

**Representative Kraig Powell** proposes the following substitute bill:

**ENTERPRISE ZONE AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kraig Powell**

Senate Sponsor: Kevin T. Van Tassell

Cosponsors:

Paul Ray

Christine F. Watkins

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Enterprise Zone Act related to the definitions of business entity and new full-time employee position, the criteria for designation of an enterprise zone, business entities qualifying for tax incentives, state tax credits applicable in an enterprise zone, annual reports, and technology-based service contracts within enterprise zones.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of business entity and defines new full-time employee position as used in the Enterprise Zone Act;
- ▶ modifies the criteria used for the designation of an enterprise zone;
- ▶ modifies the eligibility review procedure of applications for designation as an enterprise zone;
- ▶ modifies provisions related to business entities qualifying for tax incentives under the Enterprise Zone Act;
- ▶ modifies provisions related to tax credits which may be claimed for new full-time employee positions;



- 26           ▶ provides that a business entity may not claim a tax credit under the Enterprise Zone
- 27 Act if it is primarily engaged in a retail trade;
- 28           ▶ modifies annual enterprise zone reporting provisions; and
- 29           ▶ provides a repealer.

30 **Money Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           This bill takes effect on January 1, 2012.

34 **Utah Code Sections Affected:**

35 AMENDS:

36           **63M-1-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382

37           **63M-1-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382

38           **63M-1-404**, as renumbered and amended by Laws of Utah 2008, Chapter 382

39           **63M-1-406**, as renumbered and amended by Laws of Utah 2008, Chapter 382

40           **63M-1-412**, as renumbered and amended by Laws of Utah 2008, Chapter 382

41           **63M-1-413**, as renumbered and amended by Laws of Utah 2008, Chapter 382

42           **63M-1-414**, as renumbered and amended by Laws of Utah 2008, Chapter 382

43 REPEALS:

44           **63M-1-416**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

47           Section 1. Section **63M-1-402** is amended to read:

48           **63M-1-402. Definitions.**

49           As used in this part:

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

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

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

53           (2) [~~(a)~~] "Claimant" means a resident or nonresident person that has:

54           [~~(i)~~] (a) Utah taxable income as defined in Section 59-7-101; or

55           [~~(ii)~~] (b) state taxable income under Title 59, Chapter 10, Part 1, Determination and

56 Reporting of Tax Liability [~~or~~] and Information.

57 ~~[(b) "Claimant" does not include an estate or trust.]~~

58 (3) "County applicant" means the governing authority of a county that meets the  
59 requirements for designation as an enterprise zone under Section 63M-1-404.

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

62 (5) "Municipal applicant" means the governing authority of a city or town that meets  
63 the requirements for designation as an enterprise zone under Section 63M-1-404.

64 (6) "New full-time employee position" means a position that has been newly created  
65 and then filled by an employee working at least 30 hours per week:

66 (a) for a period of not less than six consecutive months; and

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

68 ~~[(6)]~~ (7) "Nonrefundable tax credit" or "tax credit" means a tax credit that a [claimant,  
69 estate, or trust] business entity may:

70 (a) claim:

71 (i) as provided by statute; and

72 (ii) in an amount that does not exceed the ~~[claimant's, estate's, or trust's]~~ business  
73 entity's tax liability for a taxable year under:

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

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

76 (b) carry forward or carry back:

77 (i) if allowed by statute; and

78 (ii) to the extent that the amount of the tax credit exceeds the ~~[claimant's, estate's, or~~  
79 ~~trust's]~~ business entity's tax liability for a taxable year under:

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

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

82 ~~[(7)]~~ (8) "Tax incentives" or "tax benefits" means the nonrefundable tax credits  
83 described in Section 63M-1-413.

84 ~~[(8)]~~ (9) "Trust" means a nonresident trust or a resident trust that has state taxable  
85 income under Title 59, Chapter 10, Part 2, Trusts and Estates.

86 Section 2. Section **63M-1-403** is amended to read:

87 **63M-1-403. Powers of the office.**

88 The office shall:

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

91 (2) evaluate an application for designation as an enterprise zone from a county  
92 applicant or a municipal applicant [~~to be designated an enterprise zone~~] and determine if the  
93 applicant qualifies for that designation;

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

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

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

100 (6) prepare an annual evaluation based, in part, on data provided by the State Tax  
101 Commission that:

102 (a) [~~evaluating~~] evaluates the effectiveness of the program and any suggestions for  
103 legislation; and

104 (b) [~~that~~] is available upon request to the governor and to the Revenue and Taxation  
105 Interim [~~Committee~~] and the Workforce Services and Economic Development Interim  
106 Committees of the Legislature by November 1 of each year.

107 Section 3. Section **63M-1-404** is amended to read:

108 **63M-1-404. Criteria for designation of enterprise zones -- Application.**

109 (1) A county applicant seeking designation as an enterprise zone shall file an  
110 application with the office that, in addition to complying with the other requirements of this  
111 part:

112 [~~(a) verifies that the entire county is not located in a metropolitan statistical area that is~~  
113 ~~entirely located within Utah, except that this requirement does not apply to a third, fourth, fifth,~~  
114 ~~or sixth class county as classified under Section 17-50-501;~~]

115 [~~(b)~~] (a) verifies that the county has a population of not more than 50,000 [~~or less~~]; and

116 [~~(c)~~] (b) provides clear evidence of the need for development in the county.

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

- 119 (a) verifies that the municipality is a city of the fifth class or a town;
- 120 (b) verifies that the municipality is within a county that has a population of not more
- 121 than 50,000 [~~or less~~]; and
- 122 (c) provides clear evidence of the need for development in the municipality.
- 123 (3) An application filed under Subsection (1) or (2) shall be in a form and in
- 124 accordance with procedures approved by the office, and shall include the following
- 125 information:
  - 126 (a) a plan developed by the county applicant or municipal applicant that identifies local
  - 127 contributions meeting the requirements of Section 63M-1-405;
  - 128 (b) the county applicant or municipal applicant has a development plan that outlines:
    - 129 (i) the types of investment and development within the zone that the county applicant
    - 130 or municipal applicant expects to take place if the incentives specified in this part are provided;
    - 131 (ii) the specific investment or development reasonably expected to take place;
    - 132 (iii) any commitments obtained from businesses;
    - 133 (iv) the projected number of jobs that will be created and the anticipated wage level of
    - 134 those jobs;
    - 135 (v) any proposed emphasis on the type of jobs created, including any affirmative action
    - 136 plans; and
    - 137 (vi) a copy of the county applicant's or municipal applicant's economic development
    - 138 plan to demonstrate coordination between the zone and overall county or municipal goals;
    - 139 (c) the county applicant's or municipal applicant's proposed means of assessing the
    - 140 effectiveness of the development plan or other programs [~~to be implemented~~] within the zone
    - 141 once they have been implemented within the zone;
    - 142 (d) any additional information required by the office; and
    - 143 (e) any additional information the county applicant or municipal applicant considers
    - 144 relevant to its designation as an enterprise zone.

145 Section 4. Section **63M-1-406** is amended to read:

146 **63M-1-406. Eligibility review.**

147 (1) [~~(a)~~] The office shall:

148 (a) review and evaluate the applications submitted under Section 63M-1-404; and

149 [~~shall~~]

150 (b) determine whether each county applicant or municipal applicant is eligible for  
151 designation as an enterprise zone.

152 [~~(b) In determining whether a county applicant or municipal applicant is eligible, if  
153 unemployment, income, population, or other necessary data are not available for the county  
154 applicant or municipal applicant from the federal departments of labor or commerce or a state  
155 agency, the office may rely upon other data submitted by the applicant, if the office determines  
156 that it is statistically reliable or accurate.]~~

157 (2) (a) The office shall designate enterprise zones.

158 (b) The office shall consider and evaluate an application using the following criteria:

159 (i) the pervasiveness of poverty, unemployment, and general distress in the proposed  
160 zone;

161 (ii) the extent of chronic abandonment, deterioration, or reduction in value of  
162 commercial, industrial, or residential structures in the proposed zone, and the extent of property  
163 tax arrearages in the proposed zone;

164 (iii) the potential for new investment and economic development in the proposed zone;

165 (iv) the county applicant's or municipal applicant's proposed use of other state and  
166 federal development funds or programs to increase the probability of new investment and  
167 development occurring;

168 (v) the extent to which the projected development in the zone will provide employment  
169 to residents of the county and particularly individuals who are unemployed or who are  
170 economically disadvantaged;

171 (vi) the degree to which the county applicant's or municipal applicant's application  
172 promotes innovative solutions to economic development problems and demonstrates local  
173 initiative; and

174 (vii) other relevant factors that the office specifies in its recommendation.

175 Section 5. Section **63M-1-412** is amended to read:

176 **63M-1-412. Business entities qualifying for tax incentives.**

177 [~~The~~] (1) Except as otherwise provided in Subsection (2), the tax incentives described  
178 in this part are available only to a business entity for which at least 51% of the employees  
179 employed at facilities of the business entity located in the enterprise zone are individuals who,  
180 at the time of employment, reside in;

181 (a) the county in which the enterprise zone is located[-]; or

182 (b) an enterprise zone that is immediately adjacent and contiguous to the county in  
 183 which the enterprise zone is located.

184 (2) Subsection (1) does not apply to a business entity that has no employees.

185 Section 6. Section **63M-1-413** is amended to read:

186 **63M-1-413. State tax credits.**

187 (1) Subject to the limitations of Subsections (2) through (4), the following  
 188 nonrefundable tax credits against a tax under Title 59, Chapter 7, Corporate Franchise and  
 189 Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, are applicable in an  
 190 enterprise zone:

191 (a) a tax credit of \$750 may be claimed by a business entity for each new full-time  
 192 employee position [filled for not less than six months during a given tax year] created within  
 193 the enterprise zone;

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

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

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

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

204 (d) an additional tax credit of \$200 may be claimed for two consecutive years for each  
 205 new full-time employee position created within the enterprise zone that is filled by an  
 206 employee who is insured under an employer-sponsored health insurance program if the  
 207 employer pays at least 50% of the premium cost ~~for two consecutive years~~  
 207a **for the year for which the credit is claimed** ;

208 (e) a tax credit of 50% of the value of a cash contribution to a private nonprofit  
 209 corporation, except that the credit claimed may not exceed \$100,000:

210 (i) that is exempt from federal income taxation under Section 501(c)(3), Internal  
 211 Revenue Code;

- 212 (ii) whose primary purpose is community and economic development; and  
213 (iii) that has been accredited by the board of directors of the Utah Rural Development  
214 Council;
- 215 (f) a tax credit of 25% of the first \$200,000 spent on rehabilitating a building in the  
216 enterprise zone that has been vacant for two years or more; and
- 217 (g) an annual investment tax credit of 10% of the first \$250,000 in investment, and 5%  
218 of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable  
219 property.
- 220 (2) (a) Subject to the limitations of Subsection (2)(b), a business entity claiming ~~[a]~~ tax  
221 ~~[credit]~~ credits under Subsections (1)(a) through (d) may claim the tax ~~[credit]~~ credits for up to  
222 30 full-time employee positions ~~[or less in each of its]~~ per taxable [years] year.
- 223 (b) A business entity that received a tax credit for ~~[its]~~ one or more new full-time  
224 employee positions under Subsections (1)(a) through (d) in a prior taxable year may claim ~~[an~~  
225 ~~additional]~~ a tax credit for a new full-time employee position in a subsequent taxable year  
226 under Subsections (1)(a) through (d) if:
- 227 (i) the business entity ~~[creates]~~ has created a new full-time ~~[employee]~~ position within  
228 the enterprise zone; and
- 229 (ii) the total number of full-time employee positions at the business entity at any point  
230 during the tax year for which the tax credit is being claimed is greater than the number of  
231 full-time employee positions ~~[previously claimed by]~~ that existed at the business entity ~~[under~~  
232 ~~Subsections (1)(a) through (d); and]~~ at any point during the taxable year immediately preceding  
233 the taxable year for which the credit is being claimed.
- 234 ~~[(iii) the total number of tax credits the business entity has claimed for its current~~  
235 ~~taxable year, including the new full-time employee position for which the claimant, estate, or~~  
236 ~~trust that is a business entity is claiming a tax credit, is less than or equal to 30.]~~
- 237 ~~[(c) A business entity existing in an enterprise zone on the date of its designation shall~~  
238 ~~calculate the number of full-time positions based on the average number of employees reported~~  
239 ~~to the Department of Workforce Services.]~~
- 240 ~~[(d)]~~ (c) Construction jobs are not eligible for the tax credits under Subsections (1)(a)  
241 through (d).
- 242 (3) If the amount of a tax credit under this section exceeds a business entity's tax



243 liability under this chapter for a taxable year, the business entity may carry forward the amount  
244 of the tax credit exceeding the liability [~~may be carried forward~~] for a period that does not  
245 exceed the next three taxable years.

246 [~~(4) (a) If a business entity is located in a county that met the requirements of~~  
247 ~~Subsections 63M-1-404(1)(b) and (c) but did not qualify as an enterprise zone prior to January~~  
248 ~~1, 1998, because the county was located in a metropolitan statistical area in more than one~~  
249 ~~state, the business entity:]~~

250 [~~(i) shall qualify for tax credits for a taxable year beginning on or after January 1, 1997,~~  
251 ~~but beginning before December 31, 1997;]~~

252 [~~(ii) may claim a tax credit as described in Subsection (4)(a) in a taxable year~~  
253 ~~beginning on or after January 1, 1997, but beginning before December 31, 1997; and]~~

254 [~~(iii) may qualify for tax credits for any taxable year beginning on or after January 1,~~  
255 ~~1998, if the county is designated as an enterprise zone in accordance with this part.]~~

256 [~~(b) If a business entity claims a tax credit under Subsection (4)(a)(ii), the business~~  
257 ~~entity:]~~

258 [~~(i) may claim the tax credit by filing for the taxable year beginning on or after January~~  
259 ~~1, 1997, but beginning before December 31, 1997:]~~

260 [~~(A) a return under Title 59, Chapter 7, Corporate Franchise and Income Taxes;]~~

261 [~~(B) an amended return under Title 59, Chapter 7, Corporate Franchise and Income~~  
262 ~~Taxes;]~~

263 [~~(C) a return under Title 59, Chapter 10, Individual Income Tax Act; or]~~

264 [~~(D) an amended return under Title 59, Chapter 10, Individual Income Tax Act; and]~~

265 [~~(ii) may carry forward the tax credit to a taxable year beginning on or after January 1,~~  
266 ~~1998, in accordance with Subsection (3).]~~

267 [~~(5) The tax]~~ (4) Tax credits under Subsections (1)(a) through (g) may not be claimed  
268 by a business entity primarily engaged in retail trade or by a public utilities business.

269 (5) A business entity that has no employees:

270 (a) may not claim tax credits under Subsections (1)(a) through (d); and

271 (b) may claim tax credits under Subsections (1)(e) through (g).

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

274 income tax credit available under Section 63M-1-504.

275 Section 7. Section **63M-1-414** is amended to read:

276 **63M-1-414. Annual report.**

277 [(1)] Each county applicant or municipal applicant designated as an enterprise zone  
278 shall annually report to the office regarding the economic activity that has occurred in the zone  
279 following the designation.

280 [~~(2) This information shall include:~~]

281 [~~(a) the number of jobs created in the zone;~~]

282 [~~(b) the number of economically disadvantaged individuals receiving public job  
283 training assistance in the zone;~~]

284 [~~(c) the average wage level of the jobs created;~~]

285 [~~(d) descriptions of any affirmative action programs undertaken by the county applicant  
286 or municipal applicant in connection with the enterprise zone;~~]

287 [~~(e) the amount of the county applicant's or municipal applicant's local contribution;  
288 and]~~]

289 [~~(f) the number of businesses qualifying for, or directly benefiting from, the local  
290 contribution.~~]

291 Section 8. **Repealer.**

292 This bill repeals:

293 Section **63M-1-416, Technology-based service contracts within enterprise zones.**

294 Section 9. **Effective date.**

295 This bill takes effect on January 1, 2012.

# FISCAL NOTE

H.B. 17 1st Sub. (Buff)

SHORT TITLE: Enterprise Zone Amendments

SPONSOR: Powell, K.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill could reduce the General Fund by \$30,600 beginning in FY 2013.

STATE BUDGET DETAIL TABLE	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund	\$0	(\$30,600)	(\$30,600)
General Fund, One-Time	\$0	\$30,600	\$0
Total Revenue	\$0	\$0	(\$30,600)
Expenditure			
	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$0	(\$30,600)
Net Impact, General/Education Funds	\$0	\$0	(\$30,600)

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill could result in tax credits for approximately 40 jobs resulting in a total benefit to businesses of \$30,600.