

ECONOMIC DEVELOPMENT INCENTIVES ACT

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: C. Brent Wallis

Senate Sponsor: Jerry W. Stevenson

Cosponsors:	Neil A. Hansen	Christine F. Watkins
Laura Black	Steven R. Mascaro	

LONG TITLE

General Description:

This bill modifies provisions of the Economic Development Incentives Act related to significant capital investment and requirements for receiving a tax credit under the act.

Highlighted Provisions:

This bill:

- ▶ defines "significant capital investment" for purposes of the Economic Development Incentives Act to be an amount of at least \$10,000,000 to purchase a capital asset or fixed asset; and

- ▶ requires an applicant for a tax credit under the act to provide the Governor's Office of Economic Development with documentation that it has satisfied the performance benchmarks required under the act, including significant capital investment, the creation of high paying jobs, significant purchases from Utah vendors or providers, or any combination of these economic factors.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30 **63M-1-2403**, as enacted by Laws of Utah 2008, Chapter 372

31 **63M-1-2405**, as enacted by Laws of Utah 2008, Chapter 372



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

34 Section 1. Section **63M-1-2403** is amended to read:

35 **63M-1-2403. Definitions.**

36 As used in this part:

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

40 (2) "Development zone" means an economic development zone created under Section
41 63M-1-2404.

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

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

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

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

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

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

52 (6) "New state revenues" means:

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

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

- 58 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 59 ~~[(i)]~~ (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability
- 60 and Information;
- 61 ~~[(ii)]~~ (iii) Title 59, Chapter 10, Part 2, Trusts and Estates;
- 62 ~~[(iii)]~~ (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or
- 63 ~~[(iv) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or]~~
- 64 ~~[(v)]~~ (v) a combination of Subsections (6)(b)(i) through (iv);
- 65 (c) incremental new state tax revenues paid as individual income taxes under Title 59,
- 66 Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information, by
- 67 employees of the new commercial project as evidenced by payroll records that indicate the
- 68 amount of employee income taxes withheld and transmitted to the State Tax Commission by
- 69 the business entity; or
- 70 (d) a combination of Subsections (6)(a) through (c).
- 71 (7) "Office" means the Governor's Office of Economic Development.
- 72 (8) "Significant capital investment" means an amount of at least \$10,000,000 to
- 73 purchase a capital asset or a fixed asset:
- 74 (a) with the primary purpose of the investment to increase a business entity's rate at
- 75 which it produces goods based on output per unit of labor;
- 76 (b) that represents an expansion of existing Utah operations; and
- 77 (c) that maintains or increases the business entity's existing Utah work force.
- 78 ~~[(8)]~~ (9) "Tax credit" means an economic development tax credit created by Section
- 79 59-7-614.2 or 59-10-1107.
- 80 ~~[(9)]~~ (10) "Tax credit amount" means the amount the office lists as a tax credit on a
- 81 tax credit certificate for a taxable year.
- 82 ~~[(10)]~~ (11) "Tax credit certificate" means a certificate issued by the office that:
- 83 (a) lists the name of the applicant;
- 84 (b) lists the applicant's taxpayer identification number;
- 85 (c) lists the amount of tax credit that the office awards the applicant for the taxable

86 year; and

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

88 Section 2. Section **63M-1-2405** is amended to read:

89 **63M-1-2405. Qualifications for tax credit -- Procedure.**

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

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

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

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

96 (c) a document that expressly directs and authorizes the State Tax Commission to
97 disclose the business entity's returns and other information concerning the business entity that
98 would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal
99 Revenue Code, to the office~~[-]; and~~

100 (d) documentation that the business entity has satisfied the performance benchmarks
101 outlined in the agreement described in Subsection 63M-1-2404(3)(a), including:

102 (i) significant capital investment;

103 (ii) the creation of high paying jobs;

104 (iii) significant purchases from Utah vendors and providers; or

105 (iv) any combination of Subsections (2)(d)(i), (ii), and (iii).

106 (3) (a) The office shall submit the document described in Subsection (2)(c) to the State
107 Tax Commission.

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

112 (4) If, after review of the information provided by the State Tax Commission, the
113 office determines that the documentation provided by the business entity is inadequate to

114 provide a reasonable justification for authorizing a tax credit, the office shall either:

115 (a) deny the tax credit; or

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

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

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

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

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

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

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

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