

**ECONOMIC DEVELOPMENT INCENTIVES FOR
ALTERNATIVE ENERGY PROJECTS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kevin S. Garn

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill enacts the Renewable Energy Development Act within the Governor's Office of Economic Development.

Highlighted Provisions:

This bill:

- ▶ provides for the creation of renewable energy development zones by the Governor's Office of Economic Development and provides definitions related to renewable energy development zones and renewable energy development projects undertaken within those zones;

- ▶ provides for an economic development tax credit to business entities upon meeting standards set by the Governor's Office of Economic Development that are based on requirements established in the act;

- ▶ provides for the issuance of a renewable energy development tax credit certificate by the office, with certain restrictions and conditions, such as specifying the maximum amount of tax credit a business entity may earn over the life of a renewable energy project;

- ▶ provides that a renewable energy project must include direct investment within the boundaries of a zone, must bring new incremental jobs to the state, must include significant capital investment or the creation of high paying jobs or significant purchases from Utah vendors and providers, and must generate new state revenues;

- ▶ requires the business entity to submit to audits for verification of a claimed tax

30 credit;

31 ▶ provides for certification by the office of a business entity's eligibility for a claimed
32 tax credit; and

33 ▶ requires an annual report to the Legislature and the Utah Tax Review Commission
34 on the success of the renewable energy development project tax incentive program.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides an effective date.

39 This bill has retrospective operation for a taxable year beginning on or after January 1,
40 2009.

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **59-7-614.2**, as enacted by Laws of Utah 2008, Chapter 372

44 **59-10-1107**, as enacted by Laws of Utah 2008, Chapter 372

45 ENACTS:

46 **63M-1-2801**, Utah Code Annotated 1953

47 **63M-1-2802**, Utah Code Annotated 1953

48 **63M-1-2803**, Utah Code Annotated 1953

49 **63M-1-2804**, Utah Code Annotated 1953

50 **63M-1-2805**, Utah Code Annotated 1953

51 **63M-1-2806**, Utah Code Annotated 1953



52
53 *Be it enacted by the Legislature of the state of Utah:*

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

55 **59-7-614.2. Refundable economic development tax credit.**

56 (1) As used in this section:

57 (a) "Business entity" means a taxpayer that meets the definition of "business entity" as

58 defined in Section 63M-1-2403 or 63M-1-2803.

59 (b) "Office" means the Governor's Office of Economic Development.

60 (2) [~~For taxable years beginning on or after January 1, 2008, a~~] A business entity may
61 claim a refundable tax credit for economic development.

62 (3) The tax credit under this section is the amount listed as the tax credit amount on
63 the tax credit certificate that the office issues to the business entity for the taxable year.

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

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

71 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
72 Utah Tax Review Commission shall study the tax credit allowed by this section and make
73 recommendations to the Revenue and Taxation Interim Committee and the Workforce
74 Services and Community and Economic Development Interim Committee concerning whether
75 the tax credit should be continued, modified, or repealed.

76 (b) For purposes of the study required by this Subsection (5), the office shall provide
77 the following information to the Utah Tax Review Commission:

78 (i) the amount of tax credit that the office grants to each business entity for each
79 calendar year;

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

81 (iii) the new state revenues generated by each business entity for each calendar year;

82 (iv) the information contained in the office's latest report to the Legislature under
83 Section 63M-1-2406 or 63M-1-2806; and

84 (v) any other information that the Utah Tax Review Commission requests.

85 (c) The Utah Tax Review Commission shall ensure that its recommendations under

86 Subsection (5)(a) include an evaluation of:

- 87 (i) the cost of the tax credit to the state;
- 88 (ii) the purpose and effectiveness of the tax credit; and
- 89 (iii) the extent to which the state benefits from the tax credit.

90 Section 2. Section **59-10-1107** is amended to read:

91 **59-10-1107. Refundable economic development tax credit.**

92 (1) As used in this section:

93 (a) "Business entity" means a claimant, estate, or trust that meets the definition of
94 "business entity" as defined in Section 63M-1-2403 or 63M-1-2803.

95 (b) "Office" means the Governor's Office of Economic Development.

96 (2) [~~For taxable years beginning on or after January 1, 2008, a~~] A business entity may
97 claim a refundable tax credit for economic development.

98 (3) The tax credit under this section is the amount listed as the tax credit amount on
99 the tax credit certificate that the office issues to the business entity for the taxable year.

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

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

107 (5) (a) On or before October 1, 2013, and every five years after October 1, 2013, the
108 Utah Tax Review Commission shall study the tax credit allowed by this section and make
109 recommendations to the Revenue and Taxation Interim Committee and the Workforce
110 Services and Community and Economic Development Interim Committee concerning whether
111 the tax credit should be continued, modified, or repealed.

112 (b) For purposes of the study required by this Subsection (5), the office shall provide
113 the following information to the Utah Tax Review Commission:

- 114 (i) the amount of tax credit the office grants to each taxpayer for each calendar year;
- 115 (ii) the criteria the office uses in granting a tax credit;
- 116 (iii) the new state revenues generated by each taxpayer for each calendar year;
- 117 (iv) the information contained in the office's latest report to the Legislature under
- 118 Section 63M-1-2406 or 63M-1-2806; and
- 119 (v) any other information that the Utah Tax Review Commission requests.

120 (c) The Utah Tax Review Commission shall ensure that its recommendations under

121 Subsection (5)(a) include an evaluation of:

- 122 (i) the cost of the tax credit to the state;
- 123 (ii) the purpose and effectiveness of the tax credit; and
- 124 (iii) the extent to which the state benefits from the tax credit.

125 Section 3. Section **63M-1-2801** is enacted to read:

Part 28. Renewable Energy Development Act

63M-1-2801. Title.

This part is known as the "Renewable Energy Development Act."

129 Section 4. Section **63M-1-2802** is enacted to read:

63M-1-2802. Findings.

(1) The Legislature finds that:

132 (a) to foster and develop the renewable energy industry in Utah, including generation

133 and manufacturing, will promote the interest of Utah's citizens in encouraging the growth of

134 the state's economy;

135 (b) Utah loses prospective high paying jobs, new economic growth, and corresponding

136 incremental new state and local revenues to competing states due to a wide variety of

137 competing renewable energy incentives offered by those states; and

138 (c) renewable energy initiatives and interests of state and local officials should be

139 aligned and united in renewable energy generation and related manufacturing.

(2) This part is enacted to:

141 (a) increase generation of renewable energy and create high paying jobs in the

142 renewable energy industry, thereby growing the state's economy and corresponding state and
143 local revenues by providing tax credits to attract new renewable energy projects and assist in
144 the expansion of existing renewable energy projects located within renewable energy
145 development zones in the state; and

146 (b) provide a cooperative and unified working relationship between state and local
147 renewable energy development efforts.

148 Section 5. Section **63M-1-2803** is enacted to read:

149 **63M-1-2803. Definitions.**

150 As used in this part:

151 (1) "Business entity" means a person that:

152 (a) conducts business in Utah; and

153 (b) enters into an agreement with the office that qualifies the person to receive a tax
154 credit under Section 59-7-614.2 or 59-10-1107.

155 (2) "High paying jobs" means the annual wages of employment positions in a business
156 entity that compare favorably against the average wage of a community in which the
157 employment positions will exist.

158 (3) "New incremental jobs" means employment positions that are:

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

160 (b) created in addition to the baseline count of employment positions that existed
161 within the business entity before the new commercial project.

162 (4) "New state revenues" means:

163 (a) incremental new state sales and use tax revenues generated as a result of a
164 renewable energy project in a renewable energy development zone that a business entity pays
165 under Title 59, Chapter 12, Sales and Use Tax Act;

166 (b) incremental new state tax revenues that a business entity pays as a result of a
167 renewable energy project in a renewable energy development zone under:

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

169 (ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and

170 Information:

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

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

173 (v) a combination of Subsections (4)(b)(i) through (4)(b)(iv);

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

178 (d) a combination of Subsections (4)(a) through (4)(c).

179 (5) "Office" means the Governor's Office of Economic Development.

180 (6) "Renewable energy" means the energy generation as defined in Subsection
181 10-19-102(11) and includes generation powered by nuclear fuel.

182 (7) "Renewable energy development zone" means a renewable energy development
183 zone created under Section 63M-1-2804.

184 (8) "Renewable energy project" means a development opportunity that involves
185 renewable energy generation or manufacturing of equipment used directly in renewable energy
186 generation of increased energy efficiency.

187 (9) "Tax credit" means an economic development tax credit created by Section
188 59-7-614.2 or 59-10-1107.

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

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

192 (a) lists the name of the applicant;

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

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

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

197 Section 6. Section **63M-1-2804** is enacted to read:

198 **63M-1-2804. Creation of renewable energy development zones -- Tax credits.**

199 (1) The office, with advice from the board, may create a renewable energy
200 development zone in the state that satisfies the following requirements:

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

203 (b) the request to create a renewable energy development zone has been forwarded to
204 the office after first being approved by an appropriate local government entity; and

205 (c) the local government entity has committed or will commit to provide incentives,
206 which may include an abatement of some or all of the property taxes for up to 30 years for a
207 renewable energy project qualified under this part.

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

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

212 (i) the renewable energy project must be within a renewable energy development zone;

213 (ii) the renewable energy project includes direct investment within the geographic
214 boundaries of the renewable energy development zone;

215 (iii) the renewable energy project brings new incremental jobs to Utah;

216 (iv) the renewable energy project includes significant capital investment, the creation
217 of high paying jobs, or significant purchases from Utah vendors and providers, or any
218 combination of these three economic factors;

219 (v) the renewable energy project generates new state revenues; and

220 (vi) the business entity qualifying for the tax credit meets the requirements of Section
221 63M-1-2405.

222 (3) (a) The office, with advice from the board, may enter into an agreement with a
223 business entity authorizing a tax credit to a business entity that meets the standards established
224 under Subsection (2).

225 (b) The office may not authorize or commit a tax credit to a business entity that

226 exceeds 100% of the new state revenues generated by the business entity's renewable energy
227 project over the life of a renewable energy project or 20 years, whichever is less.

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

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

232 (b) specifies the maximum amount of tax credit that the business entity may earn over
233 the life of the renewable energy project;

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

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

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

239 Section 7. Section **63M-1-2805** is enacted to read:

240 **63M-1-2805. Qualifications for tax credit -- Procedure.**

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

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

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

245 (b) documentation of the new state revenues generated from the business entity's
246 renewable energy project that were paid during the preceding calendar year; and

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

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

253 (b) Upon receipt of the document, the State Tax Commission shall provide the office

254 with the information requested by the office that the business entity directed or authorized the
255 State Tax Commission to provide to the office in the document referred to in Subsection
256 (2)(c).

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

260 (a) deny the tax credit; or

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

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

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

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

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

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

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

273 Section 8. Section **63M-1-2806** is enacted to read:

274 **63M-1-2806. Report to the Legislature.**

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

278 (1) its success in attracting renewable energy projects to renewable energy
279 development zones under this part and the corresponding increase in new increment jobs;

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

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

284 Section 9. **Effective date -- Retrospective operation.**

285 (1) Except as provided in Subsection (2), this bill takes effect on May 12, 2009.

286 (2) The amendments to Sections 59-7-614.2 and 59-10-1107 have retrospective
287 operation for a taxable year beginning on or after January 1, 2009.