

ENTERPRISE ZONE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

Senate Sponsor: Ralph Okerlund

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

- 30 [63N-2-203](#), as renumbered and amended by Laws of Utah 2015, Chapter 283
- 31 [63N-2-204](#), as renumbered and amended by Laws of Utah 2015, Chapter 283
- 32 [63N-2-210](#), as renumbered and amended by Laws of Utah 2015, Chapter 283
- 33 [63N-2-211](#), as renumbered and amended by Laws of Utah 2015, Chapter 283
- 34 [63N-2-213](#), as renumbered and amended by Laws of Utah 2015, Chapter 283

35 ENACTS:

36 [59-7-614.10](#), Utah Code Annotated 1953

37 [59-10-1036](#), Utah Code Annotated 1953



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

40 Section 1. Section [59-7-614.10](#) is enacted to read:

41 **[59-7-614.10](#). Nonrefundable enterprise zone tax credit.**

42 (1) As used in this section:

43 (a) "Business entity" means a corporation that meets the definition of "business entity"

44 as that term is defined in Section [63N-2-202](#).

45 (b) "Office" means the Governor's Office of Economic Development created in Section

46 [63N-1-201](#).

47 (2) Subject to the provisions of this section, a business entity may claim a

48 nonrefundable enterprise zone tax credit as described in Section [63N-2-213](#).

49 (3) The enterprise zone tax credit under this section is the amount listed as the tax

50 credit amount on the tax credit certificate that the office issues to the business entity for the

51 taxable year.

52 (4) A business entity may carry forward a tax credit under this section for a period that

53 does not exceed the next three taxable years, if the amount of the tax credit exceeds the

54 business entity's tax liability under this chapter for that taxable year.

55 (5) A business entity may not claim or carry forward a tax credit available under this

56 part for a taxable year during which the business entity has claimed the targeted business

57 income tax credit available under Section [63N-2-305](#).

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61 credit should be continued, modified, or repealed.

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

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

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

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

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

72 (v) the information related to the tax credit contained in the office's latest report to the
73 Legislature under Section [63N-1-301](#); and

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

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

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

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

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

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

81 **59-10-1036. Nonrefundable enterprise zone tax credit.**

82 (1) As used in this section:

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

85 (b) "Office" means the Governor's Office of Economic Development created in Section

86 [63N-1-201](#).

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

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

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

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

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

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

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

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

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

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

112 (v) the information related to the tax credit contained in the office's latest report to the
113 Legislature under Section [63N-1-301](#); and

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

115 (c) The Revenue and Taxation Interim Committee shall ensure that its

116 recommendations under Subsection (6)(a) include an evaluation of:

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

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

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

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

121 **63N-2-202. Definitions.**

122 As used in this part:

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

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

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

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

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

128 (b) state taxable income under Title 59, Chapter 10, Part 1, Determination and

129 Reporting of Tax Liability and Information.

130 (3) "County applicant" means the governing authority of a county that meets the

131 requirements for designation as an enterprise zone under Section [63N-2-204](#).

132 (4) "Estate" means a nonresident estate or a resident estate that has state taxable

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

134 (5) "Municipal applicant" means the governing authority of a city or town that meets

135 the requirements for designation as an enterprise zone under Section [63N-2-204](#).

136 (6) "New full-time employee position" means a position that has been newly created in

137 addition to the highest baseline count of employment positions that existed within the business

138 entity during the previous three taxable years and [~~then~~] is filled by an employee working at

139 least 30 hours per week:

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

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

142 (7) "Nonrefundable tax credit" or "tax credit" means a tax credit that a business entity
143 may:

144 (a) claim:

145 (i) as provided by statute; and

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

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

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

150 (b) carry forward or carry back:

151 (i) if allowed by statute; and

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

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

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

156 (8) "Tax incentives" or "tax benefits" means the nonrefundable tax credits described in
157 Section [63N-2-213](#).

158 (9) "Trust" means a nonresident trust or a resident trust that has state taxable income
159 under Title 59, Chapter 10, Part 2, Trusts and Estates.

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

161 **63N-2-203. Powers of the office.**

162 The office shall:

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

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

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

169 (4) assist county applicants and municipal applicants designated as enterprise zones in

170 obtaining assistance from the federal government and agencies of the state;

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

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

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

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

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

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

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

185 (f) recommendations regarding the effectiveness of the program and any suggestions
186 for legislation.

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

188 **63N-2-204. Criteria for designation of enterprise zones -- Application.**

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

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

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

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

196 (a) verifies that the municipality has a population that does not exceed [~~15,000~~]
197 20,000;

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

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

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

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

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

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

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

210 (iii) any commitments obtained from businesses;

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

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

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

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

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

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

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

224 **63N-2-210. Revocation of designations.**

225 (1) The office may revoke the designation of an enterprise zone[;] if no businesses

226 utilize the tax incentives during [~~any~~] a calendar year.

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

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

230 **63N-2-211. Disqualifying transfers.**

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

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

237 **63N-2-213. State tax credits.**

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

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

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

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

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

249 (a) deny the tax credit; or

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

252 (4) If, after review of an application and documentation provided by a business entity
253 as described in Subsection (2), the office determines that the application and documentation

254 provide reasonable justification for authorizing a tax credit, the office shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

288 ~~[(i) that is exempt from federal income taxation under Section 501(c)(3), Internal
289 Revenue Code;]~~

290 ~~[(ii) whose primary purpose is community and economic development; and]~~

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

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

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

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

301 (b) A business entity that received a tax credit for one or more new full-time employee
302 positions under Subsections ~~[(1)]~~ (7)(a) through (d) in a prior taxable year may claim a tax
303 credit for a new full-time employee position in a subsequent taxable year under Subsections
304 ~~[(1)]~~ (7)(a) through (d) if:

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

307 (ii) the total number of full-time employee positions at the business entity at any point
308 during the tax year for which the tax credit is being claimed is greater than the highest number
309 of full-time employee positions that existed at the business entity ~~[at any point during the~~

310 taxable year immediately preceding the taxable year for which the credit is being claimed] in
311 the previous three taxable years.

312 (c) Construction jobs are not eligible for the tax credits under Subsections ~~[(+)]~~ (7)(a)
313 through (d).

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

318 ~~[(4)]~~ (10) Tax credits under Subsections ~~[(+)]~~ (7)(a) through ~~[(g)]~~ (f) may not be
319 claimed by a business entity primarily engaged in retail trade or by a public utilities business.

320 ~~[(5)]~~ (11) A business entity that has no employees:

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

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

323 ~~[(6)]~~ (12) A business entity may not claim or carry forward a tax credit available under
324 this part for a taxable year during which the business entity has claimed the targeted business
325 income tax credit available under Section 63N-2-305.

326 Section 9. **Effective date.**

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

331 Section 10. **Retrospective operation.**

332 This bill has retrospective operation for a taxable year beginning on or after January 1,
333 2016.