the~~] (4) The office shall:

82 (a) audit or review the documentation[; make a determination of] and determine the  
83 amount of partial rebates earned under the agreement[;]; and [forward an office-approved  
84 request for payment of that amount to the Division of Finance, together with information  
85 regarding the name and address of the payee and any other information reasonably requested by  
86 the office; and]

87 [~~(3) the Division of Finance shall pay a partial rebate from the Economic Incentive~~  
88 ~~Restricted Account created in Section 63-38f-1309 upon receipt of documentation and the~~  
89 ~~office-approved request from the office under Subsection (2).]~~

90 (b) submit the State Tax Commission information from Subsection (2) and the office's  
91 calculation of the total amount of partial rebates required to be paid from the Economic  
92 Incentive Restricted Account created in Section 63-38f-1309 to:

- 93 (i) the governor for inclusion in the governor's budget;  
94 (ii) the chairs of the Legislature's Executive Appropriations Committee; and  
95 (iii) the Office of the Legislative Fiscal Analyst.

96 Section 3. Section **63-38f-1307** is amended to read:

97 **63-38f-1307. Office's authority.**

98 (1) The office, with the advice of the board and within the limitations of this part, may,  
99 subject to the limits established in Section 63-38f-1304, determine:

- 100 (a) the structure and amount of any partial rebates offered under this part;  
101 (b) the economic impacts and job creation necessary to qualify for the incentive; and  
102 (c) the other terms and conditions of any agreement entered into under this part.

103 (2) In reviewing claims for partial rebates of new state revenues, the office may accept:

- 104 (a) as the amount of employee income taxes paid, the amount of employee income  
105 taxes withheld and transmitted to the Utah State Tax Commission as evidenced by payroll  
106 records rather than adjusting for the difference between taxes withheld and taxes actually paid  
107 through filing by employees' annual income tax statements; and

108 (b) as the amount of company income taxes paid, the amount of corporate franchise  
109 and income taxes estimated and transmitted to the Utah State Tax Commission as evidenced by  
110 quarterly payment records rather than adjusting for the difference between estimated taxes paid  
111 quarterly and taxes actually paid through the filing of the corporation's annual income tax  
112 statement.

113 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
114 board may make, amend, and repeal rules regarding the development zone and partial rebates  
115 offered within it, provided the rules are consistent with state and federal law.

116 Section 4. Section **63-38f-1309** is amended to read:

117 **63-38f-1309. Establishment of the Economic Incentive Restricted Account.**

118 (1) There is created a restricted account in the General Fund known as the Economic  
119 Incentive Restricted Account.

120 ~~[(2) The account shall be used to make payments as required under Sections~~

121 ~~63-38f-1306 and 63-38f-1705.~~]

122 [~~(3)~~] (2) (a) The Division of Finance shall transfer from the General Fund into the  
123 restricted account the amount estimated by the office from new state revenues needed to make  
124 the partial rebates as allowed in Sections 63-38f-1306 and 63-38f-1705.

125 (b) The amount transferred into the account shall be reduced by any unencumbered  
126 balances in the account.

127 [~~(4) Notwithstanding Subsections 51-5-3(23)(b) and 63-38-9(4)(c), after receiving a~~  
128 ~~request for payment, in accordance with Subsection 63-38f-1306(2) or 63-38f-1705(2),]~~

129 (3) (a) The Legislature may appropriate monies from the restricted account to the  
130 Division of Finance to make the partial rebate payments owed under the legal agreements  
131 entered into under Section 63-38f-1304.

132 (b) As authorized in the legislative appropriation from the restricted account or from  
133 monies appropriated to the division for that purpose from any other source, the Division of  
134 Finance shall pay the partial rebates as allowed in Section 63-38f-1306 or 63-38f-1705, from  
135 the account.

136 [~~(5)~~] (4) (a) [~~Prior to~~] Before the beginning of each fiscal year, the office shall notify  
137 the Governor's Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the  
138 Division of Finance of:

139 (i) the estimated amount of new state revenues created from economic growth in the  
140 development zones, the estimate detailed by the amounts from:

141 (A) sales tax;

142 (B) income tax; and

143 (C) corporate franchise and income tax; and

144 (ii) the estimated amount partial rebates projected to be paid in the upcoming fiscal  
145 year, the estimates detailed by the amounts from:

146 (A) sales tax;

147 (B) income tax; and

148 (C) corporate franchise and income tax.

149 (b) The office shall update the estimates required by Subsections [~~(5)~~] (4)(a)(i) and (ii)  
150 within 30 days of the signing of each new agreement entered into under this part or Title 63,  
151 Chapter 38f, Part 17, Economic Development Incentives Act.

152 Section 5. Section **63-38f-1705** is amended to read:

153 **63-38f-1705. Qualifications for rebates -- Payment procedure.**

154 (1) The office shall set standards to qualify for partial rebates under this part, subject to  
155 the following:

156 (a) the qualification criteria established in Subsections 63-38f-1305(1), (2), (3), (4),  
157 and (6); and

158 (b) only projects that include significant capital investment, the creation of high paying  
159 jobs, or significant purchases from Utah vendors and providers, or any combination of these  
160 three economic factors are eligible for partial rebates.

161 (2) A payment of partial rebates of new state revenues shall be made in accordance  
162 with [~~procedures adopted by the office, with advice from the board, to include~~] the payment  
163 procedures described in Section 63-38f-1306 as applied to partial rebates authorized under this  
164 part.

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**Legislative Review Note**  
**as of 1-28-08 11:04 AM**

**Office of Legislative Research and General Counsel**

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**S.B. 185 - Economic Incentive Revisions**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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