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AIR QUALITY INCENTIVES

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill authorizes the use of funds from the Industrial Assistance Account to help a company purchase and install air quality control technology.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ describes the requirements for an entity located in the nonattainment area to qualify for financial assistance for expenses related to the purchase and installation of best available control technology for air quality; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63N-3-102, as last amended by Laws of Utah 2015, Chapter 115 and renumbered and amended by Laws of Utah 2015, Chapter 283

63N-3-105, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-3-106, as renumbered and amended by Laws of Utah 2015, Chapter 283



28 ENACTS:

29 **63N-3-109.5**, Utah Code Annotated 1953



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

32 Section 1. Section **63N-3-102** is amended to read:

33 **63N-3-102. Definitions.**

34 As used in this part:

35 (1) "Administrator" means the executive director or the executive director's designee.

36 (2) "Best available control technology" means a pollution control method that is
37 approved by the United States Environmental Protection Agency or the Department of
38 Environmental Quality to control a certain pollutant type to a specified degree.

39 [~~2~~] (3) "Company creating an economic impediment" means a company that
40 discourages economic development within a reasonable radius of its location because of:

- 41 (a) odors;
- 42 (b) noise;
- 43 (c) pollution;
- 44 (d) health hazards; or
- 45 (e) other activities similar to those described in Subsections [~~2~~] (3)(a) through (d).

46 [~~3~~] (4) "Economic opportunities" means unique business situations or community
47 circumstances, including the development of recreation infrastructure, which lend themselves
48 to the furtherance of the economic interests of the state by providing a catalyst or stimulus to
49 the growth or retention, or both, of commerce and industry in the state, including retention of
50 companies whose relocation outside the state would have a significant detrimental economic
51 impact on the state as a whole, regions of the state, or specific components of the state as
52 determined by the board.

53 [~~4~~] (5) "Economically disadvantaged rural area" means a geographic area designated
54 by the board under Section **63N-3-111**.

55 (6) "Nonattainment area" means a part of the state where air quality is determined to
56 exceed the National Ambient Air Quality Standards, as defined in the Clean Air Act
57 Amendments of 1970, Pub.L. 91-604, Sec. 109, for fine particulate matter (PM 2.5).

58 [~~5~~] (7) "Replacement company" means a company locating its business or part of its

59 business in a location vacated by a company creating an economic impediment.

60 ~~[(6)]~~ (8) "Restricted Account" means the restricted account known as the Industrial
61 Assistance Account created in Section [63N-3-103](#).

62 ~~[(7)]~~ (9) "Targeted industry" means an industry or group of industries targeted by the
63 board under Section [63N-3-111](#), for economic development in the state.

64 Section 2. Section **63N-3-105** is amended to read:

65 **63N-3-105. Qualification for assistance.**

66 (1) Except as provided in Section [63N-3-108](#), [63N-3-109](#), [63N-3-109.5](#), or [63N-3-110](#),
67 the administrator shall determine which industries, companies, and individuals qualify to
68 receive money from the Industrial Assistance Account. Except as provided by Subsection (2),
69 to qualify for financial assistance from the restricted account, an applicant shall:

70 (a) demonstrate to the satisfaction of the administrator that the applicant will expend
71 funds in Utah with employees, vendors, subcontractors, or other businesses in an amount
72 proportional with money provided from the restricted account at a minimum ratio of 2 to 1 per
73 year or other more stringent requirements as established from time to time by the board for a
74 minimum period of five years beginning with the date the loan or grant was approved;

75 (b) demonstrate to the satisfaction of the administrator the applicant's ability to sustain
76 economic activity in the state sufficient to repay, by means of cash or appropriate credits, the
77 loan provided by the restricted account; and

78 (c) satisfy other criteria the administrator considers appropriate.

79 (2) (a) The administrator may exempt an applicant from the requirements of Subsection
80 (1)(a) or (b) if:

81 (i) the financial assistance is provided to an applicant for the purpose of locating all or
82 any portion of its operations to an economically disadvantaged rural area;

83 (ii) the applicant is part of a targeted industry;

84 (iii) the applicant is a quasi-public corporation organized under Title 16, Chapter 6a,
85 Utah Revised Nonprofit Corporation Act, or Title 63E, Chapter 2, Independent Corporations
86 Act, and its operations, as demonstrated to the satisfaction of the administrator, will provide
87 significant economic stimulus to the growth of commerce and industry in the state; or

88 (iv) the applicant is an entity offering an economic opportunity under Section
89 [63N-3-109](#).

90 (b) The administrator may not exempt the applicant from the requirement under
91 Subsection 63N-3-106(2)(b) that the loan be structured so that the repayment or return to the
92 state equals at least the amount of the assistance together with an annual interest charge.

93 (3) The administrator shall:

94 (a) for applicants not described in Subsection (2)(a):

95 (i) make findings as to whether or not each applicant has satisfied each of the
96 conditions set forth in Subsection (1); and

97 (ii) monitor the continued compliance by each applicant with each of the conditions set
98 forth in Subsection (1) for five years;

99 (b) for applicants described in Subsection (2)(a), make findings as to whether the
100 economic activities of each applicant has resulted in the creation of new jobs on a per capita
101 basis in the economically disadvantaged rural area or targeted industry in which the applicant is
102 located;

103 (c) monitor the compliance by each applicant with the provisions of any contract or
104 agreement entered into between the applicant and the state as provided in Section 63N-3-107;
105 and

106 (d) make funding decisions based upon appropriate findings and compliance.

107 Section 3. Section 63N-3-106 is amended to read:

108 **63N-3-106. Loans, grants, and assistance -- Repayment -- Earned credits.**

109 (1) (a) A company that qualifies under Section 63N-3-105 may receive loans, grants, or
110 other financial assistance from the Industrial Assistance Account for expenses related to
111 establishment, relocation, or development of industry in Utah.

112 (b) A company creating an economic impediment that qualifies under Section
113 63N-3-108 may in accordance with this part receive loans, grants, or other financial assistance
114 from the restricted account for the expenses of the company creating an economic impediment
115 related to:

116 (i) relocation to a rural area in Utah of the company creating an economic impediment;
117 and

118 (ii) the siting of a replacement company.

119 (c) An entity offering an economic opportunity that qualifies under Section 63N-3-109
120 may:

121 (i) receive loans, grants, or other financial assistance from the restricted account for
122 expenses related to the establishment, relocation, retention, or development of industry in the
123 state; and

124 (ii) include infrastructure or other economic development precursor activities that act
125 as a catalyst and stimulus for economic activity likely to lead to the maintenance or
126 enlargement of the state's tax base.

127 (d) An entity located in a nonattainment area that qualifies for assistance under Section
128 63N-3-109.5 may receive loans, grants, or other financial assistance from the restricted account
129 for expenses related to the purchase and installation of best available control technology for air
130 quality.

131 (2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the
132 structure, amount, and nature of any loan, grant, or other financial assistance from the restricted
133 account.

134 (b) Loans made under Subsection (2)(a) shall be structured so the intended repayment
135 or return to the state, including cash or credit, equals at least the amount of the assistance
136 together with an annual interest charge as negotiated by the administrator.

137 (c) Payments resulting from grants awarded from the restricted account shall be made
138 only after the administrator has determined that the company has satisfied the conditions upon
139 which the payment or earned credit was based.

140 (3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a
141 system of earned credits that may be used to support grant payments or in lieu of cash
142 repayment of a restricted account loan obligation.

143 (ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors
144 determined by the administrator, including:

145 (A) the number of Utah jobs created;

146 (B) the increased economic activity in Utah; or

147 (C) other events and activities that occur as a result of the restricted account assistance.

148 (b) (i) The administrator shall provide for a system of credits to be used to support
149 grant payments or in lieu of cash repayment of a restricted account loan when loans are made to
150 a company creating an economic impediment.

151 (ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors

152 determined by the administrator, including:

153 (A) the number of Utah jobs created;

154 (B) the increased economic activity in Utah; or

155 (C) other events and activities that occur as a result of the restricted account assistance.

156 (4) (a) A cash loan repayment or other cash recovery from a company receiving
157 assistance under this section, including interest, shall be deposited into the restricted account.

158 (b) The administrator and the Division of Finance shall determine the manner of
159 recognizing and accounting for the earned credits used in lieu of loan repayments or to support
160 grant payments as provided in Subsection (3).

161 (5) (a) (i) At the end of each fiscal year, the Division of Finance shall set aside the
162 balance of the General Fund revenue surplus as defined in Section 63J-1-312 after the transfers
163 of General Fund revenue surplus described in Subsection (5)(b) to the Industrial Assistance
164 Account in an amount equal to any credit that has accrued under this part.

165 (ii) The set aside under Subsection (5)(a)(i) shall be capped at \$50,000,000, at which
166 time no subsequent contributions may be made and any interest accrued above the \$50,000,000
167 cap shall be deposited into the General Fund.

168 (b) The set aside required by Subsection (5)(a) shall be made after the transfer of
169 surplus General Fund revenue surplus is made:

170 (i) to the Medicaid Growth Reduction and Budget Stabilization Restricted Account, as
171 provided in Section 63J-1-315;

172 (ii) to the General Fund Budget Reserve Account, as provided in Section 63J-1-312;
173 and

174 (iii) to the State Disaster Recovery Restricted Account, as provided in Section
175 63J-1-314.

176 (c) These credit amounts may not be used for purposes of the restricted account as
177 provided in this part until appropriated by the Legislature.

178 Section 4. Section 63N-3-109.5 is enacted to read:

179 **63N-3-109.5. Financial assistance to entities offering economic opportunities in**
180 **the non-attainment area.**

181 (1) Subject to the duties and powers of the board under Section 63N-1-402, the
182 administrator may provide money from the Industrial Assistance Account to an entity located

183 in a nonattainment area to purchase and install best available control technology for air quality
184 if that entity:

185 (a) applies to the administrator; and

186 (b) meets the conditions of Subsection (2).

187 (2) An entity applicant shall:

188 (a) demonstrate to the satisfaction of the administrator that the purchase and
189 installation of the best available control technology for air quality will result in new jobs with
190 wages that exceed 110% of the county median wage of the county in which the entity is
191 located;

192 (b) demonstrate how the funding request will act in concert with other state, federal, or
193 local agencies to achieve the economic benefit;

194 (c) demonstrate how the funding request will act in concert with free market principles;

195 (d) demonstrate that the applicant does not currently qualify for another grant program:

196 (i) for a small business; or

197 (ii) that would cover the cost of the equipment to be purchased and installed with funds
198 provided under this section;

199 (e) provide satisfactory documentation showing that the equipment to be purchased and
200 installed with funds provided under this section meets design requirements corresponding to
201 the best available control technology for the relevant emissions profile of the applicant; and

202 (f) satisfy other criteria the administrator considers appropriate.

203 (3) Subject to the duties and powers of the board under Section [63N-1-402](#), the
204 administrator shall:

205 (a) make findings as to whether an applicant has satisfied each of the conditions set
206 forth in Subsection (2);

207 (b) establish benchmarks and timeframes in which progress toward the completion of
208 the agreed upon activity is to occur;

209 (c) monitor compliance by an applicant with any contract or agreement entered into by
210 the applicant and the state as provided by Section [63N-3-107](#);

211 (d) make funding decisions based upon appropriate findings and compliance; and

212 (e) consult with the Department of Environmental Quality, created in Section
213 [19-1-104](#), to determine whether the applicant has satisfied the conditions set forth in

214 Subsection (2).

Legislative Review Note
Office of Legislative Research and General Counsel