

ENTERPRISE ZONE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kraig Powell

Senate Sponsor: _____

Cosponsors: Paul Ray Christine F. Watkins

LONG TITLE

Committee Note:

The Workforce Services and Community and Economic Development Interim Committee recommended this bill.

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, establishment, and establishment engaged in retail trade 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;



- 28 ▶ modifies provisions related to tax credits which may be claimed for new full-time
- 29 employee positions;
- 30 ▶ provides that a business entity may claim a tax credit under the Enterprise Zone Act
- 31 when filing a tax return or combined report that includes an establishment engaged
- 32 in a retail trade, but only for a qualifying establishment;
- 33 ▶ modifies annual enterprise zone reporting provisions; and
- 34 ▶ provides a repealer.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill has retrospective operation to January 1, 2011.

39 **Utah Code Sections Affected:**

40 AMENDS:

- 41 **63M-1-402**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 42 **63M-1-403**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 43 **63M-1-404**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 44 **63M-1-406**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 45 **63M-1-412**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 46 **63M-1-413**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 47 **63M-1-414**, as renumbered and amended by Laws of Utah 2008, Chapter 382

48 REPEALS:

- 49 **63M-1-416**, as renumbered and amended by Laws of Utah 2008, Chapter 382



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

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

53 **63M-1-402. Definitions.**

54 As used in this part:

- 55 (1) "Business entity" means an entity, sole proprietorship, or individual:
- 56 (a) including a claimant, estate, or trust; and
- 57 (b) under which or by whom business is conducted or transacted.
- 58 (2) [~~(a)~~] "Claimant" means a resident or nonresident person that has:

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

60 [(ii)] (b) state taxable income under Title 59, Chapter 10, Part 1, Determination and
61 Reporting of Tax Liability ~~[or]~~ and Information.

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

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

65 (4) "Establishment" means an economic unit of operations at a single physical location
66 and is considered separately from any other locations operated by the same business entity.

67 (5) "Establishment engaged in retail trade" means an establishment described in
68 NAICS Sector 44-45, Retail Trade, of the North American Industry Classification System of
69 the federal Executive Office of the President, Office of Management and Budget.

70 ~~[(4)]~~ (6) "Estate" means a nonresident estate or a resident estate that has state taxable
71 income under Title 59, Chapter 10, Part 2, Trusts and Estates.

72 ~~[(5)]~~ (7) "Municipal applicant" means the governing authority of a city or town that
73 meets the requirements for designation as an enterprise zone under Section 63M-1-404.

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

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

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

78 ~~[(6)]~~ (9) "Nonrefundable tax credit" or "tax credit" means a tax credit that a ~~[claimant,~~
79 ~~estate, or trust]~~ business entity may:

80 (a) claim:

81 (i) as provided by statute; and

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

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

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

86 (b) carry forward or carry back:

87 (i) if allowed by statute; and

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

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

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

92 [~~(7)~~] (10) "Tax incentives" or "tax benefits" means the nonrefundable tax credits
93 described in Section 63M-1-413.

94 [~~(8)~~] (11) "Trust" means a nonresident trust or a resident trust that has state taxable
95 income under Title 59, Chapter 10, Part 2, Trusts and Estates.

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

97 **63M-1-403. Powers of the office.**

98 The office shall:

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

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

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

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

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

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

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

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

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

118 **63M-1-404. Criteria for designation of enterprise zones -- Application.**

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

121 part:

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

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

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

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

129 (a) verifies that the municipality is a city of the fifth class or a town;

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

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

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

136 (a) a plan developed by the county applicant or municipal applicant that identifies local
137 contributions meeting the requirements of Section 63M-1-405;

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

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

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

142 (iii) any commitments obtained from businesses;

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

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

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

149 (c) the county applicant's or municipal applicant's proposed means of assessing the
150 effectiveness of the development plan or other programs ~~[to be implemented]~~ within the zone
151 once they have been implemented within the zone;

- 152 (d) any additional information required by the office; and
- 153 (e) any additional information the county applicant or municipal applicant considers
- 154 relevant to its designation as an enterprise zone.

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

156 **63M-1-406. Eligibility review.**

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

158 (a) review and evaluate the applications submitted under Section 63M-1-404; and
159 ~~[shall]~~

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

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

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

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

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

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

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

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

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

181 (vi) the degree to which the county applicant's or municipal applicant's application
182 promotes innovative solutions to economic development problems and demonstrates local

183 initiative; and

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

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

186 **63M-1-412. Business entities qualifying for tax incentives.**

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

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

192 any other enterprise zone located within the state.

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

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

195 **63M-1-413. State tax credits.**

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

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

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

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

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

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

213 (d) an additional tax credit of ~~[\$200]~~ \$400 may be claimed ~~[for two consecutive years]~~

214 for each new full-time employee position created within the enterprise zone that is filled by an
215 employee who is insured under an employer-sponsored health insurance program if the
216 employer pays at least 50% of the premium cost [~~for two consecutive years~~];

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

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

221 (ii) whose primary purpose is community and economic development; and

222 (iii) that has been accredited by the board of directors of the Utah Rural Development
223 Council;

224 (f) a tax credit of 25% of the first \$200,000 spent on rehabilitating a building in the
225 enterprise zone that has been vacant for two years or more; and

226 (g) an annual investment tax credit of 10% of the first \$250,000 in investment, and 5%
227 of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable
228 property.

229 (2) (a) Subject to the limitations of Subsection (2)(b), a business entity claiming [~~a~~] tax
230 [~~credit~~] credits under Subsections (1)(a) through (d) may claim the tax [~~credit~~] credits for up to
231 30 full-time employee positions [~~or less in each of its~~] per taxable [~~years~~] year.

232 (b) A business entity that received a tax credit for [~~its~~] one or more new full-time
233 employee positions under Subsections (1)(a) through (d) in a prior taxable year may claim [~~an~~
234 ~~additional~~] a tax credit for a new full-time employee position in a subsequent taxable year
235 under Subsections (1)(a) through (d) if:

236 (i) the business entity [~~creates~~] has created a new full-time [~~employee~~] position within
237 the enterprise zone; and

238 (ii) the total number of full-time employee positions at the business entity at any point
239 during the tax year for which the tax credit is being claimed is greater than the number of
240 full-time employee positions [~~previously claimed by~~] that existed at the business entity [~~under~~
241 ~~Subsections (1)(a) through (d); and~~] at any point during the taxable year immediately preceding
242 the taxable year for which the credit is being claimed.

243 [~~(iii) the total number of tax credits the business entity has claimed for its current~~
244 ~~taxable year, including the new full-time employee position for which the claimant, estate, or~~

245 ~~trust that is a business entity is claiming a tax credit, is less than or equal to 30:]~~

246 ~~[(c) A business entity existing in an enterprise zone on the date of its designation shall~~
247 ~~calculate the number of full-time positions based on the average number of employees reported~~
248 ~~to the Department of Workforce Services.]~~

249 ~~[(d)]~~ (c) Construction jobs are not eligible for the tax credits under Subsections (1)(a)
250 through (d).

251 (3) If the amount of a tax credit under this section exceeds a business entity's tax
252 liability under this chapter for a taxable year, the business entity may carry forward the amount
253 of the tax credit exceeding the liability ~~[may be carried forward]~~ for a period that does not
254 exceed the next three taxable years.

255 ~~[(4) (a) If a business entity is located in a county that met the requirements of~~
256 ~~Subsections 63M-1-404(1)(b) and (c) but did not qualify as an enterprise zone prior to January~~
257 ~~1, 1998, because the county was located in a metropolitan statistical area in more than one~~
258 ~~state, the business entity:]~~

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

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

263 ~~[(iii) may qualify for tax credits for any taxable year beginning on or after January 1,~~
264 ~~1998, if the county is designated as an enterprise zone in accordance with this part.]~~

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

267 ~~[(i) may claim the tax credit by filing for the taxable year beginning on or after January~~
268 ~~1, 1997, but beginning before December 31, 1997;]~~

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

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

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

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

274 ~~[(ii) may carry forward the tax credit to a taxable year beginning on or after January 1,~~
275 ~~1998, in accordance with Subsection (3).]~~

276 ~~[(5) The tax]~~ (4) (a) Tax credits under Subsections (1)(a) through (g) may not be
 277 claimed by a business entity for an establishment engaged in retail trade or by a public utilities
 278 business.

279 (b) If a business entity files a Utah tax return or combined report that includes an
 280 establishment engaged in retail trade or a public utilities business, but also includes an
 281 establishment that qualifies for the tax credits under the standards contained in this section, the
 282 business entity may claim the applicable tax credits, but only for the qualifying establishment.

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

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

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

286 (6) A business entity may not claim or carry forward a tax credit available under this
 287 part for a taxable year during which the business entity has claimed the targeted business
 288 income tax credit available under Section 63M-1-504.

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

290 **63M-1-414. Annual report.**

291 ~~[(+)]~~ Each county applicant or municipal applicant designated as an enterprise zone
 292 shall annually report to the office regarding the economic activity that has occurred in the zone
 293 following the designation.

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

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

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

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

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

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

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

305 Section 8. **Repealer.**

306 This bill repeals:

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

308 Section 9. **Retrospective operation.**

309 This bill has retrospective operation to January 1, 2011.

Legislative Review Note
as of 11-17-10 2:55 PM

Office of Legislative Research and General Counsel