

ECONOMIC DEVELOPMENT REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies provisions relating to economic development.

Highlighted Provisions:

This bill:

- ▶ requires the Board of Business and Economic Development to maintain certain ethical and conflict of interest standards;
- ▶ authorizes the Governor's Office of Economic Development to commit or authorize a tax credit that exceeds established limits if certain conditions are met;
- ▶ modifies the information that an entity is required to provide to the Governor's Office of Economic Development in seeking a tax credit;
- ▶ authorizes the Governor's Office of Economic Development to terminate a tax credit agreement if the entity with the tax credit fails to meet performance standards;
- ▶ modifies tax credit reporting requirements for the Governor's Office of Economic Development; and
- ▶ requires the Governor's Office of Economic Development to conduct a periodic audit and review of certain tax credits and recommend whether to continue, modify, or repeal the tax credits.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **63M-1-303**, as last amended by Laws of Utah 2011, Chapter 342

32 **63M-1-2404**, as last amended by Laws of Utah 2010, Chapter 164

33 **63M-1-2405**, as last amended by Laws of Utah 2010, Chapters 104, 164 and last
34 amended by Coordination Clause, Laws of Utah 2010, Chapter 164

35 **63M-1-2406**, as last amended by Laws of Utah 2012, Chapter 246



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

38 Section 1. Section **63M-1-303** is amended to read:

39 **63M-1-303. Board duties and powers.**

40 (1) The board shall:

41 (a) promote and encourage the economic, commercial, financial, industrial,
42 agricultural, and civic welfare of the state;

43 (b) do all lawful acts for the development, attraction, and retention of businesses,
44 industries, and commerce within the state;

45 (c) promote and encourage the expansion and retention of businesses, industries, and
46 commerce located in the state;

47 (d) support the efforts of local government and regional nonprofit economic
48 development organizations to encourage expansion or retention of businesses, industries, and
49 commerce located in the state;

50 (e) do other acts not specifically enumerated in this chapter, if the acts are for the
51 betterment of the economy of the state;

52 (f) work in conjunction with companies and individuals located or doing business
53 within the state to secure favorable rates, fares, tolls, charges, and classification for
54 transportation of persons or property by:

55 (i) railroad;

56 (ii) motor carrier; or

57 (iii) other common carriers;

58 (g) recommend policies, priorities, and objectives to the office regarding the assistance,

59 retention, or recruitment of business, industries, and commerce in the state; [~~and~~]

60 (h) recommend how any money or program administered by the office or its divisions
61 for the assistance, retention, or recruitment of businesses, industries, and commerce in the state
62 shall be administered, so that the money or program is equitably available to all areas of the
63 state unless federal or state law requires or authorizes the geographic location of a recipient of
64 the money or program to be considered in the distribution of the money or administration of the
65 program[-]; and

66 (i) maintain ethical and conflict of interest standards consistent with those imposed on
67 a public officer under Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

68 (2) The board may:

69 (a) in furtherance of the authority granted under Subsection (1)(f), appear as a party
70 litigant on behalf of individuals or companies located or doing business within the state in
71 proceedings before regulatory commissions of the state, other states, or the federal government
72 having jurisdiction over such matters; and

73 (b) make, amend, or repeal rules for the conduct of its business consistent with this part
74 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

75 (3) (a) Subject to Subsection (3)(b), when money is appropriated or otherwise made
76 available to the office by the Legislature for the purchase of a contract for the sale of land, the
77 board, with the approval of the state treasurer, may purchase the contract if the board makes a
78 finding that the purchase of the contract promotes a statewide public interest such as promoting
79 ease of interstate or intrastate travel or advancing economic development.

80 (b) (i) As used in this Subsection (3)(b), "net projected debt service cost" means the
81 money projected to be necessary to pay bond issuance costs for a general obligation bond and
82 to make any interest payments for that general obligation bond less the projected investment
83 earnings from the state's investment of that bond's proceeds, if any.

84 (ii) When some or all of the money made available by the Legislature to purchase a
85 contract for the sale of land is provided from the proceeds from the issuance of one or more
86 general obligation bonds, if the board and state treasurer decide to purchase the contract, the
87 board and state treasurer shall purchase the contract at a price discounted by an amount equal to
88 the total net projected debt service cost for those bonds.

89 (iii) The State Bonding Commission shall certify the total net projected debt service

90 cost to the board and the state treasurer.

91 (iv) In purchasing a contract, the board and state treasurer may:

92 (A) purchase the contract with a single payment; or

93 (B) arrange to have the contract placed in escrow pending the final payment on the
94 contract and make multiple payments on the contract according to a schedule that is negotiated
95 with the holder of the contract and included as part of the contract.

96 (c) Before purchasing a contract, the board and the state treasurer shall:

97 (i) contract with a qualified person or entity to prepare a report evaluating the
98 purchaser of the land;

99 (ii) ensure that the report evaluates:

100 (A) the purchaser's financial ability to pay the money to complete the purchase on the
101 date that the final payment is due under the contract;

102 (B) whether or not the security underlying the contract is adequate to protect the state if
103 the purchaser defaults;

104 (C) the purchaser's balance sheet and general credit-worthiness;

105 (D) environmental issues affecting the property under federal or state law; and

106 (E) any other items that will assist the board and the state treasurer in determining
107 whether or not to purchase the contract;

108 (iii) ensure that the state has or will have a properly perfected security interest in, title
109 to, or a deed in escrow for, the property that is the subject of the purchase; and

110 (iv) after reviewing the report, evaluating the state's security in case of a default on the
111 contract, and considering the terms of the proposed contract, determine whether or not to
112 purchase the contract.

113 (d) The board and the state treasurer may not purchase a contract under this Subsection
114 (3) if the date of the last payment owed by the land purchaser under the contract is more than
115 seven years from the date that the board purchases the contract.

116 Section 2. Section **63M-1-2404** is amended to read:

117 **63M-1-2404. Creation of economic development zones -- Tax credits --**

118 **Assignment of tax credit.**

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

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

123 (b) the request to create a development zone has been forwarded to the office after first
124 being approved by an appropriate local government entity; and

125 (c) local incentives have been committed or will be committed to be provided within
126 the area.

127 (2) (a) By following the procedures and requirements of Title 63G, Chapter 3, Utah
128 Administrative Rulemaking Act, the office shall make rules establishing the conditions that a
129 business entity or local government entity shall meet to qualify for a tax credit under this part.

130 (b) The office shall ensure that the conditions described in Subsection (2)(a) include
131 the following requirements:

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

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

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

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

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

140 (vi) (A) a business entity or local government entity qualifying for the tax credit meets
141 the requirements of Section 63M-1-2405; or

142 (B) a community development and renewal agency to which a local government entity
143 assigns a tax credit under this section meets the requirements of Section 63M-1-2405.

144 (3) (a) Subject to the other provisions of this Subsection (3), the office, with advice
145 from the board, may enter into an agreement with a business entity or local government entity
146 authorizing a tax credit to the business entity or local government entity if the business entity or
147 local government entity meets the standards established under Subsection (2).

148 (b) (i) With respect to one new commercial project, the office may authorize a tax
149 credit to a business entity or a local government entity, but not both.

150 (ii) In determining whether to authorize a tax credit with respect to one new
151 commercial project to a business entity or a local government entity, the office shall authorize

152 the tax credit in a manner that the office determines will result in providing the most effective
153 incentive for the new commercial project.

154 (c) (i) The office may not authorize or commit to authorize a tax credit if that tax credit
155 exceeds:

156 [(†)] (A) 50% of the new state revenues from the new commercial project in any given
157 year; or

158 [(†)] (B) 30% of the new state revenues from the new commercial project over the life
159 of a new commercial project or 20 years, whichever is less.

160 (ii) Notwithstanding Subsection (3)(c)(i), the office may authorize or commit to
161 authorize a tax credit not exceeding 60% of new state revenues from the new commercial
162 project in any given year, if the eligible business entity creates a significant number of high
163 paying jobs and makes capital expenditures in the state of at least \$1,000,000,000.

164 (d) (i) A local government entity may by resolution assign a tax credit that the office
165 authorizes to the local government entity to a community development and renewal agency.

166 (ii) The local government entity shall provide a copy of the resolution described in
167 Subsection (3)(d)(i) to the office.

168 (iii) If a local government entity assigns a tax credit to a community development and
169 renewal agency:

170 (A) the agreement described in this section shall:

171 (I) be among the office, the local government entity, and the community development
172 and renewal agency; and

173 (II) establish:

174 (Aa) the obligations of the local government entity and the community development
175 and renewal agency; and

176 (Bb) the extent to which any of the local government entity's obligations are transferred
177 to the community development and renewal agency;

178 (B) the community development and renewal agency shall retain records as described
179 in Subsection (4)(d); and

180 (C) a tax credit certificate issued in accordance with Section 63M-1-2406 shall list the
181 community development and renewal agency as the name of the applicant.

182 (4) Subject to Subsection (3), the office shall ensure that the agreement described in

183 Subsection (3):

184 (a) details the requirements that the business entity or local government entity shall
185 meet to qualify for a tax credit under this part;

186 (b) specifies the maximum amount of tax credit that the business entity or local
187 government entity may be authorized for a taxable year and over the life of the new commercial
188 project;

189 (c) establishes the length of time the business entity or local government entity may
190 claim a tax credit;

191 (d) requires the business entity or local government entity to retain records supporting a
192 claim for a tax credit for at least four years after the business entity or local government entity
193 claims a tax credit under this part; and

194 (e) requires the business entity or local government entity to submit to audits for
195 verification of the tax credit claimed.

196 Section 3. Section **63M-1-2405** is amended to read:

197 **63M-1-2405. Qualifications for tax credit -- Procedure.**

198 (1) The office shall certify a business entity's or local government entity's eligibility for
199 a tax credit as provided in this section.

200 (2) A business entity or local government entity seeking to receive a tax credit shall
201 provide the office with:

202 (a) an application for a tax credit certificate, including a certification, by an officer of
203 the business entity, of any signature on the application;

204 (b) (i) for a business entity, documentation of the new state revenues from the business
205 entity's new commercial project that were paid during the preceding calendar year; or

206 (ii) for a local government entity, documentation of the new state revenues from the
207 new commercial project within the local government entity that were paid during the preceding
208 calendar year;

209 (c) known or expected detriments to the state or existing businesses in the state;

210 [~~(c)~~] (d) if a local government entity seeks to assign the tax credit to a community
211 development and renewal agency in accordance with Section 63M-1-2404, a statement
212 providing the name and taxpayer identification number of the community development and
213 renewal agency to which the local government entity seeks to assign the tax credit;

214 ~~[(d)]~~ (e) (i) with respect to a business entity, a document that expressly directs and
215 authorizes the State Tax Commission to disclose the business entity's returns and other
216 information that would otherwise be subject to confidentiality under Section 59-1-403 or
217 Section 6103, Internal Revenue Code, to the office;

218 (ii) with respect to a local government entity that seeks to claim the tax credit:

219 (A) a document that expressly directs and authorizes the State Tax Commission to
220 disclose the local government entity's returns and other information that would otherwise be
221 subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code, to
222 the office; and

223 (B) if the new state revenues collected as a result of a new commercial project are
224 attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or
225 business service within a new commercial project within the local government, a document
226 signed by an authorized representative of the new or expanded industrial, manufacturing,
227 distribution, or business service that:

228 (I) expressly directs and authorizes the State Tax Commission to disclose the returns of
229 that new or expanded industrial, manufacturing, distribution, or business service and other
230 information that would otherwise be subject to confidentiality under Section 59-1-403 or
231 Section 6103, Internal Revenue Code, to the office; and

232 (II) lists the taxpayer identification number of that new or expanded industrial,
233 manufacturing, distribution, or business service; or

234 (iii) with respect to a local government entity that seeks to assign the tax credit to a
235 community development and renewal agency:

236 (A) a document signed by the members of the governing body of the community
237 development and renewal agency that expressly directs and authorizes the State Tax
238 Commission to disclose the returns of the community development and renewal agency and
239 other information that would otherwise be subject to confidentiality under Section 59-1-403 or
240 Section 6103, Internal Revenue Code, to the office; and

241 (B) if the new state revenues collected as a result of a new commercial project are
242 attributable in whole or in part to a new or expanded industrial, manufacturing, distribution, or
243 business service within a new commercial project within the community development and
244 renewal agency, a document signed by an authorized representative of the new or expanded

245 industrial, manufacturing, distribution, or business service that:

246 (I) expressly directs and authorizes the State Tax Commission to disclose the returns of
247 that new or expanded industrial, manufacturing, distribution, or business service and other
248 information that would otherwise be subject to confidentiality under Section 59-1-403 or
249 Section 6103, Internal Revenue Code, to the office; and

250 (II) lists the taxpayer identification number of that new or expanded industrial,
251 manufacturing, distribution, or business service; and

252 [~~(e)~~] (f) for a business entity only, documentation that the business entity has satisfied
253 the performance benchmarks outlined in the agreement described in Subsection
254 63M-1-2404(3)(a), including:

- 255 (i) significant capital investment;
256 (ii) the creation of high paying jobs;
257 (iii) significant purchases from Utah vendors and providers; or
258 (iv) any combination of Subsections (2)[~~(e)~~](f)(i), (ii), and (iii).

259 (3) (a) The office shall submit the documents described in Subsection (2)[~~(d)~~](e) to the
260 State Tax Commission.

261 (b) Upon receipt of a document described in Subsection (2)[~~(d)~~](e), the State Tax
262 Commission shall provide the office with the returns and other information requested by the
263 office that the State Tax Commission is directed or authorized to provide to the office in
264 accordance with Subsection (2)[~~(d)~~](e).

265 (4) If, after review of the returns and other information provided by the State Tax
266 Commission, or after review of the ongoing performance of the business entity or local
267 government entity, the office determines that the returns and other information are inadequate
268 to provide a reasonable justification for authorizing or continuing a tax credit, the office shall
269 [~~either~~]:

270 (a) (i) deny the tax credit; or

271 (ii) terminate the agreement described in Subsection 63M-1-2404(3)(a) for failure to
272 meet the performance standards established in the agreement; or

273 (b) inform the business entity or local government entity that the returns or other
274 information were inadequate and ask the business entity or local government entity to submit
275 new documentation.

276 (5) If after review of the returns and other information provided by the State Tax
277 Commission, the office determines that the returns and other information provided by the
278 business entity or local government entity provide reasonable justification for authorizing a tax
279 credit, the office shall, based upon the returns and other information:

280 (a) determine the amount of the tax credit to be granted to the business entity, local
281 government entity, or if the local government entity assigns the tax credit in accordance with
282 Section 63M-1-2404, to the community development and renewal agency to which the local
283 government entity assigns the tax credit;

284 (b) issue a tax credit certificate to the business entity, local government entity, or if the
285 local government entity assigns the tax credit in accordance with Section 63M-1-2404, to the
286 community development and renewal agency to which the local government entity assigns the
287 tax credit; and

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

289 (6) A business entity, local government entity, or community development and renewal
290 agency may not claim a tax credit unless the business entity, local government entity, or
291 community development and renewal agency has a tax credit certificate issued by the office.

292 (7) (a) A business entity, local government entity, or community development and
293 renewal agency may claim a tax credit in the amount listed on the tax credit certificate on its
294 tax return.

295 (b) A business entity, local government entity, or community development and renewal
296 agency that claims a tax credit under this section shall retain the tax credit certificate in
297 accordance with Section 59-7-614.2 or 59-10-1107.

298 Section 4. Section **63M-1-2406** is amended to read:

299 **63M-1-2406. Report to the Legislature -- Posting monthly and annual reports --**
300 **Audit and study of tax credits.**

301 (1) The office shall submit an annual written report to the Economic Development and
302 Workforce Services Interim Committee describing:

303 ~~[(1)]~~ (a) its success in attracting new commercial projects to development zones under
304 this part and the corresponding increase in new incremental jobs;

305 ~~[(2)]~~ (b) the estimated amount of tax credit commitments made by the office and the
306 period of time over which tax credits will be paid; ~~[and]~~

307 ~~[(3)]~~ (c) the economic impact on the state related to generating new state revenues and
308 providing tax credits under this part[-];

309 (d) the estimated costs and economic benefits of the tax credit commitments that the
310 office made;

311 (e) the actual costs and economic benefits of the tax credit commitments that the office
312 made; and

313 (f) tax credit commitments that the office made, with the associated calculation.

314 (2) The office shall post the annual report under Subsection (1) on its website and on a
315 state website.

316 (3) The office shall monthly post on its website and on a state website:

317 (a) the new tax credit commitments that the office made during the previous month;
318 and

319 (b) the estimated costs and economic benefits of those tax credit commitments.

320 (4) (a) On or before November 1, 2014, and every five years after November 1, 2014,
321 the office shall:

322 (i) conduct an audit of the tax credits allowed under Section 63M-1-2405;

323 (ii) study the tax credits allowed under Section 63M-1-2405; and

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

326 (b) An audit under Subsection (4)(a)(i) shall include an evaluation of:

327 (i) the cost of the tax credits;

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel