

**Senator Lyle W. Hillyard** proposes the following substitute bill:

**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.



26 **Utah Code Sections Affected:**

27 ENACTS:

28 **59-7-614.2**, Utah Code Annotated 1953

29 **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 REPEALS:

37 **63-38f-1301**, as renumbered and amended by Laws of Utah 2005, Chapter 148

38 **63-38f-1302**, as renumbered and amended by Laws of Utah 2005, Chapter 148

39 **63-38f-1303**, as last amended by Laws of Utah 2005, Chapter 3 and renumbered and  
40 amended by Laws of Utah 2005, Chapter 148

41 **63-38f-1304**, as last amended by Laws of Utah 2006, Chapter 52

42 **63-38f-1305**, as last amended by Laws of Utah 2006, Chapter 52

43 **63-38f-1306**, as renumbered and amended by Laws of Utah 2005, Chapter 148

44 **63-38f-1307**, as last amended by Laws of Utah 2006, Chapter 52

45 **63-38f-1308**, as renumbered and amended by Laws of Utah 2005, Chapter 148

46 **63-38f-1309**, as last amended by Laws of Utah 2005, Chapter 272 and renumbered and  
47 amended by Laws of Utah 2005, Chapter 148

48 **63-38f-1701**, as enacted by Laws of Utah 2005, Chapter 272

49 **63-38f-1702**, as enacted by Laws of Utah 2005, Chapter 272

50 **63-38f-1703**, as enacted by Laws of Utah 2005, Chapter 272

51 **63-38f-1704**, as enacted by Laws of Utah 2005, Chapter 272

52 **63-38f-1705**, as enacted by Laws of Utah 2005, Chapter 272

53 **63-38f-1706**, as enacted by Laws of Utah 2005, Chapter 272



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

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

57 **59-7-614.2. Refundable economic development tax credit.**58 (1) As used in this section:59 (a) "Business entity" means a taxpayer that meets the definition of "business entity" as  
60 defined in Section 63M-1-2403.61 (b) "Office" means the Governor's Office of Economic Development.62 (2) For taxable years beginning on or after January 1, 2008, a business entity may claim  
63 a refundable tax credit for economic development.64 (3) The tax credit under this section is the amount listed as the tax credit amount on the  
65 tax credit certificate that the office issues to the business entity for the taxable year.66 (4) (a) In accordance with any rules prescribed by the commission under Subsection  
67 (4)(b), the commission shall make a refund to a business entity that claims a tax credit under  
68 this section if the amount of the tax credit exceeds the business entity's tax liability for a  
69 taxable year.70 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
71 commission may make rules providing procedures for making a refund to a business entity as  
72 required by Subsection (4)(a).73 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the  
74 Utah Tax Review Commission shall study the tax credit allowed by this section and make  
75 recommendations to the Revenue and Taxation Interim Committee and the Workforce Services  
76 and Community and Economic Development Interim Committee concerning whether the tax  
77 credit should be continued, modified, or repealed.78 (b) For purposes of the study required by this Subsection (5), the office shall provide  
79 the following information to the Utah Tax Review Commission:80 (i) the amount of tax credit that the office grants to each business entity for each  
81 calendar year;82 (ii) the criteria that the office uses in granting a tax credit;83 (iii) the new state revenues generated by each business entity for each calendar year;84 (iv) the information contained in the office's latest report to the Legislature under  
85 Section 63M-1-2406; and86 (v) any other information that the Utah Tax Review Commission requests.87 (c) The Utah Tax Review Commission shall ensure that its recommendations under

88 Subsection (5)(a) include an evaluation of:

- 89 (i) the cost of the tax credit to the state;
- 90 (ii) the purpose and effectiveness of the tax credit; and
- 91 (iii) the extent to which the state benefits from the tax credit.

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

93 **59-10-1107. Refundable economic development tax credit.**

94 (1) As used in this section:

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

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

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

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

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

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

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

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

- 116 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;
- 117 (ii) the criteria the office uses in granting a tax credit;
- 118 (iii) the new state revenues generated by each taxpayer for each calendar year;

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

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

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

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

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

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

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

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

129 **63M-1-2401. Title.**

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

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

132 **63M-1-2402. Findings.**

133 (1) The Legislature finds that:

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

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

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

143 (2) This part is enacted to:

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

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

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

150 63M-1-2403. Definitions.

151 As used in this part:

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

155 (2) "Development zone" means an economic development zone created under Section  
156 63M-1-2404.

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

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

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

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

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

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

167 (6) "New state revenues" means:

168 (a) incremental new state sales and use tax revenues that a business entity pays under  
169 Title 59, Chapter 12, Sales and Use Tax Act, as a result of a new commercial project in a  
170 development zone;

171 (b) incremental new state tax revenues, if any, that a business entity pays as a result of  
172 a new commercial project in a development zone under:

173 (i) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and  
174 Information;

175 (ii) Title 59, Chapter 10, Part 2, Trusts and Estates;

176 (iii) Title 59, Chapter 10, Part 4, Withholding of Tax;

177 (iv) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

178 (v) a combination of Subsections (6)(b)(i) through (iv);

179 (c) incremental new state tax revenues paid as individual income taxes under Title 59,  
180 Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by

181 employees of the new commercial project as evidenced by payroll records from the business  
182 entity; or

183 (d) a combination of Subsections (6)(a) through (c).

184 (7) "Office" means the Governor's Office of Economic Development.

185 (8) "Tax credit" means an economic development tax credit created by Section  
186 59-7-614.2 or 59-10-1107.

187 (9) "Tax credit amount" means the amount the office lists as a tax credit on a tax credit  
188 certificate for a taxable year.

189 (10) "Tax credit certificate" means a certificate issued by the office that:

190 (a) lists the name of the applicant;

191 (b) lists the applicant's taxpayer identification number;

192 (c) lists the amount of tax credit that the office awards the applicant for the taxable  
193 year; and

194 (d) may include other information as determined by the office.

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

196 **63M-1-2404. Creation of economic development zones -- Tax credits.**

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

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

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

204 (2) (a) By following the procedures and requirements of Title 63, Chapter 46b,  
205 Administrative Procedures Act, the office shall set standards that a business entity must meet to  
206 qualify for a tax credit under this part.

207 (b) The office shall ensure that those standards include the following requirements:

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

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

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

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

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

216 (vi) the business entity qualifying for the tax credit meets the requirements of Section  
217 63M-1-2405.

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

221 (b) The office may not promise or authorize a tax credit to a business entity if that tax  
222 credit exceeds:

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

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

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

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

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

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

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

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

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

239 **63M-1-2405. Qualifications for tax credit -- Procedure.**

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

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



- 243 (a) an application for a tax credit certificate;  
244 (b) documentation of the new state revenues from the business entity's new commercial  
245 project that were paid during the preceding calendar year; and  
246 (c) a document that expressly directs and authorizes the State Tax Commission to  
247 disclose the business entity's returns and other information concerning the business entity that  
248 would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal  
249 Revenue Code, to the office.
- 250 (3) (a) The office shall submit the document described in Subsection (2)(c) to the State  
251 Tax Commission.
- 252 (b) Upon receipt of the document described in Subsection (2)(c), the State Tax  
253 Commission shall provide the office with the information requested by the office that the  
254 business entity directed or authorized the State Tax Commission to provide to the office in the  
255 document described in Subsection (2)(c).
- 256 (4) If, after review of the information provided by the State Tax Commission, the  
257 office determines that the documentation provided by the business entity is inadequate to  
258 provide a reasonable justification for authorizing a tax credit, the office shall either:
- 259 (a) deny the tax credit; or  
260 (b) inform the business entity that the documentation was inadequate and ask the  
261 business entity to submit new documentation.
- 262 (5) If after review of the information provided by the State Tax Commission, the office  
263 determines that the documentation provided by the business entity provides reasonable  
264 justification for authorizing a tax credit, the office shall, based upon the documentation:
- 265 (a) determine the amount of the tax credit to be granted to the business entity;  
266 (b) issue a tax credit certificate to the business entity no later than the last day of the  
267 business entity's taxable year; and  
268 (c) provide a duplicate copy of the tax credit certificate to the State Tax Commission.
- 269 (6) A business entity may not claim a tax credit unless the business entity has a tax  
270 credit certificate issued by the office.
- 271 (7) (a) A business entity may claim a tax credit in the amount listed on the tax credit  
272 certificate on its tax return.
- 273 (b) A business entity that claims a tax credit under this section shall retain the tax

274 credit certificate in accordance with Section 59-7-614.2 or 59-10-1107.

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

276 **63M-1-2406. Report to the Legislature.**

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

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

282 (2) the amount of tax credits promised and the period of time over which tax credits  
283 will be paid; and

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

286 Section 9. **Repealer.**

287 This bill repeals:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

303 Section 10. **Effective date -- Retrospective operation.**

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

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

---

---

**S.B. 185 1st Sub. (Green) - Economic Incentive Revisions**

**Fiscal Note**

2008 General Session

State of Utah

---

---

**State Impact**

Enactment of this bill will shift the revenue impact of the Economic Development Tax Increment Financing Program to the Education Fund in order to properly reflect the revenue credits in the source to which they accrue.

---

**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.

---