

ECONOMIC DEVELOPMENT INCENTIVES

MODIFICATIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill modifies economic development provisions of Title 63M, Chapter 1, the Governor's Office of Economic Development, related to the Industrial Assistance Fund.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of economic opportunities as defined in Title 63M, Chapter 1, Part 9, Industrial Assistance Fund, to include the 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;
- ▶ increases the percentage of money in the Industrial Assistance Fund that may be used to take timely advantage of economic opportunities as they arise;
- ▶ modifies qualifications for receiving financial assistance from the Industrial Assistance Fund; and
- ▶ modifies the amount of transfer of surplus of General Fund revenues earmarked to the Industrial Assistance Fund.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30 **63M-1-902**, as renumbered and amended by Laws of Utah 2008, Chapter 382

31 **63M-1-903**, as renumbered and amended by Laws of Utah 2008, Chapter 382

32 **63M-1-905**, as last amended by Laws of Utah 2009, Chapter 183

33 **63M-1-909**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

36 Section 1. Section **63M-1-902** is amended to read:

37 **63M-1-902. Definitions.**

38 As used in this part:

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

40 (2) "Board" means the Board of Business and Economic Development.

41 (3) "Company creating an economic impediment" means a company that discourages
42 economic development within a reasonable radius of its location because of:

43 (a) odors;

44 (b) noise;

45 (c) pollution;

46 (d) health hazards; or

47 (e) other activities similar to those described in Subsections (3)(a) through (d).

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

54 (5) "Economically disadvantaged rural area" means a geographic area designated by
55 the board under Section 63M-1-910.

56 (6) "Fund" means the restricted account known as the Industrial Assistance Fund
57 created in Section 63M-1-903.

58 (7) "Replacement company" means a company locating its business or part of its
59 business in a location vacated by a company creating an economic impediment.

60 (8) "Targeted industry" means an industry or group of industries targeted by the board
61 under Section 63M-1-910, for economic development in the state.

62 Section 2. Section **63M-1-903** is amended to read:

63 **63M-1-903. Industrial Assistance Fund created.**

64 (1) There is created within the General Fund a restricted account known as the
65 Industrial Assistance Fund of which:

66 (a) up to 50% shall be used in economically disadvantaged rural areas; and

67 (b) up to [~~20%~~] 25% may be used to take timely advantage of economic opportunities
68 as they arise.

69 (2) The fund shall be administered by the administrator under the policy direction of
70 the board.

71 (3) The administrator may hire appropriate support staff.

72 (4) The cost of administering the fund shall be paid from monies in the fund.

73 (5) Interest accrued from investment of monies in the fund shall remain in the fund.

74 Section 3. Section **63M-1-905** is amended to read:

75 **63M-1-905. Loans, grants, and assistance -- Repayment -- Earned credits.**

76 (1) (a) A company that qualifies under Section 63M-1-906 may receive loans, grants,
77 or other financial assistance from the fund for expenses related to establishment, relocation, or
78 development of industry in Utah.

79 (b) A company creating an economic impediment that qualifies under Section
80 63M-1-908 may in accordance with this part receive loans, grants, or other financial assistance
81 from the fund for the expenses of the company creating an economic impediment related to:

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

84 (ii) the siting of a replacement company.

85 (c) An entity offering an economic opportunity that qualifies under Section

86 63M-1-909 may:

87 (i) receive loans, grants, or other financial assistance from the fund for expenses
88 related to the establishment, relocation, retention, or development of industry in the state; and

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

92 (2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the
93 structure, amount, and nature of any loan, grant, or other financial assistance from the fund.

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

97 (c) Payments resulting from grants awarded from the fund shall be made only after the
98 administrator has determined that the company has satisfied the conditions upon which the
99 payment or earned credit was based.

100 (3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a
101 system of earned credits that may be used to support grant payments or in lieu of cash
102 repayment of a fund loan obligation.

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

105 (A) the number of Utah jobs created;

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

107 (C) other events and activities that occur as a result of the fund assistance.

108 (b) (i) The administrator shall provide for a system of credits to be used to support
109 grant payments or in lieu of cash repayment of a fund loan when loans are made to a company
110 creating an economic impediment.

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

113 (A) the number of Utah jobs created;

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

115 (C) other events and activities that occur as a result of the fund assistance.

116 (4) (a) A cash loan repayment or other cash recovery from a company receiving
117 assistance under this section, including interest, shall be deposited into the fund.

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

121 (5) (a) (i) At the end of each fiscal year, the unrestricted, undesignated General Fund
122 balance after the transfers of surplus of General Fund revenues described in this Subsection
123 (5)(a) shall be earmarked to the Industrial Assistance Fund in an amount equal to any credit
124 that has accrued under this part.

125 (ii) The earmark under Subsection (5)(a)(i) shall be capped at \$50,000,000, at which
126 time no subsequent contributions may be made and any interest accrued above the
127 \$50,000,000 cap shall be deposited into the General Fund.

128 (b) The earmark required by [~~this~~] Subsection (5)(a) shall be made after the transfer of
129 surplus General Fund revenues is made:

130 (i) to the General Fund Budget Reserve Account as provided in Section 63J-1-312;
131 and

132 (ii) beginning with the fiscal year ending June 30, 2007, as provided in Section
133 63J-1-314.

134 [~~(b)~~] (c) These credit amounts may not be used for purposes of the fund as provided in
135 this part until appropriated by the Legislature.

136 Section 4. Section **63M-1-909** is amended to read:

137 **63M-1-909. Financial assistance to entities offering economic opportunities.**

138 (1) Subject to the duties and powers of the board under Section 63M-1-303, the
139 administrator may provide monies from the fund to an entity offering an economic opportunity
140 if that entity:

141 (a) applies to the administrator; and

142 (b) meets the qualifications of Subsection (2).

143 (2) The applicant shall:

144 (a) demonstrate to the satisfaction of the administrator the nature of the economic
145 opportunity and the related benefit to the economic well-being of the state by providing
146 evidence documenting the logical and compelling linkage, either direct or indirect, between
147 the expenditure of monies necessitated by the economic opportunity and the likelihood that the
148 state's tax base, regions of the state's tax base, or specific components of the state's tax base
149 will not be reduced but will be maintained or enlarged;

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

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

154 (d) in the case of an economic opportunity that includes the retention of jobs,
155 demonstrate how the potential relocation of jobs outside the state is related to a merger,
156 acquisition, consolidation, or similar business reason other than the applicant simply
157 requesting state assistance to remain in the state;

158 (e) satisfy other criteria the administrator considers appropriate; and

159 [~~e~~] (f) be either:

160 (i) an entity whose purpose is to exclusively or substantially promote, develop, or
161 maintain the economic welfare and prosperity of the state as a whole, regions of the state, or
162 specific components of the state; or

163 (ii) a company or individual that does not otherwise qualify under Section 63M-1-906.

164 (3) Subject to the duties and powers of the board under Section 63M-1-303, the
165 administrator shall:

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

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

- 170 (c) monitor compliance by an applicant with any contract or agreement entered into by
- 171 the applicant and the state as provided by Section 63M-1-907; and
- 172 (d) make funding decisions based upon appropriate findings and compliance.