

ENTERPRISE ZONE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions related to the Enterprise Zone Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the population requirements for a county or a municipality to qualify for designation as an enterprise zone;
- ▶ modifies the requirements to receive an enterprise zone tax credit, including requirements related to obtaining a tax credit certificate from the Governor's Office of Economic Development (GOED);
- ▶ grants certain rulemaking authority to GOED related to enterprise zone tax credit certificates;
- ▶ modifies GOED's reporting requirements related to enterprise zone tax credits; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

63N-2-202, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-203, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-204, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-210, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-211, as renumbered and amended by Laws of Utah 2015, Chapter 283

63N-2-213, as renumbered and amended by Laws of Utah 2015, Chapter 283

33 ENACTS:

34 **59-7-614.10**, Utah Code Annotated 1953

35 **59-10-1036**, Utah Code Annotated 1953

36

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

38 Section 1. Section **59-7-614.10** is enacted to read:

39 **59-7-614.10. Nonrefundable enterprise zone tax credit.**

40 (1) As used in this section:

41 (a) "Business entity" means a corporation that meets the definition of "business entity"
42 as that term is defined in Section 63N-2-202.

43 (b) "Office" means the Governor's Office of Economic Development created in Section
44 63N-1-201.

45 (2) Subject to the provisions of this section, a business entity may claim a
46 nonrefundable enterprise zone tax credit as described in Section 63N-2-213.

47 (3) The enterprise zone tax credit under this section is the amount listed as the tax
48 credit amount on the tax credit certificate that the office issues to the business entity for the
49 taxable year.

50 (4) A business entity may carry forward a tax credit under this section for a period that
51 does not exceed the next three taxable years, if the amount of the tax credit exceeds the
52 business entity's tax liability under this chapter for that taxable year.

53 (5) A business entity may not claim or carry forward a tax credit available under this
54 part for a taxable year during which the business entity has claimed the targeted business
55 income tax credit available under Section 63N-2-305.

56 (6) (a) On or before October 1, 2018, and every five years after October 1, 2018, the
57 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
58 make recommendations to the Legislative Management Committee concerning whether the tax
59 credit should be continued, modified, or repealed.

60 (b) For purposes of the study required by this Subsection (6), the office shall provide
61 by electronic means the following information for each calendar year to the Revenue and
62 Taxation Interim Committee:

63 (i) the amount of tax credits provided in each development zone;

64 (ii) the number of new full-time employee positions reported to obtain tax credits in
65 each development zone;

66 (iii) the amount of tax credits awarded for rehabilitating a building in each
67 development zone;

68 (iv) the amount of tax credits awarded for investing in a plant, equipment, or other
69 depreciable property in each development zone;

70 (v) the information related to the tax credit contained in the office's latest report to the
71 Legislature under Section 63N-1-301; and

72 (vi) other information as requested by the Revenue and Taxation Interim Committee.

73 (c) The Revenue and Taxation Interim Committee shall ensure that its
74 recommendations under Subsection (6)(a) include an evaluation of:

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

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

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

78 Section 2. Section **59-10-1036** is enacted to read:

79 **59-10-1036. Nonrefundable enterprise zone tax credit.**

80 (1) As used in this section:

81 (a) "Business entity" means a claimant, estate, or trust that meets the definition of
82 "business entity" as that term is defined in Section 63N-2-202.

83 (b) "Office" means the Governor's Office of Economic Development created in Section
84 63N-1-201.

85 (2) Subject to the provisions of this section, a business entity may claim a
86 nonrefundable enterprise zone tax credit as described in Section 63N-2-213.

87 (3) The enterprise zone tax credit under this section is the amount listed as the tax
88 credit amount on the tax credit certificate that the office issues to the business entity for the
89 taxable year.

90 (4) A business entity may carry forward a tax credit under this section for a period that
91 does not exceed the next three taxable years, if the amount of the tax credit exceeds the
92 business entity's tax liability under this chapter for that taxable year.

93 (5) A business entity may not claim or carry forward a tax credit available under this
94 part for a taxable year during which the business entity has claimed the targeted business

95 income tax credit available under Section 63N-2-305.

96 (6) (a) On or before October 1, 2018, and every five years after October 1, 2018, the
97 Revenue and Taxation Interim Committee shall study the tax credit allowed by this section and
98 make recommendations to the Legislative Management Committee concerning whether the tax
99 credit should be continued, modified, or repealed.

100 (b) For purposes of the study required by this Subsection (6), the office shall provide
101 by electronic means the following information for each calendar year to the Revenue and
102 Taxation Interim Committee:

103 (i) the amount of tax credits provided in each development zone;

104 (ii) the number of new full-time employee positions reported to obtain tax credits in
105 each development zone;

106 (iii) the amount of tax credits awarded for rehabilitating a building in each
107 development zone;

108 (iv) the amount of tax credits awarded for investing in a plant, equipment, or other
109 depreciable property in each development zone;

110 (v) the information related to the tax credit contained in the office's latest report to the
111 Legislature under Section 63N-1-301; and

112 (vi) other information as requested by the Revenue and Taxation Interim Committee.

113 (c) The Revenue and Taxation Interim Committee shall ensure that its
114 recommendations under Subsection (6)(a) include an evaluation of:

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

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

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

118 Section 3. Section **63N-2-202** is amended to read:

119 **63N-2-202. Definitions.**

120 As used in this part:

121 (1) "Business entity" means an entity, sole proprietorship, or individual:

122 (a) including a claimant, estate, or trust; and

123 (b) under which or by whom business is conducted or transacted.

124 (2) "Claimant" means a resident or nonresident person that has:

125 (a) Utah taxable income as defined in Section 59-7-101; or

126 (b) state taxable income under Title 59, Chapter 10, Part 1, Determination and
127 Reporting of Tax Liability and Information.

128 (3) "County applicant" means the governing authority of a county that meets the
129 requirements for designation as an enterprise zone under Section 63N-2-204.

130 (4) "Estate" means a nonresident estate or a resident estate that has state taxable
131 income under Title 59, Chapter 10, Part 2, Trusts and Estates.

132 (5) "Municipal applicant" means the governing authority of a city or town that meets
133 the requirements for designation as an enterprise zone under Section 63N-2-204.

134 (6) "New full-time employee position" means a position that has been newly created in
135 addition to the highest baseline count of employment positions that existed within the business
136 entity during the previous three taxable years and [~~then~~] is filled by an employee working at
137 least 30 hours per week:

138 (a) for a period of [~~not less than~~] at least six consecutive months; and

139 (b) where the period ends in the tax year for which the credit is claimed.

140 (7) "Nonrefundable tax credit" or "tax credit" means a tax credit that a business entity
141 may:

142 (a) claim:

143 (i) as provided by statute; and

144 (ii) in an amount that does not exceed the business entity's tax liability for a taxable
145 year under:

146 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

147 (B) Title 59, Chapter 10, Individual Income Tax Act; and

148 (b) carry forward or carry back:

149 (i) if allowed by statute; and

150 (ii) to the extent that the amount of the tax credit exceeds the business entity's tax
151 liability for a taxable year under:

152 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

153 (B) Title 59, Chapter 10, Individual Income Tax Act.

154 (8) "Tax incentives" or "tax benefits" means the nonrefundable tax credits described in
155 Section 63N-2-213.

156 (9) "Trust" means a nonresident trust or a resident trust that has state taxable income

157 under Title 59, Chapter 10, Part 2, Trusts and Estates.

158 Section 4. Section **63N-2-203** is amended to read:

159 **63N-2-203. Powers of the office.**

160 The office shall:

161 (1) monitor the implementation and operation of this part and conduct a continuing
162 evaluation of the progress made in the enterprise zones;

163 (2) evaluate an application for designation as an enterprise zone from a county
164 applicant or a municipal applicant and determine if the applicant qualifies for that designation;

165 (3) provide technical assistance to county applicants and municipal applicants in
166 developing applications for designation as enterprise zones;

167 (4) assist county applicants and municipal applicants designated as enterprise zones in
168 obtaining assistance from the federal government and agencies of the state;

169 (5) assist a qualified business entity in obtaining the benefits of an incentive or
170 inducement program authorized by this part; and

171 (6) as part of the annual written report described in Section [~~63N-2-301~~] 63N-1-301,
172 prepare an annual evaluation [~~based, in part, on data provided by the State Tax Commission~~
173 ~~that evaluates the~~] that provides:

174 (a) based on data from the State Tax Commission, the total amount of tax credits
175 claimed under this part;

176 (b) the total amount awarded in tax credits for each development zone;

177 (c) the number of new full-time employee positions reported to obtain tax credits in
178 each development zone;

179 (d) the amount of tax credits awarded for rehabilitating a building in each development
180 zone;

181 (e) the amount of tax credits awarded for investing in a plant, equipment, or other
182 depreciable property in each development zone; and

183 (f) recommendations regarding the effectiveness of the program and any suggestions
184 for legislation.

185 Section 5. Section **63N-2-204** is amended to read:

186 **63N-2-204. Criteria for designation of enterprise zones -- Application.**

187 (1) A county applicant seeking designation as an enterprise zone shall file an

188 application with the office that, in addition to complying with the other requirements of this
189 part:

190 (a) verifies that the county has a population of not more than [~~50,000~~] 70,000; and

191 (b) provides clear evidence of the need for development in the county.

192 (2) A municipal applicant seeking designation as an enterprise zone shall file an
193 application with the office that, in addition to complying with other requirements of this part:

194 (a) verifies that the municipality has a population that does not exceed [~~15,000~~]
195 20,000;

196 (b) verifies that the municipality is within a county that has a population of not more
197 than [~~50,000~~] 70,000; and

198 (c) provides clear evidence of the need for development in the municipality.

199 (3) An application filed under Subsection (1) or (2) shall be in a form and in
200 accordance with procedures approved by the office, and shall include the following
201 information:

202 (a) a plan developed by the county applicant or municipal applicant that identifies local
203 contributions meeting the requirements of Section 63N-2-205;

204 (b) the county applicant or municipal applicant has a development plan that outlines:

205 (i) the types of investment and development within the zone that the county applicant
206 or municipal applicant expects to take place if the incentives specified in this part are provided;

207 (ii) the specific investment or development reasonably expected to take place;

208 (iii) any commitments obtained from businesses;

209 (iv) the projected number of jobs that will be created and the anticipated wage level of
210 those jobs;

211 (v) any proposed emphasis on the type of jobs created, including any affirmative action
212 plans; and

213 (vi) a copy of the county applicant's or municipal applicant's economic development
214 plan to demonstrate coordination between the zone and overall county or municipal goals;

215 (c) the county applicant's or municipal applicant's proposed means of assessing the
216 effectiveness of the development plan or other programs within the zone once they have been
217 implemented within the zone;

218 (d) any additional information required by the office; and

219 (e) any additional information the county applicant or municipal applicant considers
220 relevant to its designation as an enterprise zone.

221 Section 6. Section **63N-2-210** is amended to read:

222 **63N-2-210. Revocation of designations.**

223 (1) The office may revoke the designation of an enterprise zone[;] if no businesses
224 utilize the tax incentives during [~~any~~] a calendar year.

225 (2) Prior to that action, the office shall conduct a public hearing to determine reasons
226 for inactivity and explore possible alternative actions.

227 Section 7. Section **63N-2-211** is amended to read:

228 **63N-2-211. Disqualifying transfers.**

229 Except in [~~counties~~] a county of the first or second class, tax incentives provided by this
230 part are not available to [~~companies~~] a business entity that [~~close~~] closes or permanently
231 [~~curtail~~] curtails operations in another part of the state in connection with a transfer of any part
232 of its business operations to an enterprise zone, if the closure or permanent curtailment is
233 reasonably expected to diminish employment in that part of the state.

234 Section 8. Section **63N-2-213** is amended to read:

235 **63N-2-213. State tax credits.**

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

238 (2) A business entity seeking to receive a tax credit as provided in this section shall
239 provide the office with:

240 (a) an application for a tax credit certificate in a form approved by the office, including
241 a certification, by an officer of the business entity, of a signature on the application; and

242 (b) documentation that demonstrates the business entity has met the requirements to
243 receive the tax credit.

244 (3) If, after review of an application and documentation provided by a business entity
245 as described in Subsection (2), the office determines that the application and documentation are
246 inadequate to provide a reasonable justification for authorizing the tax credit, the office shall:

247 (a) deny the tax credit; or

248 (b) inform the business entity that the application or documentation was inadequate
249 and ask the business entity to submit additional documentation.

250 (4) If, after review of an application and documentation provided by a business entity
251 as described in Subsection (2), the office determines that the application and documentation
252 provide reasonable justification for authorizing a tax credit, the office shall:

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

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

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

256 (5) A business entity may not claim a tax credit under this section unless the business
257 entity has a tax credit certificate issued by the office.

258 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
259 office shall make rules describing:

260 (a) the form and content of an application for a tax credit under this section;

261 (b) the documentation requirements for a business entity to receive a tax credit
262 certificate under this section; and

263 (c) administration of the program, including relevant timelines and deadlines.

264 ~~[(1)]~~ (7) Subject to the limitations of Subsections ~~[(2)]~~ (8) through ~~[(4)]~~ (10), and if the
265 requirements of this part are met, the following nonrefundable tax credits against a tax under
266 Title 59, Chapter 7, Corporate Franchise and Income Taxes, or Title 59, Chapter 10, Individual
267 Income Tax Act, are applicable in an enterprise zone:

268 (a) a tax credit of \$750 may be claimed by a business entity for each new full-time
269 employee position created within the enterprise zone;

270 (b) an additional \$500 tax credit may be claimed if the new full-time employee position
271 created within the enterprise zone pays at least 125% of:

272 (i) the county average monthly nonagricultural payroll wage for the respective industry
273 as determined by the Department of Workforce Services; or

274 (ii) if the county average monthly nonagricultural payroll wage is not available for the
275 respective industry, the total average monthly nonagricultural payroll wage in the respective
276 county where the enterprise zone is located;

277 (c) an additional tax credit of \$750 may be claimed if the new full-time employee
278 position created within the enterprise zone is in a business entity that adds value to agricultural
279 commodities through manufacturing or processing;

280 (d) an additional tax credit of \$200 may be claimed for two consecutive years for each

281 new full-time employee position created within the enterprise zone that is filled by an
282 employee who is insured under an employer-sponsored health insurance program if the
283 employer pays at least 50% of the premium cost for the year for which the credit is claimed;

284 ~~[(e) a tax credit of 50% of the value of a cash contribution to a private nonprofit~~
285 ~~corporation, except that the credit claimed may not exceed \$100,000;]~~

286 ~~[(f) that is exempt from federal income taxation under Section 501(c)(3), Internal~~
287 ~~Revenue Code;]~~

288 ~~[(g) whose primary purpose is community and economic development; and]~~

289 ~~[(h) that has been accredited by the Governor's Rural Partnership Board;]~~

290 ~~[(i) (e) a tax credit of 25% of the first \$200,000 spent on rehabilitating a building in~~
291 ~~the enterprise zone that has been vacant for two years or more; and~~

292 ~~[(j) (f) an annual investment tax credit of 10% of the first \$250,000 in investment,~~
293 ~~and 5% of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable~~
294 ~~property.~~

295 ~~[(2) (8) (a) Subject to the limitations of Subsection [(2) (8)(b), a business entity~~
296 ~~claiming [tax credits] a tax credit under Subsections [(1) (7)(a) through (d) may claim the tax~~
297 ~~[credits for up to] credit for no more than 30 full-time employee positions [per] in a taxable~~
298 ~~year.~~

299 (b) A business entity that received a tax credit for one or more new full-time employee
300 positions under Subsections [(1) (7)(a) through (d) in a prior taxable year may claim a tax
301 credit for a new full-time employee position in a subsequent taxable year under Subsections
302 [(1) (7)(a) through (d) if:

303 (i) the business entity has created a new full-time position within the enterprise zone;
304 and

305 (ii) the total number of full-time employee positions at the business entity at any point
306 during the tax year for which the tax credit is being claimed is greater than the highest number
307 of full-time employee positions that existed at the business entity ~~[at any point during the~~
308 ~~taxable year immediately preceding the taxable year for which the credit is being claimed] in~~
309 the previous three taxable years.

310 (c) Construction jobs are not eligible for the tax credits under Subsections [(1) (7)(a)
311 through (d).

312 ~~[(3)]~~ (9) If the amount of a tax credit under this section exceeds a business entity's tax
313 liability under this chapter for a taxable year, the business entity may carry forward the amount
314 of the tax credit exceeding the liability for a period that does not exceed the next three taxable
315 years.

316 ~~[(4)]~~ (10) Tax credits under Subsections ~~[(1)]~~ (7)(a) through ~~[(g)]~~ (f) may not be
317 claimed by a business entity primarily engaged in retail trade or by a public utilities business.

318 ~~[(5)]~~ (11) A business entity that has no employees:

319 (a) may not claim tax credits under Subsections ~~[(1)]~~ (7)(a) through (d); and

320 (b) may claim tax credits under Subsections ~~[(1)]~~ (7)(e) through ~~[(g)]~~ (f).

321 (6) A business entity may not claim or carry forward a tax credit available under this
322 part for a taxable year during which the business entity has claimed the targeted business
323 income tax credit available under Section 63N-2-305.

324 Section 9. **Effective date.**

325 If approved by two-thirds of all the members elected to each house, this bill takes effect
326 upon approval by the governor, or the day following the constitutional time limit of Utah
327 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
328 the date of veto override.

329 Section 10. **Retrospective operation.**

330 This bill has retrospective operation for a taxable year beginning on or after January 1,
331 2016.