

HB0356S02 compared with HB0356S01

~~{deleted text}~~ shows text that was in HB0356S01 but was deleted in HB0356S02.

inserted text shows text that was not in HB0356S01 but was inserted into HB0356S02.

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~~{Representative Carl}~~Senator Derrin R. ~~{Albrecht}~~Owens proposes the following substitute bill:

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 definitions 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

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areas of the state;

- ▶ modifies the types of new commercial projects that may qualify for tax credits authorized by the Governor's Office of Economic Development; 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 amended by Coordination Clause, Laws of Utah 2019, Chapter 465

63N-2-104, as last amended by Laws of Utah 2018, Chapter 281

63N-2-105, as last amended by Laws of Utah 2016, Chapter 350

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

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

63N-1-102. Definitions.

As used in this title:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) directly by a business entity; or

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

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

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

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

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

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

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

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

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

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

63N-2-103. Definitions.

As used in this part:

(1) "Authority" means:

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

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

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

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

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

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

(b) With respect to a tax credit authorized by the office in accordance with Subsection 63N-2-104(3)(c)(ii), "business entity" includes a nonprofit entity.

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

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

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

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

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

(ii) an authority project area; and

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

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

(b) "New commercial project" includes an economic development opportunity that involves new or expanded agricultural or mining business services in Utah if the new commercial project is located within a:

(i) county of the third, fourth, fifth, or sixth class; or

(ii) municipality that has a population of 10,000 or less and the municipality is in a county of the second class.

~~[(b)]~~ (c) "New commercial project" does not include retail business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) If the office authorizes or commits to authorize a tax credit for a new commercial project located within the boundary of:

(A) a municipality with a population of 10,000 or less located within a county of the second class and that is experiencing economic hardship as determined by the office, the office

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shall authorize a tax credit of up to 50% of new state revenues from the new commercial project over the lesser of the life of the new commercial project or 20 years;

(B) a county of the third class, the office shall authorize a tax credit of up to 50% of new state revenues from the new commercial project over the lesser of the life of the new commercial project or 20 years; and

(C) a county of the fourth, fifth, or sixth class, the office shall authorize a tax credit of 50% of new state revenues from the new commercial project over the lesser of the life of the new commercial project or 20 years.

(iii) Notwithstanding any other provisions of this section, the office may not authorize a tax credit under this section for a new commercial project:

(A) to a business entity that has claimed a High Cost Infrastructure Development Tax Credit described in Section 63M-4-603 related to the same new commercial project; or

(B) in an amount more than the amount of the capital investment in the new commercial project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) the creation of new incremental jobs that are also high paying jobs;
- (ii) significant capital investment;
- (iii) significant purchases from Utah vendors and providers; or
- (iv) a combination of these benchmarks.

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

(b) Upon receipt of a document described in Subsection (2)(e), the State Tax

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Commission shall provide the office with the returns and other information requested by the office that the State Tax Commission is directed or authorized to provide to the office in accordance with Subsection (2)(e).

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

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

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

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

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

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

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

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

(6) A business entity, local government entity, or community reinvestment agency may not claim a tax credit unless the business entity, local government entity, or community reinvestment agency has a tax credit certificate issued by the office.

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

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