

1 **ECONOMIC DEVELOPMENT INCENTIVES FOR**
2 **ALTERNATIVE ENERGY PROJECTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kevin T. Van Tassell**

6 House Sponsor: John G. Mathis

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions of the Renewable Energy Development Act dealing with
11 economic development incentives for alternative energy projects.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ changes the name of the Renewable Energy Development Act to the Alternative
15 Energy Development Act;
16 ▶ provides definitions for alternative energy, alternative energy development zones,
17 and alternative energy project;
18 ▶ provides the Governor's Office of Economic Development with criteria for
19 determining a qualifying tax credit under the act; and
20 ▶ makes certain conforming and technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **63M-1-2801**, as enacted by Laws of Utah 2009, Chapter 198



- 28 **63M-1-2802**, as enacted by Laws of Utah 2009, Chapter 198
- 29 **63M-1-2803**, as enacted by Laws of Utah 2009, Chapter 198
- 30 **63M-1-2804**, as enacted by Laws of Utah 2009, Chapter 198
- 31 **63M-1-2805**, as enacted by Laws of Utah 2009, Chapter 198
- 32 **63M-1-2806**, as enacted by Laws of Utah 2009, Chapter 198

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

35 Section 1. Section **63M-1-2801** is amended to read:

36 **Part 28. Alternative Energy Development Act**

37 **63M-1-2801. Title.**

38 This part is known as the "[renewable] Alternative Energy Development Act."

39 Section 2. Section **63M-1-2802** is amended to read:

40 **63M-1-2802. Findings.**

41 (1) The Legislature finds that:

42 (a) to foster and develop the [renewable] alternative energy industry in Utah, including
43 generation and manufacturing, will promote the interest of Utah's citizens in encouraging the
44 growth of the state's economy;

45 (b) Utah loses prospective high paying jobs, new economic growth, and corresponding
46 incremental new state and local revenues to competing states due to a wide variety of
47 competing [renewable] energy incentives offered by those states; and

48 (c) [renewable] alternative energy initiatives and interests of state and local officials
49 should be aligned and united in [renewable] alternative energy generation and related
50 manufacturing.

51 (2) This part is enacted to:

52 (a) increase generation of [renewable] alternative energy and create high paying jobs in
53 the [renewable] alternative energy industry, thereby growing the state's economy and
54 corresponding state and local revenues by providing tax credits to attract new [renewable]
55 alternative energy projects and assist in the expansion of existing [renewable] alternative
56 energy projects located within [renewable] alternative energy development zones in the state;
57 and

58 (b) provide a cooperative and unified working relationship between state and local

59 ~~[renewable]~~ alternative energy development efforts.

60 Section 3. Section **63M-1-2803** is amended to read:

61 **63M-1-2803. Definitions.**

62 As used in this part:

63 (1) (a) "Alternative energy" means:

64 (i) renewable energy that is derived from solar, wind, geothermal, biomass, or

65 hydroelectric sources; and

66 (ii) petroleum coke, shale oil, ~~§~~→ **[uranium] nuclear fuel** ←~~§~~, tar sands, or

66a oil-impregnated diatomaceous

67 earth.

68 (b) "Alternative energy" does not mean ~~§~~→ **conventional** ←~~§~~ natural gas or petroleum.

69 (2) "Alternative energy development zone" means an alternative energy development

70 zone created under Section 63M-1-2804.

71 (3) "Alternative energy project" means a development opportunity that involves:

72 (a) utility-scale alternative energy generation;

73 (b) the extraction of alternative fuels; or

74 (c) manufacturing of equipment used directly in alternative energy generation.

75 ~~[(4)]~~ (4) "Business entity" means a person that:

76 (a) conducts business in Utah; and

77 (b) enters into an agreement with the office that qualifies the person to receive a tax

78 credit under Section 59-7-614.2 or 59-10-1107.

79 ~~[(2)]~~ (5) "High paying jobs" means the annual wages of employment positions in a
80 business entity that compare favorably against the average wage of a community in which the
81 employment positions will exist.

82 ~~[(3)]~~ (6) "New incremental jobs" means employment positions that are:

83 (a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and

84 (b) created in addition to the baseline count of employment positions that existed

85 within the business entity before the new commercial project.

86 ~~[(4)]~~ (7) "New state revenues" means:

87 (a) incremental new state sales and use tax revenues generated as a result of [~~a~~

88 ~~renewable]~~ an alternative energy project in [~~a-renewable]~~ an alternative energy development

89 zone that a business entity pays under Title 59, Chapter 12, Sales and Use Tax Act;

90 (b) incremental new state tax revenues that a business entity pays as a result of [a
91 ~~renewable~~] an alternative energy project in [a ~~renewable~~] an alternative energy development
92 zone under:

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

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

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

97 (iv) Title 59, Chapter 10, Part 4, Withholding of Tax; or

98 (v) a combination of Subsections [~~(4)~~] (7)(b)(i) through [~~(4)~~] (7)(b)(iv);

99 (c) incremental new state tax revenues generated as individual income taxes under
100 Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information,
101 paid by employees of the new commercial project as evidenced by payroll records from the
102 business entity; or

103 (d) a combination of Subsections [~~(4)~~] (7)(a) through [~~(4)~~] (7)(c).

104 [~~(5)~~] (8) "Office" means the Governor's Office of Economic Development.

105 [~~(6)~~ "Renewable energy" means the energy generation as defined in Subsection
106 ~~10-19-102(11) and includes generation powered by nuclear fuel.~~]

107 [~~(7)~~ "Renewable energy development zone" means a renewable energy development
108 zone created under Section 63M-1-2804.]

109 [~~(8)~~ "Renewable energy project" means a development opportunity that involves
110 renewable energy generation or manufacturing of equipment used directly in renewable energy
111 generation of increased energy efficiency.]

112 (9) "Tax credit" means an economic development tax credit created by Section
113 59-7-614.2 or 59-10-1107.

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

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

117 (a) lists the name of the applicant;

118 (b) lists the applicant's taxpayer identification number;

119 (c) lists the amount of the tax credit that the office awards the applicant for a taxable
120 year; and

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

122 Section 4. Section **63M-1-2804** is amended to read:

123 **63M-1-2804. Creation of alternative energy development zones -- Tax credits.**

124 (1) The office, with advice from the board, may create [~~a renewable~~] an alternative
125 energy development zone in the state that satisfies the following requirements:

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

128 (b) the request to create [~~a renewable~~] an alternative energy development zone has been
129 forwarded to the office after first being approved by an appropriate local government entity;
130 and

131 (c) the local government entity has committed or will commit to provide incentives,
132 which may include an abatement of some or all of the property taxes for up to 30 years for [~~a~~
133 ~~renewable~~] an alternative energy project qualified under this part.

134 (2) (a) By following the procedures and requirements of Title 63G, Chapter 4,
135 Administrative Procedures Act, the office shall set standards that a business entity must meet to
136 qualify for a tax credit under this part.

137 (b) The office shall ensure that those standards include the following requirements:

138 (i) the [~~renewable~~] alternative energy project must be within [~~a renewable~~] an
139 alternative energy development zone;

140 (ii) the [~~renewable~~] alternative energy project includes direct investment within the
141 geographic boundaries of the [~~renewable~~] alternative energy development zone;

142 (iii) the [~~renewable~~] alternative energy project brings new incremental jobs to Utah;

143 (iv) the [~~renewable~~] alternative energy project includes significant capital investment,
144 the creation of high paying jobs, or significant purchases from Utah vendors and providers, or
145 any combination of these three economic factors;

146 (v) the [~~renewable~~] alternative energy project generates new state revenues; and

147 (vi) the business entity qualifying for the tax credit meets the requirements of Section
148 63M-1-2405.

149 (3) (a) The office, with advice from the board[;];

150 (i) may enter into an agreement with a business entity authorizing a tax credit to a
151 business entity that meets the standards established under Subsection (2); and

152 (ii) shall consider economic modeling, including the costs and benefits of the
153 alternative energy project to state and local governments, in determining the tax credit amount.

154 (b) The office may not authorize or commit a tax credit to a business entity that
155 exceeds 100% of the new state revenues generated by the business entity's [~~renewable~~]
156 alternative energy project over the life of [~~a-renewable~~] an alternative energy project or 20
157 years, whichever is less.

158 (4) The office shall ensure that the agreement with the business entity that is described
159 in Subsection (3):

160 (a) details the requirements that the business entity must meet to qualify for a tax credit
161 under this part;

162 (b) specifies the maximum amount of tax credit that the business entity may earn over
163 the life of the [~~renewable~~] alternative energy project;

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

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

167 (e) requires the business entity to submit to audits for verification of the tax credit
168 claimed.

169 Section 5. Section **63M-1-2805** is amended to read:

170 **63M-1-2805. Qualifications for tax credit -- Procedure.**

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

173 (2) A business entity seeking to receive a tax credit shall provide the office with:

174 (a) an application for the tax credit certificate;

175 (b) documentation of the new state revenues generated from the business entity's
176 [~~renewable~~] alternative energy project that were paid during the preceding calendar year; and

177 (c) a document that expressly directs and authorizes the State Tax Commission to
178 disclose to the office the business entity's returns and other information concerning the business
179 entity that would otherwise be subject to confidentiality under Section 59-1-403 or Section
180 6103 of the Internal Revenue Code.

181 (3) (a) The office shall submit the document referred to in Subsection (2)(c) to the
182 State Tax Commission.

183 (b) Upon receipt of the document, the State Tax Commission shall provide the office
184 with the information requested by the office that the business entity directed or authorized the
185 State Tax Commission to provide to the office in the document referred to in Subsection (2)(c).

186 (4) If after review of the information provided by the business entity and the State Tax
187 Commission the office determines that the documentation provided by the business entity is
188 not substantially accurate, the office shall either:

189 (a) deny the tax credit; or

190 (b) inform the business entity that the documentation was inadequate and ask the
191 business entity to submit new documentation.

192 (5) If after review of the information provided by the entity and the State Tax
193 Commission the office determines that the documentation provided by the business entity is
194 substantially accurate, the office shall, based upon the documentation:

195 (a) determine the amount of the tax credit to be granted to the business entity;

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

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

198 (6) A business entity may not claim a tax credit under this part unless the business
199 entity has a tax credit certificate issued by the office.

200 (7) A business entity that claims the credit under this section shall retain the tax credit
201 certificate in accordance with Section 59-7-614.2 or 59-10-1107.

202 Section 6. Section **63M-1-2806** is amended to read:

203 **63M-1-2806. Report to the Legislature.**

204 The office shall report annually to the Legislature's Workforce Services and Community
205 and Economic Development Interim Committee and the Utah Tax Review Commission
206 describing:

207 (1) its success in attracting [~~renewable~~] alternative energy projects to [~~renewable~~]
208 alternative energy development zones under this part and the corresponding increase in new
209 increment jobs;

210 (2) the amount of tax credits promised and the period of time over which the tax credits
211 will be paid; and

212 (3) the economic impact on the state related to generating new state revenues and
213 providing tax credits under this part.

Legislative Review Note
as of 2-9-10 8:33 AM

Office of Legislative Research and General Counsel

S.B. 242 - Economic Development Incentives for Alternative Energy Projects

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill would result in foregone revenue in the long run of up to \$360 million annually. In the short run of FY 2013 to FY 2015, this foregone revenue is expected to be in the neighborhood of \$5 million.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments or individuals. Businesses involved in alternative energy projects could see significant savings as a result of the tax credits.
