

ENTERPRISE ZONE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

Senate Sponsor: Ralph Okerlund

LONG TITLE

Committee Note:

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

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:



28 This bill provides a special effective date.

29 This bill provides retrospective operation.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 [63N-2-202](#), as renumbered and amended by Laws of Utah 2015, Chapter 283

33 [63N-2-203](#), as renumbered and amended by Laws of Utah 2015, Chapter 283

34 [63N-2-204](#), as renumbered and amended by Laws of Utah 2015, Chapter 283

35 [63N-2-210](#), as renumbered and amended by Laws of Utah 2015, Chapter 283

36 [63N-2-211](#), as renumbered and amended by Laws of Utah 2015, Chapter 283

37 [63N-2-213](#), as renumbered and amended by Laws of Utah 2015, Chapter 283

38 ENACTS:

39 [59-7-614.10](#), Utah Code Annotated 1953

40 [59-10-1036](#), Utah Code Annotated 1953



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

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

44 **59-7-614.10. Nonrefundable enterprise zone tax credit.**

45 (1) As used in this section:

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

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

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

49 [63N-1-201](#).

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

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

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

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

54 taxable year.

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

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

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

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

59 part for a taxable year during which the business entity has claimed the targeted business
60 income tax credit available under Section [63N-2-305](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

84 **59-10-1036. Nonrefundable enterprise zone tax credit.**

85 (1) As used in this section:

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

88 (b) "Office" means the Governor's Office of Economic Development created in Section
89 [63N-1-201](#).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

124 **63N-2-202. Definitions.**

125 As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

145 (7) "Nonrefundable tax credit" or "tax credit" means a tax credit that a business entity
146 may:

147 (a) claim:

148 (i) as provided by statute; and

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

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

- 152 (B) Title 59, Chapter 10, Individual Income Tax Act; and
- 153 (b) carry forward or carry back:
- 154 (i) if allowed by statute; and
- 155 (ii) to the extent that the amount of the tax credit exceeds the business entity's tax
- 156 liability for a taxable year under:
- 157 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
- 158 (B) Title 59, Chapter 10, Individual Income Tax Act.
- 159 (8) "Tax incentives" or "tax benefits" means the nonrefundable tax credits described in
- 160 Section [63N-2-213](#).
- 161 (9) "Trust" means a nonresident trust or a resident trust that has state taxable income
- 162 under Title 59, Chapter 10, Part 2, Trusts and Estates.
- 163 Section 4. Section **63N-2-203** is amended to read:
- 164 **63N-2-203. Powers of the office.**
- 165 The office shall:
- 166 (1) monitor the implementation and operation of this part and conduct a continuing
- 167 evaluation of the progress made in the enterprise zones;
- 168 (2) evaluate an application for designation as an enterprise zone from a county
- 169 applicant or a municipal applicant and determine if the applicant qualifies for that designation;
- 170 (3) provide technical assistance to county applicants and municipal applicants in
- 171 developing applications for designation as enterprise zones;
- 172 (4) assist county applicants and municipal applicants designated as enterprise zones in
- 173 obtaining assistance from the federal government and agencies of the state;
- 174 (5) assist a qualified business entity in obtaining the benefits of an incentive or
- 175 inducement program authorized by this part; and
- 176 (6) as part of the annual written report described in Section [~~63N-2-301~~] [63N-1-301](#),
- 177 prepare an annual evaluation [~~based, in part, on data provided by the State Tax Commission~~
- 178 ~~that evaluates the~~] that provides:
- 179 (a) based on data from the State Tax Commission, the total amount of tax credits
- 180 claimed under this part;
- 181 (b) the total amount awarded in tax credits for each development zone;
- 182 (c) the number of new full-time employee positions reported to obtain tax credits in

183 each development zone;

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

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

188 (f) recommendations regarding the effectiveness of the program and any suggestions
189 for legislation.

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

191 **63N-2-204. Criteria for designation of enterprise zones -- Application.**

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

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

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

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

199 (a) verifies that the municipality has a population that does not exceed [~~15,000~~]
200 20,000;

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

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

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

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

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

210 (i) the types of investment and development within the zone that the county applicant

211 or municipal applicant expects to take place if the incentives specified in this part are provided;

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

213 (iii) any commitments obtained from businesses;

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

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

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

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

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

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

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

227 **63N-2-210. Revocation of designations.**

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

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

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

233 **63N-2-211. Disqualifying transfers.**

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

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

240 **63N-2-213. State tax credits.**

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

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

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

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

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

252 (a) deny the tax credit; or

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

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

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

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

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

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

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

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

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

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

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

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

275 (b) an additional \$500 tax credit may be claimed if the new full-time employee position

276 created within the enterprise zone pays at least 125% of:

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

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

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

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

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

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

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

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

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

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

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

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

307 ~~[(+)] (7)(a)~~ through (d) if:

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

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

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

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

321 ~~[(4)] (10)~~ Tax credits under Subsections ~~[(+)] (7)(a)~~ through ~~[(g)] (f)~~ may not be
322 claimed by a business entity primarily engaged in retail trade or by a public utilities business.

323 ~~[(5)] (11)~~ A business entity that has no employees:

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

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

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

329 **Section 9. Effective date.**

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

334 **Section 10. Retrospective operation.**

335 This bill has retrospective operation for a taxable year beginning on or after January 1,
336 2016.

**Legislative Review Note
Office of Legislative Research and General Counsel**