

HB0496S01 compared with HB0496

~~{deleted text}~~ shows text that was in HB0496 but was deleted in HB0496S01.

inserted text shows text that was not in HB0496 but was inserted into HB0496S01.

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Representative David Clark proposes the following substitute bill:

TECHNOLOGY AND LIFE SCIENCE ECONOMIC DEVELOPMENT ACT AND RELATED TAX CREDITS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Technology and Life Science Economic Development Act and provides for tax credits related to certain technology and life science companies.

Highlighted Provisions:

This bill:

- ▶ amends a nonrefundable income tax credit related to certain capital gain transactions;
- ▶ enacts a nonrefundable income tax credit related to the purchase of an ownership interest in certain business entities;
- ▶ ~~{amends a nonrefundable income}~~ enacts refundable tax ~~{credit related to certain~~

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~~capital gain transactions}~~ credits for certain business entities that generate an increase in state revenues;

- ▶ enacts the Technology and Life Science Economic Development Act, including:
 - defining terms;
 - granting rulemaking authority;
 - authorizing the Governor's Office of Economic Development to enter into an agreement with an eligible business entity that will generate increased state tax revenues within the state; and
 - establishing procedures to certify a tax credit;
- ▶ requires a report to and a study by the Workforce Services and Community and Economic Development Interim Committee and the Revenue and Taxation Interim Committee; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides for ~~{retrospective operation for a taxable year beginning on or after January 1, 2011}~~ effective dates.

Utah Code Sections Affected:

AMENDS:

59-10-1022, as enacted by Laws of Utah 2008, Chapter 389

ENACTS:

59-7-614.6, Utah Code Annotated 1953

59-10-1025, Utah Code Annotated 1953

59-10-1109, Utah Code Annotated 1953

63M-1-2901, Utah Code Annotated 1953

63M-1-2902, Utah Code Annotated 1953

63M-1-2903, Utah Code Annotated 1953

63M-1-2904, Utah Code Annotated 1953

63M-1-2905, Utah Code Annotated 1953

63M-1-2906, Utah Code Annotated 1953

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

Section 1. Section ~~{59-10-1022 is amended to read:~~

~~}{59-7-614.6 is enacted to read:~~

59-7-614.6. Refundable tax credit for certain business entities generating state revenue increases.

(1) As used in this section:

(a) "Eligible business entity" means a corporation that is an eligible business entity as defined in Section 63M-1-2902.

(b) "Eligible new state tax revenues" is as defined in Section 63M-1-2902.

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

(d) "Pass-through entity" is as defined in Section 59-10-1402.

(e) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(2) Subject to the other provisions of this section, an eligible business entity may:

(a) claim a refundable tax credit equal to the amount of eligible new state tax revenues generated by the eligible business entity; or

(b) if the eligible business entity is a pass-through entity, pass through to one or more pass-through entity taxpayers, in accordance with Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act, a refundable tax credit that the eligible business entity could otherwise claim under this section.

(3) The tax credit for an eligible business entity is the amount listed as the amount of eligible new state tax revenues generated by the eligible business entity on the tax credit certificate that the office issues to the eligible business entity for a taxable year.

(4) An eligible business entity:

(a) may claim or pass through a tax credit under this section for:

(i) the taxable year in which the eligible business entity first generates eligible new state tax revenues; and

(ii) two taxable years immediately following the year described in Subsection (4)(a)(i);

and

(b) may not carry forward or carry back a tax credit under this section.

Section 2. Section **59-10-1022** is amended to read:

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59-10-1022. Nonrefundable tax credit for capital gain transactions.

(1) As used in this section:

(a) (i) "Capital gain transaction" means a transaction that results in a:

(A) short-term capital gain; or

(B) long-term capital gain.

(ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "transaction."

(b) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.

(c) "Long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(d) "Pass-through entity" and "pass-through entity taxpayer" are as defined in Section 59-10-1402.

(e) "Qualifying [stock"] ownership interest" means [stock that is] an ownership interest that is:

(i) (A) common stock; ~~[or]~~

(B) preferred stock; or

(C) an ownership interest in a ~~limited liability company or a limited liability partnership~~ pass-through entity;

(ii) ~~[as defined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,]~~ originally issued to:

(A) a claimant, estate, or trust; ~~{ } or { }~~

(B) a partnership pass-through entity if the claimant, estate, or trust that claims a tax credit under this section ~~[-(B)]~~ was a partner pass-through entity taxpayer on the day on which the ~~[stock]~~ qualifying ownership interest was issued~~[-]~~ and ~~[(H)]~~ remains a partner pass-through entity taxpayer until the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section; ~~{ } and { } or~~

~~{ — (C) a limited liability company or a limited liability partnership if the claimant, estate, or trust that claims a tax credit under this section was an owner on the day on which the qualifying ownership interest was issued and remains an owner until the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section; and~~

~~‡~~ (iii) issued:

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(A) by a Utah small business corporation;

(B) on or after January 1, 2008; and

(C) for ~~[-(F)]~~ money[;] or ~~[(H)]~~ other property, except for stock or securities.

~~[(e)]~~ [(f)] "Short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

~~[(F)]~~ [(g)] (i) "Utah small business corporation" means a corporation that:

(A) except as provided in Subsection (1) ~~[(F)]~~ [(g)](ii), is a small business corporation as defined in Section 1244(c)(3), Internal Revenue Code;

(B) except as provided in Subsection (1) ~~[(F)]~~ [(g)](iii), meets the requirements of Section 1244(c)(1)(C), Internal Revenue Code; and

(C) has its commercial domicile in this state.

(ii) For purposes of this section:

~~[(ii) The]~~ (A) the dollar amount listed in Section 1244(c)(3)(A), Internal Revenue Code, is considered to be \$2,500,000~~[-];~~ and

(B) a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to include a ~~limited liability company and a limited liability partnership;~~ pass-through entity.

(iii) The phrase "the date the loss on such stock was sustained" in Sections 1244(c)(1)(C) and 1244(c)(2), Internal Revenue Code, is considered to be "the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section."

(2) ~~For]~~ Subject to the other provisions of this section, for a taxable ~~[years]~~ year beginning on or after January 1, ~~[2008]~~ 2011, a claimant, estate, or trust that ~~[-, except as provided in Subsection (4).]~~ or Subsection (4) may claim a nonrefundable tax credit equal to the product of:

(a) the total amount of the claimant's, estate's, or trust's short-term capital gain or long-term capital gain on a capital gain transaction that occurs on or after January 1, ~~[2008]~~ 2011; and

(b) ~~[5%]~~ the tax rate imposed under ~~{Section}~~ Subsection 59-10-104(2)(b).

(3) ~~For {]~~ Except as provided in Subsection (4), for} purposes of Subsection (2), a A claimant, estate, or trust may claim the nonrefundable tax credit allowed by Subsection (2) if:

(a) 70% or more of the gross proceeds of the capital gain transaction are expended:

(i) to purchase a qualifying ~~[stock]~~ ownership interest in a Utah small business corporation; and

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(ii) within a 12-month period after the day on which the capital gain transaction occurs;
and

(b) prior to the purchase of the qualifying [~~stock~~] ownership interest described in Subsection (3)(a)(i), the claimant, estate, or trust did not have an ownership interest in the Utah small business corporation that issued the qualifying [~~stock~~] ownership interest.

(4) ~~Notwithstanding Subsection (3), a~~ A claimant, estate, or trust may claim the nonrefundable tax credit allowed by Subsection (2) if:

(a) the gross proceeds of the capital gain transaction result from the sale of a qualifying ownership interest:

(i) held for at least two taxable years ~~prior to~~ before the sale of the qualifying ownership interest; and

(ii) in a Utah small business corporation described in one of the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(A) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

(B) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or

(C) NAICS Code 334517, Irradiation Apparatus Manufacturing; and

(b) on ~~the last~~ each day of the taxable year of the capital gain transaction, the Utah small business corporation described in Subsection (4)(a) has at least 50% of its employees in the state.

~~(4)~~ (5) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

~~(5)~~ (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

(a) defining the term "gross proceeds"; and

(b) prescribing the circumstances under which a claimant, estate, or trust has an ownership interest in a Utah small business corporation.

Section ~~2~~ 3. Section **59-10-1025** is enacted to read:

59-10-1025. Nonrefundable tax credit for investment in certain businesses.

(1) As used in this section:

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(a) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.

(b) "Pass-through entity" and "pass-through entity taxpayer" are as defined in Section 59-10-1402.

(~~b~~)c) "Qualifying ownership interest" means an ownership interest that is:

(i) (A) common stock;

(B) preferred stock; or

(C) an ownership interest in a ~~limited liability company or a limited liability partnership~~ pass-through entity;

(ii) originally issued to:

(A) a claimant, estate, or trust; ~~or~~

(B) a ~~partnership~~ pass-through entity if the claimant, estate, or trust that claims a tax credit under this section was a ~~partner~~ pass-through entity taxpayer on the day on which the stock was issued and remains a ~~partner~~ pass-through entity taxpayer until the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section; ~~for~~ — (C) a limited liability company or a limited liability partnership if the claimant, estate, or trust that claims a tax credit under this section was an owner on the day on which the qualifying ownership interest was issued and remains an owner until the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section; }and

(iii) issued:

(A) by a Utah small business corporation;

(B) on or after January 1, 2011; and

(C) for money or other property, except for stock or securities.

(~~c~~)d) (i) "Utah small business corporation" means a corporation that:

(A) except as provided in Subsection (1)(~~c~~)d)(ii), is a small business corporation as defined in Section 1244(c)(3), Internal Revenue Code;

(B) except as provided in Subsection (1)(~~c~~)d)(iii), meets the requirements of Section 1244(c)(1)(C), Internal Revenue Code; and

(C) has its commercial domicile in this state.

(ii) For purposes of this section:

(A) the dollar amount listed in Section 1244(c)(3)(A), Internal Revenue Code, is

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considered to be \$2,500,000; and

(B) a corporation under Section 1244(c)(3)(A), Internal Revenue Code, is considered to include a ~~limited liability company and a limited liability partnership~~ pass-through entity.

(iii) The phrase "the date the loss on such stock was sustained" in Sections 1244(c)(1)(C) and 1244(c)(2), Internal Revenue Code, is considered to be "the last day of the taxable year for which the claimant, estate, or trust claims a tax credit under this section."

(2) ~~Except as provided in Subsection (3)~~ Subject to the other provisions of this section, for a taxable year beginning on or after January 1, 2011, a claimant, estate, or trust may claim a nonrefundable tax credit in an amount ~~equal~~ up to 35% of the purchase price of a qualifying ownership interest if:

(a) the qualifying ownership interest is issued by a Utah small business corporation described in one of the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

(i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

(ii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing; or

(iii) NAICS Code 334517, Irradiation Apparatus Manufacturing;

(b) the qualifying ownership interest in the Utah small business corporation is purchased for at least \$25,000;

(c) the claimant, estate, or trust owned less than 30% of the qualifying ownership interest of the Utah small business corporation at the time of the purchase of the qualifying ownership interest; and

(d) on ~~the last~~ each day of the taxable year of the purchase of the qualifying ownership interest, the Utah small business corporation described in Subsection (2)(a) has at least 50% of its employees in the state.

(3) Except as provided in Subsection (4), the tax credit under Subsection (2) ~~is~~

~~(a) may be carried forward for two years from the~~ shall be claimed during a period of three taxable years as follows:

(a) (i) the tax credit in the taxable year of the purchase of the qualifying ~~is~~ ownership interest;

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~~(b)(i)~~ may not exceed 10% of the purchase price of the qualifying ownership interest ~~in~~:

~~(A) the year of the purchase~~;

(ii) the tax credit in the taxable year after the taxable year described in Subsection (3)(a)(i) may not exceed 10% of the purchase price of the qualifying ownership interest; and

~~(B)iii~~ the tax credit in the taxable year two years after the taxable year described in Subsection (3)~~(b)a(i)(A)~~; and

~~(ii)~~ may not exceed 15% of the purchase price of the qualifying ownership interest ~~in~~ the year two years after the year described in Subsection (3)(b)(i)(A); and

~~(c)b~~ may not exceed \$350,000 in a taxable year.

(4) A claimant, estate, or trust may not claim a tax credit under this section for a taxable year if the claimant, estate, or trust has sold any of the qualifying ownership interest during the taxable year.

(5) If a Utah small business corporation from which a claimant, estate, or trust purchases a qualifying ownership interest fails, dissolves, or otherwise goes out of business, the claimant, estate, or trust may not claim both the tax credit provided in Subsection (2) and a capital loss on the qualifying ownership interest.

(6) A claimant, estate, or trust may not carry forward or carry back a tax credit under this section.

Section ~~3~~4. ~~Retrospective operation.~~

~~This bill provides for retrospective operation for~~ Section 59-10-1109 is enacted to read:

59-10-1109. Refundable tax credit for certain business entities generating state revenue increases.

(1) As used in this section:

(a) "Eligible business entity" means a claimant, estate, or trust that is an eligible business entity as defined in Section 63M-1-2902.

(b) "Eligible new state tax revenues" is as defined in Section 63M-1-2902.

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

(d) "Pass-through entity" is as defined in Section 59-10-1402.

(e) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.

(2) Subject to the other provisions of this section, an eligible business entity may:

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(a) claim a refundable tax credit equal to the amount of eligible new state tax revenues generated by the eligible business entity; or

(b) if the eligible business entity is a pass-through entity, pass through to one or more pass-through entity taxpayers, in accordance with Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act, a refundable tax credit that the eligible business entity could otherwise claim under this section.

(3) The tax credit is:

(a) for an eligible business entity, the amount listed as the amount of eligible new state tax revenues generated by the eligible business entity on the tax credit certificate that the office issues to the eligible business entity for the taxable year; or

(b) for a pass-through entity taxpayer, the amount of a tax credit that an eligible business entity passes through to the pass-through entity taxpayer in accordance with Subsection (2)(b).

(4) An eligible business entity:

(a) may claim or pass through a tax credit under this section for:

(i) the taxable year in which the eligible business entity first generates eligible new state tax revenues; and

(ii) two taxable years following the year described in Subsection (4)(a)(i); and

(b) may not carry forward or carry back a tax credit under this section.

Section 5. Section 63M-1-2901 is enacted to read:

Part 29. Technology and Life Science Economic Development Act

63M-1-2901. Title.

This part is known as the "Technology and Life Science Economic Development Act."

Section 6. Section 63M-1-2902 is enacted to read:

63M-1-2902. Definitions.

As used in this part:

(1) "Eligible business entity" means a person that:

(a) enters into an agreement with the office to produce an eligible product or project in Utah that will generate eligible new state tax revenues;

(b) is described in one of the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of

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Management and Budget:

- (i) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
- (ii) NAICS Code 334413, Semiconductor and Related Device Manufacturing;
- (iii) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus

Manufacturing; or

- (iv) NAICS Code 334517, Irradiation Apparatus Manufacturing; and
- (c) has at least 50% of its employees in the state for each day of a taxable year

{beginning on or after January 1, 2011.

Legislative Review Note

as of 3-1-11 4:25 PM

Office of Legislative Research and General Counsel the eligible business entity claims a tax credit under Sections 59-7-614.6 or 59-10-1109.

(2) "Eligible business entity applicant" means a person that applies to the office to become an eligible business entity.

(3) "Eligible new state tax revenues" means an increased amount of tax revenues generated as a result of an eligible product or project by an eligible business entity or a new incremental job within the state under the following:

- (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- (ii) Title 59, Chapter 10, Individual Income Tax Act; and
- (iii) Title 59, Chapter 12, Sales and Use Tax Act.

(4) "Eligible product or project" means any product or project produced by an eligible business entity that was not produced prior to the date of an agreement with the office under Section 63M-1-2903:

- (a) by the eligible business entity; and
- (b) within the state.
- (5) "New incremental job within the state" means an employment position at an

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eligible business entity that:

(a) did not exist within the state before;

(i) the eligible business entity entered into an agreement with the office; and

(ii) the eligible product was produced or the eligible project began;

(b) is not shifted from one location in the state to another location in the state; and

(c) is established to the satisfaction of the office by amounts paid or withheld by the

eligible business entity under Title 59, Chapter 10, Individual Income Tax Act.

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

(7) "Tax credit" means a tax credit under:

(a) Section 59-7-614.6; or

(b) Section 59-1-1109.

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

(a) lists the name of the eligible business entity to which the office authorizes a tax

credit:

(b) lists the eligible business entity's taxpayer identification number;

(c) lists the amount of the eligible business entity's eligible new state tax revenues for

the taxable year; and

(d) includes other information as determined by the office.

Section 7. Section **63M-1-2903** is enacted to read:

63M-1-2903. Tax credit agreement.

(1) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules establishing the conditions that an eligible business entity applicant shall meet to qualify for a tax credit under this part.

(b) The office shall ensure that the conditions described in Subsection (1)(a) comply with the requirements of this part, including requiring the generation of eligible new state tax revenues.

(2) (a) Subject to the other provisions of this Subsection (2), the office, with advice from the board, may enter into an agreement authorizing a tax credit to an eligible business entity if an eligible business entity applicant meets the conditions established under Subsection (1).

(b) The agreement required by this Subsection (2)(a) to qualify for a tax credit shall:

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(i) detail the requirements that the eligible business entity shall meet to quantify the amount of eligible new state tax revenues;

(ii) require the eligible business entity to retain records supporting a claim for a tax credit for at least four years after the eligible business entity claims a tax credit under this part;

(iii) require the eligible business entity to submit to audits for verification of the tax credit claimed, including audits by the office and by the State Tax Commission; and

(iv) require the eligible business entity to provide tax return information to the office that is necessary for the office to determine the generation of eligible new state tax revenues.

(3) The office may grant a tax credit certificate under this section to an eligible business entity:

(a) for the first taxable year in which the eligible business entity enters into an agreement with the office and generates eligible new state tax revenues; and

(b) the two taxable years immediately following the taxable year described in Subsection (3)(a).

Section 8. Section **63M-1-2904** is enacted to read:

63M-1-2904. Procedure to certify tax credit.

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

(2) An eligible business entity applicant shall provide the office with:

(a) an application for a tax credit certificate, on a form and in the manner designated by the office; and

(b) documentation that the eligible business entity applicant has satisfied the conditions outlined in the agreement described in Section 63M-1-2903.

(3) If the office determines that the information is inadequate to provide a reasonable justification for authorizing a tax credit, the office shall:

(a) deny the tax credit; or

(b) inform the eligible business entity applicant that the information is inadequate and ask the eligible business entity applicant to submit new documentation.

(4) If the office determines that there is reasonable justification for authorizing a tax credit, the office shall, for each year the office grants a tax credit certificate:

(a) determine the amount of eligible new state tax revenues generated by the eligible

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business entity for the taxable year;

(b) issue a tax credit certificate to the eligible business entity that states the amount of eligible new state tax revenues for the taxable year; and

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

(5) An eligible business entity may not claim or pass through a tax credit unless the eligible business entity has a tax credit certificate issued by the office.

(6) An eligible business entity that receives a tax credit certificate may claim or pass through a tax credit, as provided in Section 59-7-614.6 or 59-10-1109.

(7) Upon request of the office, the State Tax Commission shall provide the office with summary information regarding eligible new state tax revenues generated by an eligible business entity.

Section 9. Section 63M-1-2905 is enacted to read:

63M-1-2905. Report to the Legislature -- Study by legislative committees.

(1) The office shall annually report to the Legislature's Workforce Services and Community and Economic Development Interim Committee and Revenue and Taxation Interim Committee describing:

(a) the total amount listed as eligible new state tax revenues on tax credit certificates the office issues to eligible business entities;

(b) the criteria that the office uses in determining whether an eligible business entity generates eligible new state tax revenues; and

(c) the economic impact on the state related to providing tax credits under this part.

(2) (a) On or before November 1, 2016 and every five years after November 1, 2016, the Legislature's Workforce Services and Community and Economic Development Interim Committee and Revenue and Taxation Interim Committee shall:

(i) study the tax credits allowed under Sections 59-7-614.6 and 59-10-1109; and

(ii) make recommendations concerning whether the tax credits should be continued, modified, or repealed.

(b) The study under Subsection (2)(a) shall include an evaluation of:

(i) the cost of the tax credits under Sections 59-7-614.6 or 59-10-1109;

(ii) the purposes and effectiveness of the tax credits; and

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

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Section 10. Section 63M-1-2906 is enacted to read:

63M-1-2906. Reports of tax credits.

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

(a) the total amount listed as eligible new state tax revenues on tax credit certificates the office issues to eligible business entities; and

(b) the criteria that the office uses in determining whether an eligible business entity generates eligible new state tax revenues.

(2) By the first business day of each month, the office shall submit a report to the Governor's Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the Division of Finance identifying:

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

(b) the total amount listed as eligible new state tax revenues on tax credit certificates the office issues to eligible business entities; and

(c) the criteria that the office uses in determining whether an eligible business entity generates eligible new state tax revenues.

Section 11. Effective date -- Retrospective operation.

(1) Except as provided in Subsection (2), this bill takes effect on July 1, 2011.

(2) The amendments to and enactments of the following sections have retrospective operation for a taxable year beginning on or after January 1, 2011:

(a) Section 59-7-614.6;

(b) Section 59-10-1022;

(c) Section 59-10-1025; and

(d) Section 59-10-1109.