

HB0035S03 compared with HB0035S02

~~{deleted text}~~ shows text that was in HB0035S02 but was deleted in HB0035S03.

inserted text shows text that was not in HB0035S02 but was inserted into HB0035S03.

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~~{Representative Stephen G. Handy}~~Senator Ronald M. Winterton proposes the following substitute bill:

ECONOMIC DEVELOPMENT MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Ronald M. Winterton

LONG TITLE

General Description:

This bill modifies provisions related to economic development.

Highlighted Provisions:

This bill:

- ▶ requires the Unified Economic Opportunity Commission, instead of the Business and Economic Development Subcommittee, to identify targeted industries for economic development in the state;
- ▶ modifies provisions related to the issuance of economic development tax credits by the Governor's Office of Economic Opportunity (GO Utah office), including by:
 - defining and modifying terms;
 - limiting tax credit eligibility to certain projects involving targeted industries,

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located within rural areas or approved by the Unified Economic Opportunity Commission;

- repealing provisions allowing a local government entity or community reinvestment agency to receive a tax credit;
 - allowing a local government entity to create an economic development zone for the purpose of incentivizing projects within the local government entity's boundaries;
 - allowing the GO Utah office to issue tax credits for projects that establish remote work opportunities in the state;
 - requiring the GO Utah office to conduct an economic impact study to determine a business entity's eligibility for a tax credit;
 - establishing requirements for the GO Utah office to enter into a written agreement with a business entity, including factors for the GO Utah office to consider in determining the duration and amount of tax credit;
 - modifying provisions related to the process for a business entity to claim a tax credit; and
 - allowing the GO Utah office to make rules for purposes of administration; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-7-614.2, as last amended by Laws of Utah 2021, Chapter 282

63N-1a-102, as last amended by Laws of Utah 2021, Chapter 381 and renumbered and amended by Laws of Utah 2021, Chapter 282

63N-1a-202, as enacted by Laws of Utah 2021, Chapter 282

63N-1a-301, as renumbered and amended by Laws of Utah 2021, Chapter 282

63N-2-102, as last amended by Laws of Utah 2015, Chapter 344 and renumbered and amended by Laws of Utah 2015, Chapter 283

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63N-2-103, as last amended by Laws of Utah 2021, Chapters 282 and 381

63N-2-104, as last amended by Laws of Utah 2021, Chapters 282, 381 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 282

63N-2-105, as last amended by Laws of Utah 2021, Chapters 282 and 381

63N-2-107, as last amended by Laws of Utah 2021, Chapters 282 and 382

63N-3-102, as last amended by Laws of Utah 2021, Chapter 282

63N-3-111, as last amended by Laws of Utah 2021, Chapters 282 and 382

ENACTS:

63N-2-104.1, Utah Code Annotated 1953

63N-2-104.2, Utah Code Annotated 1953

63N-2-104.3, Utah Code Annotated 1953

63N-2-110, Utah Code Annotated 1953

REPEALS:

63N-2-108, as last amended by Laws of Utah 2016, Chapter 350

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

Section 1. Section **59-7-614.2** is amended to read:

59-7-614.2. Refundable economic development tax credit.

(1) As used in this section:

(a) "Business entity" means a taxpayer that meets the definition of "business entity" as defined in Section 63N-2-103.

~~[(b) "Community reinvestment agency" means the same as that term is defined in Section 17C-1-102.]~~

~~[(c)] (b) "Incremental job" means the same as that term is defined in Section 63N-1a-102.~~

~~[(d) "Local government entity" means the same as that term is defined in Section 63N-2-103.]~~

~~[(e)] (c) "New state revenue" means the same as that term is defined in Section 63N-1a-102.~~

~~[(f)] (d) "Office" means the Governor's Office of Economic Opportunity.~~

(2) Subject to the other provisions of this section, a business entity~~[, local government~~

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~~entity, or community reinvestment agency]~~ may claim a refundable tax credit for economic development.

(3) The tax credit under this section is the amount listed as the tax credit amount on the tax credit certificate that the office issues to the business entity~~[-local government entity, or community reinvestment agency]~~ for the taxable year.

~~[(4) A community reinvestment agency may claim a tax credit under this section only if a local government entity assigns the tax credit to the community reinvestment agency in accordance with Section 63N-2-104.]~~

~~[(5)(a) In accordance with any rules prescribed by the commission under Subsection (5)(b), the commission shall make a refund to the following that claim a tax credit under this section:]~~

~~[(i) a local government entity;]~~

~~[(ii) a community reinvestment agency; or]~~

~~[(iii) a business entity if the amount of the tax credit exceeds the business entity's tax liability for a taxable year.]~~

~~[(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a business entity, local government entity, or community reinvestment agency as required by Subsection (5)(a).]~~

(4) (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the commission shall make a refund to a business entity that claims a tax credit under this section if the amount of the tax credit exceeds the business entity's tax liability for a taxable year.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules providing procedures for making a refund to a business entity as required by Subsection (4)(a).

~~[(6)] (5) (a) In accordance with Section 59-7-159, the Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and make recommendations concerning whether the tax credit should be continued, modified, or repealed.~~

(b) Except as provided in Subsection ~~[(6)] (5)(c)~~, for purposes of the study required by this Subsection ~~[(6)] (5)~~, the office shall provide the following information, if available to the office, to the Revenue and Taxation Interim Committee by electronic means:

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(i) the amount of tax credit that the office grants to each business entity~~[, local government entity, or community reinvestment agency]~~ for each calendar year;

(ii) the criteria that the office uses in granting a tax credit;

~~[(iii) (A) for a business entity, the new state revenue generated by the business entity for the calendar year; or]~~

~~[(B) for a local government entity, regardless of whether the local government entity assigns the tax credit in accordance with Section 63N-2-104, the new state revenue generated as a result of a new commercial project within the local government entity for each calendar year;]~~

(iii) the new state revenue generated by the business entity for the calendar year;

(iv) estimates for each of the next three calendar years of the following:

(A) the amount of tax credits that the office will grant;

(B) the amount of new state revenue that will be generated; and

(C) the number of new incremental jobs within the state that will be generated;

(v) the information contained in the office's latest report under Section 63N-2-106; and

(vi) any other information that the Revenue and Taxation Interim Committee requests.

(c) (i) In providing the information described in Subsection ~~[(6)]~~ (5)(b), the office shall redact information that identifies a recipient of a tax credit under this section.

(ii) If, notwithstanding the redactions made under Subsection ~~[(6)]~~ (5)(c)(i), reporting the information described in Subsection ~~[(6)]~~ (5)(b) might disclose the identity of a recipient of a tax credit, the office may file a request with the Revenue and Taxation Interim Committee to provide the information described in Subsection ~~[(6)]~~ (5)(b) in the aggregate for all business entities ~~[and agencies]~~ that receive the tax credit under this section.

(d) The Revenue and Taxation Interim Committee shall ensure that the recommendations described in Subsection ~~[(6)]~~ (5)(a) include an evaluation of:

(i) the cost of the tax credit to the state;

(ii) the purpose and effectiveness of the tax credit; and

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

Section 2. Section **63N-1a-102** is amended to read:

63N-1a-102. Definitions.

As used in this title:

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(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 GO Utah 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 GO Utah board.

(3) "Commission" means the Unified Economic Opportunity Commission created in Section 63N-1a-201.

(4) "Economic opportunity agency" includes:

- (a) the Department of Workforce Services;
- (b) the Department of Cultural and Community Engagement;
- (c) the Department of Commerce;
- (d) the Department of Natural Resources;
- (e) the Office of Energy Development;
- (f) the State Board of Education;
- (g) institutions of higher education;
- (h) the Utah Multicultural Commission;
- (i) the World Trade Center Utah;
- (j) local government entities;
- (k) associations of governments;
- (l) the Utah League of Cities and Towns;
- (m) the Utah Association of Counties;
- (n) the Economic Development Corporation of Utah;
- (o) the Small Business Administration;
- (p) chambers of commerce;
- (q) industry associations;
- (r) small business development centers; and
- (s) other entities identified by the commission or the executive director.

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

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

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(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) "GO Utah board" means the Business and Economic Development Subcommittee created in Section 63N-1b-202.

(8) "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.

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

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

(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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(10) "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.

(11) "Office" or "GO Utah office" means the Governor's Office of Economic Opportunity.

(12) "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.

(13) "State strategic goals" means the strategic goals listed in Section 63N-1a-103.

(14) "Statewide economic development strategy" means the economic development strategy developed by the commission in accordance with Section 63N-1a-202.

(15) "Targeted industry" means an industry or group of industries targeted by the commission under Section 63N-1a-202, for economic development in the state.

Section 3. Section **63N-1a-202** is amended to read:

63N-1a-202. Commission duties.

(1) The commission shall:

(a) develop, coordinate, and lead a comprehensive statewide economic development strategy that:

(i) unifies and coordinates economic development efforts in the state;

(ii) includes key performance indicators for long-term progress toward the state strategic goals;

(iii) establishes reporting and accountability processes for the key performance indicators; and

(iv) ensures the success of the statewide economic development strategy is shared among the urban and rural areas of the state;

(b) receive feedback, input, and reports from economic opportunity agencies regarding programs related to the statewide economic development strategy;

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(c) develop the statewide economic strategy in view of the state water policy described in Section 73-1-21, including the state's commitment to appropriate conservation, efficient and optimal use of water resources, infrastructure development and improvement, optimal agricultural use, water quality, reasonable access to recreational activities, effective wastewater treatment, and protecting and restoring healthy ecosystems;

(d) direct and facilitate changes to or recommend elimination of economic development programs to ensure alignment with the mission and vision described in Section 63N-1a-103;

(e) at least once every five years, identify [~~industry clusters on which the commission recommends the state focus recruiting and expansion efforts~~] which industries or groups of industries shall be targeted for economic development in the state;

(f) establish strategies for the recruitment and retention of targeted [~~industry clusters~~] industries while respecting the different needs of rural and urban areas throughout the state;

(g) establish strategies for supporting entrepreneurship and small business development in the state;

(h) analyze the state's projected long-term population and economic growth and plan for the anticipated impacts of the projected growth in a manner that improves quality of life and is consistent with the statewide economic development strategy and state strategic goals;

(i) identify gaps and potential solutions related to improving infrastructure, especially as related to the state's projected long-term population growth;

(j) support the development of a prepared workforce that can support [~~critical industries and industry clusters~~] targeted industries identified by the commission;

(k) coordinate and develop strategies that assist education providers and industry to cooperate in supporting students in developing market relevant skills to meet industry needs;

(l) develop strategies and plans to ensure comprehensive economic development efforts are targeted to the unique needs of rural areas of the state;

(m) study the unique needs of multicultural communities throughout the state and develop household-level plans to ensure residents of the state can participate in economic opportunities in the state;

(n) ensure the commission's efforts are, to the extent practicable, data-driven and evidence-based;

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- (o) support an integrated international trade strategy for the state;
- (p) facilitate coordination among public, private, and nonprofit economic opportunity agencies; and
- (q) in performing the commission's duties, consider the recommendations of the subcommittees described in Chapter 1b, Commission Subcommittees.

(2) The commission shall provide a report to the office for inclusion in the office's annual written report described in Section 63N-1a-306, that includes:

- (a) the statewide economic development strategy;
- (b) a description of how the commission fulfilled the commission's statutory purposes and duties during the year, including any relevant findings;
- (c) the key performance indicators included in the statewide economic development strategy, including data showing the extent to which the indicators are being met; and
- (d) any legislative recommendations.

Section 4. Section **63N-1a-301** is amended to read:

63N-1a-301. Creation of office -- Responsibilities.

- (1) There is created the Governor's Office of Economic Opportunity.
- (2) The office is:
 - (a) responsible for implementing the statewide economic development strategy developed by the commission; and
 - (b) the industrial and business promotion authority of the state.
- (3) The office shall:
 - (a) consistent with the statewide economic development strategy, coordinate and align into a single effort the activities of the economic opportunity agencies in the field of economic development;
 - (b) provide support and direction to economic opportunity agencies in establishing goals, metrics, and activities that align with the statewide economic development strategy;
 - (c) administer and coordinate state and federal economic development grant programs;
 - (d) promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the state;
 - (e) promote and encourage the employment of workers in the state and the purchase of goods and services produced in the state by local businesses;

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(f) act to create, develop, attract, and retain business, industry, and commerce in the state, in accordance with the statewide economic development plan and commission directives;

(g) act to enhance the state's economy;

(h) act to assist strategic industries that are likely to drive future economic growth;

(i) assist communities in the state in developing economic development capacity and coordination with other communities;

(j) identify areas of education and workforce development in the state that can be improved to support economic and business development;

(k) consistent with direction from the commission, develop core strategic priorities for the office, which may include:

(i) enhancing statewide access to entrepreneurship opportunities and small business support;

(ii) focusing industry recruitment and expansion [~~on strategically chosen clusters~~] of targeted industries;

(iii) ensuring that in awarding competitive economic development incentives the office accurately measures the benefits and costs of the incentives; and

(iv) assisting communities with technical support to aid those communities in improving economic development opportunities;

(l) submit an annual written report as described in Section 63N-1a-306; and

(m) perform other duties as provided by the Legislature.

(4) In order to perform its duties under this title, the office may:

(a) enter into a contract or agreement with, or make a grant to, a public or private entity, including a municipality, if the contract or agreement is not in violation of state statute or other applicable law;

(b) except as provided in Subsection (4)(c), receive and expend funds from a public or private source for any lawful purpose that is in the state's best interest; and

(c) solicit and accept a contribution of money, services, or facilities from a public or private donor, but may not use the contribution for publicizing the exclusive interest of the donor.

(5) Money received under Subsection (4)(c) shall be deposited [~~in~~] into the General Fund as dedicated credits of the office.

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(6) (a) The office shall:

(i) obtain the advice of the GO Utah board before implementing a change to a policy, priority, or objective under which the office operates; and

(ii) provide periodic updates to the commission regarding the office's efforts under Subsections (3)(a) and (b).

(b) Subsection (6)(a)(i) does not apply to the routine administration by the office of money or services related to the assistance, retention, or recruitment of business, industry, or commerce in the state.

Section 5. Section **63N-2-102** is amended to read:

63N-2-102. Purpose.

This part is enacted to:

(1) foster and develop [~~industry~~] targeted industries in the state, to [~~provide additional employment opportunities for Utah's citizens~~] stimulate community-focused economic growth, and to [~~improve~~] diversify and catalyze the state's economy;

~~[(2) address the loss of prospective high paying jobs, the loss of new economic growth, and the corresponding loss of incremental new state and local revenues to competing states caused by economic incentives offered by those states;]~~

(2) create high paying employment opportunities in the state;

(3) provide tax credits to attract new commercial projects and new jobs in economic development zones in the state; and

(4) provide a cooperative and unified working relationship between state and local economic development efforts.

Section 6. 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.]~~

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~~[(3)]~~ (1) (a) "Business entity" means a person that enters into ~~[an]~~ a written 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)]~~ 63N-2-104.3(2), "business entity" includes a nonprofit entity.

(2) "Commercial or industrial zone" means an area zoned agricultural, commercial, industrial, manufacturing, business park, research park, or other appropriate business related use in a general plan that contemplates future growth.

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

~~[(5)]~~ (3) "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:]~~

~~[(a) is 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:]~~

~~[(i) involves new or expanded industrial, manufacturing, distribution, or business services in the state; and]~~

~~[(ii) advances the statewide economic development strategy.]~~

~~[(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.]~~

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

(4) "Local government entity" means a county, city, town, or metro township.

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(5) "New commercial project" means an economic development opportunity that:

(a) involves a targeted industry;

(b) is located within:

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

(ii) a municipality that has a population of 10,000 or less and the municipality is

located within a county of the second class; or

(c) involves an economic development opportunity that the commission determines to be eligible for a tax credit under this part.

(6) "Remote work opportunity" means a new commercial project that:

(a) does not require a physical office in the state where employees associated with the new commercial project are required to work; and

(b) requires employees associated with the new commercial project to:

(i) work remotely from a location within the state; and

(ii) maintain residency in the state.

~~[(8)] (7) "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]~~

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

~~[(9)] (8) "Tax credit" means an economic development tax credit created by Section 59-7-614.2 or 59-10-1107.~~

~~[(10)] (9) "Tax credit amount" means the amount the office lists as a tax credit on a tax credit certificate for a taxable year.~~

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~~[(11)]~~ (10) "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.

(11) "Written agreement" means a written agreement entered into between the office and a business entity under Section 63N-2-104.2.

Section 7. Section **63N-2-104** is amended to read:

63N-2-104. Creation of economic development zones.

(1) The office 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 that contemplates future growth;]~~

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

(a) the area is located within a commercial or industrial zone;

(b) the local government entity having jurisdiction over the area supports the creation of the development zone; and

(c) the local government entity described in Subsection (1)(b) provides or commits to provide local incentives [have been or will be committed to be provided] within the area in accordance with the [community's] local government entity's approved incentive policy [and application process].

(2) A local government entity may, for the purpose of incentivizing new commercial projects within the local government entity's boundaries, create an economic development zone if the following requirements are satisfied:

(a) the area is located:

(i) within a commercial or industrial zone; and

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(i) within the geographic boundaries of the local government entity;

(b) the local government entity adopts a long-term plan that addresses the following planning elements within the area:

(i) transportation and infrastructure;

(ii) workforce development; and

(iii) housing needs; and

(c) the office approves the local government entity's request to create the development zone.

~~[(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;]~~

~~[(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;]~~

~~[(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; and]~~

~~[(vii) unless otherwise advisable in light of economic circumstances, the new commercial project relates to the industry clusters identified by the commission under Section 63N-1a-202.]~~

~~[(3)(a) The office, after consultation with the GO Utah 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~~

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~~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)(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 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 79-6-603 related to the same new commercial project; or]~~

~~[(B) in an amount more than the amount of the capital investment in the new~~

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~~commercial project.]~~

~~[(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:]~~

~~[(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~~

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~~verification of the tax credit claimed.]~~

~~[(5) The office may attribute an incremental job or a high paying job to a new commercial project regardless of whether the job is performed in person, within the development zone or remotely from elsewhere in the state.]~~

Section 8. Section **63N-2-104.1** is enacted to read:

63N-2-104.1. Eligibility for tax credit -- Economic impact study.

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

(2) A business entity is eligible to receive a tax credit for a new commercial project if:

(a) the new commercial project:

(i) (A) is located and provides direct investment within the geographic boundaries of a development zone; or

(B) creates a remote work opportunity;

(ii) 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; and

(iii) generates new state revenues; and

(b) the business entity has not claimed a High Cost Infrastructure Development Tax Credit under Section 79-6-603 for the same new commercial project.

(3) The office shall conduct a study of the economic impacts associated with a new commercial project to determine whether a business entity meets the requirements of Subsection (2).

(4) In determining whether a new commercial project meets the requirements of Subsection (2)(a)(ii), the office may attribute an incremental job or a high paying job to a new commercial project regardless of whether the job is performed in person, within a development zone, or remotely from elsewhere in the state.

Section 9. Section **63N-2-104.2** is enacted to read:

63N-2-104.2. Written Agreement -- Contents -- Grounds for amendment or termination.

(1) If the office determines that a business entity is eligible for a tax credit under Section 63N-2-104.1, the office may enter into a written agreement with the business entity

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that:

(a) establishes performance benchmarks for the business entity to claim a tax credit, including any minimum wage requirements;

(b) specifies the maximum amount of tax credit that the business entity may be authorized for a taxable year and over the life of the new commercial project, subject to the limitations in Section 63N-2-104.3;

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

(d) requires the business entity to retain records supporting a claim for a tax credit for at least four years after the business entity claims the tax credit;

(e) requires the business entity to submit to audits for verification of any tax credit claimed; and

(f) requires the business entity, in order to claim a tax credit, to meet the requirements of Section 63N-2-105.

(2) In establishing the terms of a written agreement, including the duration and amount of tax credit that the business entity may be authorized to receive, the office shall:

(a) authorize the tax credit in a manner that provides the most effective incentive for the new commercial project;

(b) consider the following factors:

(i) whether the new commercial project provides vital or specialized support to supply chains;

(ii) whether the new commercial project provides an innovative product, technology, or service;

(iii) the number and wages of new incremental jobs associated with the new commercial project;

(iv) the amount of financial support provided by local government entities for the new commercial project;

(v) the amount of capital expenditures associated with the new commercial project;

(vi) whether the new commercial project returns jobs transferred overseas;

(vii) the rate of unemployment in the county in which the new commercial project is located;

(viii) whether the new commercial project creates a remote work opportunity;

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(ix) whether the new commercial project is located in a development zone created by a local government entity as described in Subsection 63N-2-104(2);

(x) whether the business entity commits to hiring Utah workers for the new commercial project;

(xi) whether the business entity adopts a corporate citizenry plan or supports initiatives in the state that advance education, gender equality, diversity and inclusion, work-life balance, environmental or social good, or other similar causes;

(xii) whether the business entity's headquarters are located within the state;

(xiii) the likelihood of other business entities relocating to another state as a result of the new commercial project;

(xiv) the necessity of the tax credit for the business entity's expansion in the state or relocation from another state; and

(xv) the location and impact of the new commercial project on existing and planned transportation facilities, existing and planned housing, including affordable housing, and public infrastructure; and

(c) consult with the GO Utah board.

(3) (a) In determining the amount of tax credit that a business entity may be authorized to receive under a written agreement, the office may:

(i) authorize a higher or optimized amount of tax credit for a new commercial project located within a development zone created by a local government entity as described in Subsection 63N-2-104(2); and

(ii) establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a process by which the office closely approximates the amount of taxes the business entity paid under Title 59, Chapter 12, Sales and Use Tax Act, for a capital project.

(b) The office may apply a process described in Subsection (3)(a)(ii) to a business entity only with respect to a new or amended written agreement that takes effect on or after January 1, 2022.

(4) If the office identifies any of the following events after entering into a written agreement with a business entity, the office and the business entity shall amend, or the office may terminate, the written agreement:

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(a) a change in the business entity's organization resulting from a merger with or acquisition of another entity located in the state;

(b) a material increase in the business entity's retail operations that results in new state revenue not subject to the incentive; or

(c) an increase in the business entity's operations that:

(i) is outside the scope of the written agreement or outside the boundaries of a development zone; and

(ii) results in new state revenue not subject to the incentive.

Section 10. Section **63N-2-104.3** is enacted to read:

63N-2-104.3. Limitations on tax credit amount.

(1) Except as provided in Subsection (2)(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 a tax credit that exceeds:

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

(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; or

(c) 35% of the new state revenues from the new commercial project over the lesser of the life of a new commercial project or 20 years, if:

(i) the new commercial project brings 2,500 or more new incremental jobs to the state;

(ii) the amount of capital expenditures associated with the new commercial project is \$1,000,000,000 or more; and

(iii) the commission approves the tax credit.

(2) If the office authorizes 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 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

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(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.

Section 11. Section **63N-2-105** is amended to read:

63N-2-105. Requirements for claiming tax credit -- Application for tax credit certificate -- 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.]~~

(1) A business entity may claim a tax credit under this part if the office:

(a) determines that the business entity is eligible for a tax credit under Section 63N-2-104.1;

(b) enters into a written agreement with the business entity in accordance with Section 63N-2-104.2; and

(c) issues a tax credit certificate to the business entity in accordance with this section.

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

~~(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 a 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 a 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 that seeks to claim a tax credit:]~~

~~[(A)] (d) 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~~

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be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code;
[and]

~~[(B)]~~ (e) a document that expressly directs and authorizes the Department of Workforce Services to disclose to the office the business entity's unemployment insurance contribution reports that would otherwise be subject to confidentiality under Section 35A-4-312; and

(f) documentation that the business entity has satisfied the performance benchmarks outlined in the written agreement.

~~[(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:]~~

~~[(f) 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]~~

~~[(H) 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;~~

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~~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:]~~

~~[(f) 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]~~

~~[(H) 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), and as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including the creation of new:]~~

~~[(i) incremental jobs;]~~

~~[(ii) high paying jobs; and]~~

~~[(iii) state revenue.]~~

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

~~[(b)]~~ (ii) Upon receipt of ~~[a]~~ the document described in Subsection ~~[(2)(e)]~~ (2)(d), the State Tax 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)]~~ (2)(d).

(b) (i) The office shall submit the document described in Subsection (2)(e) to the Department of Workforce Services.

(ii) Upon receipt of the document described in Subsection (2)(e), the Department of Workforce Services shall provide the office with the information that the Department of Workforce Services is directed or authorized to provide to the office in accordance with

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Subsection (2)(e).

(4) If the returns and other information provided under Subsections (2) and (3) provide the office with a reasonable justification for authorizing or continuing a tax credit, the office shall:

(a) determine the amount of the tax credit to be granted to the business entity, consistent with the terms of the written agreement;

(b) issue a tax credit certificate to the business entity; and

(c) provide a digital record of the tax credit certificate to the State Tax Commission.

~~[(4) If, with respect to an agreement described in Subsection 63N-2-104(3)(a) between the office and a business entity, the office identifies one of the following events, the office and the business entity shall amend or the office may terminate the agreement:]~~

~~[(a) a change in the business entity's organization resulting from a merger with or acquisition of another entity located in the state;]~~

~~[(b) a material increase in the business entity's retail operations that results in new state revenue not subject to the incentive; or]~~

~~[(c) an increase in the business entity's operations that:]~~

~~[(i) is outside the scope of the agreement or outside the boundaries of a development zone; and]~~

~~[(ii) results in new state revenue not subject to the incentive.]~~

~~[(5) 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.]~~

~~[(6) 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~~

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~~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 digital record of the tax credit certificate to the State Tax Commission.]~~

~~[(7) (a) For purposes of determining the amount of a business entity's tax credit in accordance with this section, the office may establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a process by which the office closely approximates the amount of taxes the business entity paid under Title 59, Chapter 12, Sales and Use Tax Act, for a capital project.]~~

~~[(b) The office may apply a process described in Subsection (7)(a) to a business entity only with respect to a new agreement described in Subsection 63N-2-104(3)(a) that takes effect on or after January 1, 2022.]~~

~~[(8) 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.]~~

~~[(9) (5) (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.~~

~~(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.~~

Section 12. Section **63N-2-107** is amended to read:

63N-2-107. Reports of new state revenues, partial rebates, and tax credits.

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

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Finance identifying:

(a) (i) the total estimated amount of new state revenues created from new commercial projects [~~in development zones~~];

(ii) the estimated amount of new state revenues from new commercial projects [~~in development zones~~] that will be generated from:

(A) sales tax;

(B) income tax; and

(C) corporate franchise and income tax; and

(iii) the minimum number of new incremental jobs and high paying jobs that will be created before any tax credit is awarded; and

(b) the total estimated amount of tax credits that the office projects that business entities [~~local government entities, or community reinvestment agencies~~] will qualify to claim under this part.

(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 the Legislative Fiscal Analyst, and the Division of Finance identifying:

(a) each new written agreement that the office entered into [~~by the office~~] since the last report;

(b) the estimated amount of new state revenues that will be generated under each written agreement described in Subsection (2)(a);

(c) the estimated maximum amount of tax credits that a business entity [~~local government entity, or community reinvestment agency~~] could qualify for under each written agreement described in Subsection (2)(a); and

(d) the minimum number of new incremental jobs and high paying jobs that will be created before any tax credit is awarded.

(3) At the reasonable request of the Governor's Office of Planning and Budget, the Office of the Legislative Fiscal Analyst, or the Division of Finance, the office shall provide additional information about the tax credit, new incremental jobs and high paying jobs, costs, and economic benefits related to this part, if the information is part of a public record as defined in Section 63G-2-103.

(4) By June 30, the office shall submit to the Economic Development and Workforce

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Services Interim Committee, the Business, Economic Development, and Labor Appropriations Subcommittee, and the governor, a written report that provides an overview of the implementation and efficacy of the statewide economic development strategy, including an analysis of the extent to which the office's programs are aligned with the prevailing economic conditions expected in the next fiscal year.

Section 13. Section **63N-2-110** is enacted to read:

63N-2-110. Rulemaking authority.

The office may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this part.

Section 14. Section **63N-3-102** is amended to read:

63N-3-102. Definitions.

As used in this part:

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

(2) "Economic opportunities" means unique business situations or community circumstances, including the development of recreation infrastructure and the promotion of the high tech sector in the state, which lend themselves to the furtherance of the economic interests of the state by providing a catalyst or stimulus to the growth or retention, or both, of commerce and industry in the state, including retention of companies whose relocation outside the state would have a significant detrimental economic impact on the state as a whole, regions of the state, or specific components of the state as determined by the GO Utah board.

(3) "Restricted Account" means the restricted account known as the Industrial Assistance Account created in Section 63N-3-103.

~~[(4) "Targeted industry" means an industry or group of industries targeted by the GO Utah board under Section 63N-3-111, for economic development in the state.]~~

~~[(5) (4) "Talent development grant" means a grant awarded under Section 63N-3-112.~~

Section 15. Section **63N-3-111** is amended to read:

63N-3-111. Annual policy considerations.

~~[(1)(a) The GO Utah board shall determine annually which industries or groups of industries shall be targeted industries as defined in Section 63N-3-102.]~~

~~[(b) (1) (a) The office shall make recommendations to state and federal agencies, local governments, the governor, and the Legislature regarding policies and initiatives that promote~~

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the economic development of targeted industries.

~~[(c)]~~ (b) The office may create one or more voluntary advisory committees that may include public and private stakeholders to solicit input on policy guidance and best practices in encouraging the economic development of targeted industries.

(2) In evaluating the economic impact of applications for assistance, the GO Utah board shall use an econometric cost-benefit model.

(3) The GO Utah board may establish:

(a) minimum interest rates to be applied to loans granted that reflect a fair social rate of return to the state comparable to prevailing market-based rates such as the prime rate, U.S. Government T-bill rate, or bond coupon rate as paid by the state, adjusted by social indicators such as the rate of unemployment; and

(b) minimum applicant expense ratios, as long as they are at least equal to those required under Subsection 63N-3-105(1)(b).

Section 16. Repealer.

This bill repeals:

Section 63N-2-108, Expenditure of amounts received by a local government entity or community reinvestment agency as a tax credit -- Commingling of tax credit amounts with certain other amounts.

Section 17. Effective date.

This bill takes effect on May 4, 2022, except that the amendments to Section 59-7-614.2 in this bill take effect for a taxable year beginning on or after January 1, 2022.