

RURAL ECONOMIC DEVELOPMENT TAX INCREMENT

FINANCING

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl R. Albrecht

Senate Sponsor: Derrin R. Owens

LONG TITLE

General Description:

This bill modifies provisions related to economic development tax increment financing.

Highlighted Provisions:

This bill:

- ▶ defines terms, including modifying the definition of "new commercial project," "high paying job," and "significant capital investment," related to new commercial projects located in rural areas of the state;
- ▶ modifies provisions related to the authorization of tax credits by the Governor's Office of Economic Development for new commercial projects located in rural areas of the state; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63N-1-102, as last amended by Laws of Utah 2019, Chapter 465

63N-2-103, as last amended by Laws of Utah 2019, Chapters 399, 465, 498 and last



28 amended by Coordination Clause, Laws of Utah 2019, Chapter 465

29 [63N-2-104](#), as last amended by Laws of Utah 2018, Chapter 281

30 [63N-2-105](#), as last amended by Laws of Utah 2016, Chapter 350

31

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

33 Section 1. Section [63N-1-102](#) is amended to read:

34 **[63N-1-102. Definitions.](#)**

35 As used in this title:

36 (1) "Baseline jobs" means the number of full-time employee positions that existed
37 within a business entity in the state before the date on which a project related to the business
38 entity is approved by the office or by the board.

39 (2) "Baseline state revenue" means the amount of state tax revenue collected from a
40 business entity or the employees of a business entity during the year before the date on which a
41 project related to the business entity is approved by the office or by the board.

42 (3) "Board" means the Board of Business and Economic Development created in
43 Section [63N-1-401](#).

44 (4) "Council" means the Governor's Economic Development Coordinating Council
45 created in Section [63N-1-501](#).

46 (5) "Executive director" means the executive director of the office.

47 (6) "Full-time employee" means an employment position that is filled by an employee
48 who works at least 30 hours per week and:

49 (a) may include an employment position filled by more than one employee, if each
50 employee who works less than 30 hours per week is provided benefits comparable to a
51 full-time employee; and

52 (b) may not include an employment position that is shifted from one jurisdiction in the
53 state to another jurisdiction in the state.

54 (7) "High paying job" means a newly created full-time employee position where the
55 aggregate average annual gross wage of the employment position, not including health care or
56 other paid or unpaid benefits, is:

57 (a) at least 110% of the average wage of the county in which the employment position
58 exists[-]; or

59 **(b) for an employment position related to a project described in Chapter 2, Part 1,**
60 **Economic Development Tax Increment Financing, and that is located within the boundary of a**
61 **county of the third, fourth, fifth, or sixth class, or located within a municipality in a county of**
62 **the second class and where the municipality has a population of 10,000 or less:**

63 **(i) at least 100% of the average wage of the county in which the employment position**
64 **exists; or**

65 **(ii) an amount determined by rule made by the office in accordance with Title 63G,**
66 **Chapter 3, Utah Administrative Rulemaking Act, if the office determines the project is in a**
67 **county experiencing economic distress.**

68 **(8) (a) "Incremental job" means a full-time employment position in the state that:**

69 **~~[(a)]~~ (i) did not exist within a business entity in the state before the beginning of a**
70 **project related to the business entity; and**

71 **~~[(b)]~~ (ii) is created in addition to the number of baseline jobs that existed within a**
72 **business entity.**

73 **(b) "Incremental job" includes a full-time employment position where the employee is**
74 **hired:**

75 **(i) directly by a business entity; or**

76 **(ii) by a professional employer organization, as defined in Section 31A-40-102, on**
77 **behalf of a business entity.**

78 **(9) "New state revenue" means the state revenue collected from a business entity or a**
79 **business entity's employees during a calendar year minus the baseline state revenue calculation.**

80 **(10) "Office" or "GOED" means the Governor's Office of Economic Development.**

81 **(11) "State revenue" means state tax liability paid by a business entity or a business**
82 **entity's employees under any combination of the following provisions:**

83 **(a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;**

84 **(b) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and**
85 **Information;**

86 **(c) Title 59, Chapter 10, Part 2, Trusts and Estates;**

87 **(d) Title 59, Chapter 10, Part 4, Withholding of Tax; and**

88 **(e) Title 59, Chapter 12, Sales and Use Tax Act.**

89 **Section 2. Section 63N-2-103 is amended to read:**

90 **63N-2-103. Definitions.**

91 As used in this part:

92 (1) "Authority" means:

93 (a) the Utah Inland Port Authority, created in Section 11-58-201; or

94 (b) the Military Installation Development Authority, created in Section 63H-1-201.

95 (2) "Authority project area" means a project area of:

96 (a) the Utah Inland Port Authority, created in Section 11-58-201; or

97 (b) the Military Installation Development Authority, created in Section 63H-1-201.

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

101 (4) "Community reinvestment agency" has the same meaning as that term is defined in
102 Section 17C-1-102.

103 (5) "Development zone" means an economic development zone created under Section
104 63N-2-104.

105 (6) "Local government entity" means a county, city, town, or authority that enters into
106 an agreement with the office to have a new commercial project that:

107 (a) is ~~[initiated]~~ located within:

108 (i) the boundary of the county, city, or town; or

109 (ii) an authority project area; and

110 (b) qualifies the county, city, town, or authority to receive a tax credit under Section
111 59-7-614.2.

112 (7) (a) "New commercial project" means an economic development opportunity that
113 involves new or expanded industrial, manufacturing, agricultural, mining, distribution, or
114 business services in Utah.

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

116 ~~[(8) "Significant capital investment" means an amount of at least \$10,000,000 to
117 purchase capital or fixed assets, which may include real property, personal property, and other
118 fixtures related to a new commercial project:]~~

119 ~~[(a) that represents an expansion of existing operations in the state; or]~~

120 ~~[(b) that maintains or increases the business entity's existing work force in the state.]~~

121 (8) "Significant capital investment" means an investment in capital or fixed assets in
122 the following amounts, which may include real property, personal property, and other fixtures
123 related to a new commercial project that represents an expansion of existing operations in the
124 state or that increases the business entity's existing workforce in the state:

125 (a) except as described in Subsection (8)(b), an amount of at least \$10,000,000 for a
126 new commercial project located within the boundary of a county of the first or second class;

127 (b) an amount of at least \$500,000 for a new commercial project located within the
128 boundary of a county of the third or fourth class, or located within a municipality in a county of
129 the second class and where the municipality has a population of 10,000 or less;

130 (c) an amount of at least \$250,000 for a new commercial project located within the
131 boundary of a county of the fifth or sixth class; or

132 (d) an amount determined by rule made by the office in accordance with 63G, Chapter
133 3, Utah Administrative Rulemaking Act.

134 (9) "Tax credit" means an economic development tax credit created by Section
135 59-7-614.2 or 59-10-1107.

136 (10) "Tax credit amount" means the amount the office lists as a tax credit on a tax
137 credit certificate for a taxable year.

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

139 (a) lists the name of the business entity, local government entity, or community
140 development and renewal agency to which the office authorizes a tax credit;

141 (b) lists the business entity's, local government entity's, or community development and
142 renewal agency's taxpayer identification number;

143 (c) lists the amount of tax credit that the office authorizes the business entity, local
144 government entity, or community development and renewal agency for the taxable year; and

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

146 Section 3. Section **63N-2-104** is amended to read:

147 **63N-2-104. Creation of economic development zones -- Tax credits -- Assignment**
148 **of tax credit.**

149 (1) The office, with advice from the board, may create an economic development zone
150 in the state if the following requirements are satisfied:

151 (a) the area is zoned agricultural, commercial, industrial, manufacturing, business park,

152 research park, or other appropriate business related use in a community-approved master plan;

153 (b) the request to create a development zone has first been approved by an appropriate
154 local government entity; and

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

156 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
157 the office shall make rules establishing the requirements for a business entity or local
158 government entity to qualify for a tax credit for a new commercial project in a development
159 zone under this part.

160 (b) The office shall ensure that the requirements described in Subsection (2)(a) include
161 the following:

162 (i) the new commercial project is within the development zone;

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

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

166 (iv) the new commercial project includes the creation of high paying jobs in the state,
167 significant capital investment in the state, or significant purchases from vendors, contractors, or
168 service providers in the state, or a combination of these three economic factors;

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

170 (vi) a business entity, a local government entity, or a community reinvestment agency
171 to which a local government entity assigns a tax credit under this section meets the
172 requirements of Section [63N-2-105](#).

173 (3) (a) The office, after consultation with the board, may enter into a written agreement
174 with a business entity or local government entity authorizing a tax credit to the business entity
175 or local government entity if the business entity or local government entity meets the
176 requirements described in this section.

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

179 (ii) In determining whether to authorize a tax credit with respect to a new commercial
180 project to a business entity or a local government entity, the office shall authorize the tax credit
181 in a manner that the office determines will result in providing the most effective incentive for
182 the new commercial project.

183 (c) (i) Except as provided in Subsection (3)(c)(ii), the office may not authorize or
184 commit to authorize a tax credit, for a new commercial project that is located within the
185 boundary of a county of the first or second class, that exceeds:

186 (A) 50% of the new state revenues from the new commercial project in any given year;
187 or

188 (B) 30% of the new state revenues from the new commercial project over the lesser of
189 the life of a new commercial project or 20 years.

190 (ii) The office may not authorize or commit to authorize a tax credit for a new
191 commercial project initiated within the boundary of a county of the third, fourth, fifth, or sixth
192 class, or for a new commercial project located within the boundary of a municipality with a
193 population of 10,000 or less located within a county of the second class, that exceeds 50% of
194 new state revenues from the new commercial project over the lesser of the life of a new
195 commercial project or 20 years.

196 (iii) Notwithstanding any other provisions of this section, the office may not authorize
197 a tax credit under this section for a business entity that has received a High Cost Infrastructure
198 Development Tax Credit described in Section 63M-4-603 related to the same new commercial
199 project.

200 [~~(ii) If the eligible business entity makes capital expenditures in the state of~~
201 ~~\$1,500,000,000 or more associated with a new commercial project, the office may:]~~

202 [~~(A) authorize or commit to authorize a tax credit not exceeding 60% of new state~~
203 ~~revenues over the lesser of the life of the project or 20 years, if the other requirements of this~~
204 ~~part are met;]~~

205 [~~(B) establish the year that state revenues and incremental jobs baseline data are~~
206 ~~measured for purposes of an incentive under this Subsection (3)(c)(ii); and]~~

207 [~~(C) offer an incentive under this Subsection (3)(c)(ii) or modify an existing incentive~~
208 ~~previously granted under Subsection (3)(c)(i) that is based on the baseline measurements~~
209 ~~described in Subsection (3)(c)(ii)(B), except that the incentive may not authorize or commit to~~
210 ~~authorize a tax credit of more than 60% of new state revenues in any one year.]~~

211 (d) (i) A local government entity may by resolution assign a tax credit authorized by
212 the office to a community reinvestment agency.

213 (ii) The local government entity shall provide a copy of the resolution described in

214 Subsection (3)(d)(i) to the office.

215 (iii) If a local government entity assigns a tax credit to a community reinvestment
216 agency, the written agreement described in Subsection (3)(a) shall:

217 (A) be between the office, the local government entity, and the community
218 reinvestment agency;

219 (B) establish the obligations of the local government entity and the community
220 reinvestment agency; and

221 (C) establish the extent to which any of the local government entity's obligations are
222 transferred to the community reinvestment agency.

223 (iv) If a local government entity assigns a tax credit to a community reinvestment
224 agency:

225 (A) the community reinvestment agency shall retain records as described in Subsection
226 (4)(d); and

227 (B) a tax credit certificate issued in accordance with Section [63N-2-105](#) shall list the
228 community reinvestment agency as the named applicant.

229 (4) The office shall ensure that the written agreement described in Subsection (3):

230 (a) specifies the requirements that the business entity or local government entity shall
231 meet to qualify for a tax credit under this part;

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

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

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

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

242 Section 4. Section **63N-2-105** is amended to read:

243 **63N-2-105. Qualifications for tax credit -- Procedure.**

244 (1) The office shall certify a business entity's or local government entity's eligibility for

245 a tax credit as provided in this part.

246 (2) A business entity or local government entity seeking to receive a tax credit as
247 provided in this part shall provide the office with:

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

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

252 (ii) for a local government entity, documentation of the new state revenues from the
253 new commercial project within the area of the local government entity that were paid during
254 the preceding calendar year;

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

256 (d) if a local government entity seeks to assign the tax credit to a community
257 reinvestment agency as described in Section 63N-2-104, a statement providing the name and
258 taxpayer identification number of the community reinvestment agency to which the local
259 government entity seeks to assign the tax credit;

260 (e) (i) with respect to a business entity, a document that expressly directs and
261 authorizes the State Tax Commission to disclose to the office the business entity's returns and
262 other information that would otherwise be subject to confidentiality under Section 59-1-403 or
263 Section 6103, Internal Revenue Code;

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

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

269 (B) if the new state revenues collected as a result of a new commercial project are
270 attributable in whole or in part to a new or expanded industrial, manufacturing, mining,
271 agricultural, distribution, or business service within a new commercial project within the area
272 of the local government entity, a document signed by an authorized representative of the new
273 or expanded industrial, manufacturing, mining, agricultural, distribution, or business service
274 that:

275 (I) expressly directs and authorizes the State Tax Commission to disclose to the office

276 the returns of the new or expanded industrial, manufacturing, distribution, or business service
277 and other information that would otherwise be subject to confidentiality under Section
278 59-1-403 or Section 6103, Internal Revenue Code; and

279 (II) lists the taxpayer identification number of the new or expanded industrial,
280 manufacturing, mining, agricultural, distribution, or business service; or

281 (iii) with respect to a local government entity that seeks to assign the tax credit to a
282 community reinvestment agency:

283 (A) a document signed by the members of the governing body of the community
284 reinvestment agency that expressly directs and authorizes the State Tax Commission to
285 disclose to the office the returns of the community reinvestment agency and other information
286 that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103,
287 Internal Revenue Code; and

288 (B) if the new state revenues collected as a result of a new commercial project are
289 attributable in whole or in part to a new or expanded industrial, manufacturing, mining,
290 agricultural, distribution, or business service within a new commercial project within the
291 community reinvestment agency, a document signed by an authorized representative of the new
292 or expanded industrial, manufacturing, mining, agricultural, distribution, or business service
293 that:

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

298 (II) lists the taxpayer identification number of the new or expanded industrial,
299 manufacturing, mining, agricultural, distribution, or business service; and

300 (f) for a business entity only, documentation that the business entity has satisfied the
301 performance benchmarks outlined in the written agreement described in Subsection
302 63N-2-104(3)(a), including:

303 (i) the creation of new incremental jobs that are also high paying jobs;

304 (ii) significant capital investment;

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

306 (iv) a combination of these benchmarks.

307 (3) (a) The office shall submit the documents described in Subsection (2)(e) to the
308 State Tax Commission.

309 (b) Upon receipt of a document described in Subsection (2)(e), the State Tax
310 Commission shall provide the office with the returns and other information requested by the
311 office that the State Tax Commission is directed or authorized to provide to the office in
312 accordance with Subsection (2)(e).

313 (4) If, after review of the returns and other information provided by the State Tax
314 Commission, or after review of the ongoing performance of the business entity or local
315 government entity, the office determines that the returns and other information are inadequate
316 to provide a reasonable justification for authorizing or continuing a tax credit, the office shall:

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

318 (ii) terminate the agreement described in Subsection 63N-2-104(3)(a) for failure to
319 meet the performance standards established in the agreement; or

320 (b) inform the business entity or local government entity that the returns or other
321 information were inadequate and ask the business entity or local government entity to submit
322 new documentation.

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

327 (a) determine the amount of the tax credit to be granted to the business entity, local
328 government entity, or if the local government entity assigns the tax credit as described in
329 Section 63N-2-104, to the community reinvestment agency to which the local government
330 entity assigns the tax credit;

331 (b) issue a tax credit certificate to the business entity, local government entity, or if the
332 local government entity assigns the tax credit as described in Section 63N-2-104, to the
333 community reinvestment agency to which the local government entity assigns the tax credit;
334 and

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

336 (6) A business entity, local government entity, or community reinvestment agency may
337 not claim a tax credit unless the business entity, local government entity, or community

338 reinvestment agency has a tax credit certificate issued by the office.

339 (7) (a) A business entity, local government entity, or community reinvestment agency
340 may claim a tax credit in the amount listed on the tax credit certificate on its tax return.

341 (b) A business entity, local government entity, or community reinvestment agency that
342 claims a tax credit under this section shall retain the tax credit certificate in accordance with
343 Section [59-7-614.2](#) or [59-10-1107](#).