

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0410.01 Nicole Myers

SENATE BILL 10-162

SENATE SPONSORSHIP

Heath,

HOUSE SPONSORSHIP

Hullinghorst, May

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 CONCERNING MODIFICATIONS TO THE "URBAN AND RURAL
102 ENTERPRISE ZONE ACT" TO IMPROVE THE ACCOUNTABILITY OF
103 INCOME TAX CREDITS ALLOWED BY THE ACT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The "Urban and Rural Enterprise Zone Act" (act) specifies limitations on the population of an area that may be included in an enterprise zone but does not include a standard method of calculating the population. The bill specifies that the population of an enterprise zone

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

shall be calculated using data from the most recent federal decennial census at the county, municipal, or block levels and that the calculations that require the use of block level data shall include the entire population of each block in which the enterprise zone is included. In addition, the bill increases the population limitation for an urban enterprise zone from 80,000 to 115,000 people and increases the limitation for a rural enterprise zone from 100,000 to 150,000 people to account for population growth that has occurred since 1986 when the population limits were established and to account for new standardized methodology.

Currently, the state auditor is required to use 6 broad economic indicators when evaluating the effectiveness of the act in an audit. The current factors are too broad to be utilized to determine the impact of an enterprise zone. The bill eliminates the requirement that the state auditor use the 6 indicators and instead creates a new pre-certification process that a taxpayer is required to follow if the taxpayer intends to claim an enterprise zone income tax credit pursuant to the act in order to demonstrate that the act has an impact on the taxpayers' decisions.

Currently, a taxpayer's business may earn an income tax credit pursuant to the act by:

- ! Being located in the enterprise zone; and
- ! Performing an activity that is eligible for an enterprise zone income tax credit, regardless of whether the availability of the income tax credit had any demonstrable impact on the taxpayer's decision to start, relocate, or expand the business in the enterprise zone.

The bill requires a taxpayer to complete a pre-certification process prior to beginning and completing any activity for which a taxpayer intends to claim an income tax credit pursuant to the act to ensure that the income tax credits allowed pursuant to the act have an impact on taxpayers' business decisions. The bill directs the department of revenue (department) to include a section for the pre-certification data on the enterprise zone income tax credit certification forms that the department currently uses.

Currently, some enterprise zone administrators charge a fee to programs, projects, and organizations (contribution projects) that have been approved by the Colorado economic development commission (commission). Current statute does not provide any authority or limitation regarding the fees, and, consequently, the fee policies vary from one enterprise zone to another. The bill requires each enterprise zone administrator that charges fees to create a policy regarding the fees and to submit the policy to the commission for approval. The commission must review each policy submitted by an enterprise zone administrator.

The bill directs the Colorado office of economic development (office) to work with the commission and the department to develop the

capability, if there is no fiscal impact, to allow taxpayers that intend to claim one or more income tax credits pursuant to the act to submit pre-certification forms, certification forms, and required reporting information in an electronic format.

The bill requires the department to aggregate and report data collected regarding tax credits claimed pursuant to the act, categorized by the date that the tax credit was authorized, the specific tax credit allowed pursuant to the act that each taxpayer was authorized to claim, and the total amount of the tax credits claimed for each tax credit allowed pursuant to the act. The bill requires the department to submit the data to the office on an annual basis.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** The introductory portion to 39-30-103 (1) and
3 39-30-103 (4) (c) (II), Colorado Revised Statutes, are amended, and the
4 said 39-30-103 is further amended BY THE ADDITION OF THE
5 FOLLOWING NEW SUBSECTIONS, to read:

6 **39-30-103. Zones established - termination.** (1) Any
7 municipality, county, or group of contiguous municipalities or counties
8 may propose an area of such municipality, county, or group of
9 municipalities or counties to be designated as an enterprise zone if the
10 area has a population of no more than ~~eighty~~ ONE HUNDRED FIFTEEN
11 thousand persons AS CALCULATED PURSUANT TO SUBSECTION (1.3) OF
12 THIS SECTION, or one hundred FIFTY thousand persons AS CALCULATED
13 PURSUANT TO SUBSECTION (1.3) OF THIS SECTION if the area is a rural area,
14 and meets at least one of the following additional criteria:

15 (1.3) FOR THE PURPOSES OF THIS ARTICLE, THE POPULATION OF AN
16 ENTERPRISE ZONE SHALL BE CALCULATED USING DATA FROM THE MOST
17 RECENT FEDERAL DECENNIAL CENSUS AT THE COUNTY, MUNICIPAL, OR
18 BLOCK LEVELS. SUCH CALCULATIONS THAT REQUIRE THE USE OF BLOCK
19 LEVEL DATA SHALL INCLUDE THE ENTIRE POPULATION OF EACH BLOCK IN

1 WHICH THE ENTERPRISE ZONE IS LOCATED.

2 (4) (c) (II) The state auditor shall submit a report to the governor
3 and the general assembly, at the discretion of the state auditor and the
4 legislative audit committee, evaluating the implementation of the
5 enterprise zone program, ~~and its effect on the employment,~~
6 ~~unemployment rate, investment, overall growth rate, economic diversity,~~
7 ~~and per capita income in each enterprise zone and enhanced rural~~
8 ~~enterprise zone or county containing an enterprise zone or enhanced rural~~
9 ~~enterprise zone, evaluating the effectiveness of each zone in achieving its~~
10 ~~measurable objectives,~~ making recommendations for statutory changes,
11 if any, and including any other information requested by the governor or
12 the general assembly. The evaluation shall be based upon the data
13 included in the annual reports submitted by the director of the Colorado
14 office of economic development on behalf of the Colorado economic
15 development commission to the general assembly pursuant to paragraph
16 (b.7) of this subsection (4) and objective verifiable data submitted by the
17 ENTERPRISE zone administrators and maintained by the Colorado office
18 of economic development, local governments, and ENTERPRISE zone
19 administrators. The report shall also include information concerning the
20 amounts of tax credits claimed and allowed under the program. For
21 purposes of preparing the report required by this paragraph (c), the state
22 auditor shall have access to all records and documents applicable to the
23 program, whether maintained by the Colorado office of economic
24 development, local governments, or enterprise zone administrators.

25 (7) (a) BEFORE ENGAGING IN ANY ACTIVITY FOR WHICH A
26 TAXPAYER INTENDS TO CLAIM AN INCOME TAX CREDIT PURSUANT TO
27 SECTION 39-30-104, 39-30-105, 39-30-105.5, OR 39-30-105.6, AN

1 AUTHORIZED COMPANY OFFICIAL OF THE TAXPAYER'S BUSINESS OR THE
2 TAXPAYER WHO IS THE OWNER OF THE BUSINESS SHALL SUBMIT A
3 PRE-CERTIFICATION FORM TO THE ENTERPRISE ZONE ADMINISTRATOR AS
4 SPECIFIED IN PARAGRAPH (b) OF THIS SUBSECTION (7). IN CONNECTION
5 WITH THE PRE-CERTIFICATION, THE TAXPAYER SHALL BE REQUIRED TO:

6 (I) OBTAIN VERIFICATION FROM THE ENTERPRISE ZONE
7 ADMINISTRATOR THAT THE TAXPAYER'S BUSINESS IS LOCATED IN AN
8 ENTERPRISE ZONE;

9 (II) CERTIFY THAT THE TAXPAYER IS AWARE OF THE ENTERPRISE
10 ZONE INCOME TAX CREDITS ALLOWED PURSUANT TO THIS ARTICLE;

11 (III) CERTIFY THAT THE ENTERPRISE ZONE INCOME TAX CREDITS
12 ALLOWED PURSUANT TO THIS ARTICLE ARE INSTRUMENTAL TO THE
13 START-UP, EXPANSION, OR RELOCATION OF THE TAXPAYER'S BUSINESS IN
14 THE ENTERPRISE ZONE; AND

15 (IV) CERTIFY THAT THE TAXPAYER ACKNOWLEDGES THAT THE
16 PRE-CERTIFICATION REQUIRED PURSUANT TO THIS SECTION IS FOR
17 ACTIVITIES THAT SHALL COMMENCE AFTER THE DATE THAT THE
18 PRE-CERTIFICATION FORM IS EXECUTED BY THE ENTERPRISE ZONE
19 ADMINISTRATOR THROUGH THE END OF THE BUSINESS'S THEN-CURRENT
20 INCOME TAX YEAR;

21 (b) A TAXPAYER MAY OBTAIN A PRE-CERTIFICATION FORM AS
22 REQUIRED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7) FROM
23 THE DEPARTMENT OF REVENUE. THE DEPARTMENT SHALL AMEND THE
24 CURRENT CERTIFICATION FORMS THAT A TAXPAYER IS REQUIRED TO
25 COMPLETE IN CONNECTION WITH CLAIMING AN INCOME TAX CREDIT
26 PURSUANT TO THIS ARTICLE, TO INCLUDE A SECTION THROUGH WHICH THE
27 TAXPAYER OR AN AUTHORIZED COMPANY OFFICIAL OF THE TAXPAYER'S

1 BUSINESS MAY PROVIDE THE INFORMATION REQUIRED PURSUANT TO
2 SUBPARAGRAPHS (II) TO (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (7).

3 **SECTION 2.** 39-30-103.5, Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW SUBSECTION to read:

5 **39-30-103.5. Credit against tax - contributions to enterprise**
6 **zone administrators to implement economic development plans.**

7 (8) (a) ANY ENTERPRISE ZONE ADMINISTRATOR THAT PROVIDES
8 OVERSIGHT, MANAGEMENT, OR OTHER ADMINISTRATIVE SERVICES TO A
9 PROGRAM, PROJECT, OR ORGANIZATION THAT HAS BEEN APPROVED BY THE
10 ECONOMIC DEVELOPMENT COMMISSION FOR PURPOSES OF THE
11 CONTRIBUTION TAX CREDIT AS DEFINED IN THIS SECTION IS AUTHORIZED
12 TO CHARGE REASONABLE FEES TO PROGRAMS, PROJECTS, AND
13 ORGANIZATIONS AS DEFINED IN THIS SECTION. EACH ENTERPRISE ZONE
14 ADMINISTRATOR THAT CHARGES ADMINISTRATIVE FEES PURSUANT TO THIS
15 PARAGRAPH (a) SHALL ESTABLISH A REASONABLE POLICY REGARDING THE
16 IMPOSITION OF SUCH FEES AND SHALL SUBMIT THE POLICY TO THE
17 COLORADO ECONOMIC DEVELOPMENT COMMISSION FOR REVIEW AND
18 APPROVAL.

19 (b) THE COLORADO ECONOMIC DEVELOPMENT COMMISSION SHALL
20 REVIEW THE ADMINISTRATIVE FEE POLICY ESTABLISHED BY AN ENTERPRISE
21 ZONE ADMINISTRATOR AND SHALL APPROVE THE POLICY OR REQUIRE THAT
22 THE ENTERPRISE ZONE ADMINISTRATOR MAKE MODIFICATIONS TO THE
23 POLICY AS SPECIFIED BY THE COMMISSION BEFORE APPROVING THE POLICY.

24 **SECTION 3.** Article 30 of title 39, Colorado Revised Statutes, is
25 amended BY THE ADDITION OF THE FOLLOWING NEW
26 SECTIONS to read:

27 **39-30-110. Electronic submissions.** (1) THE COLORADO OFFICE

1 OF ECONOMIC DEVELOPMENT SHALL COLLABORATE, IF THERE IS NO FISCAL
2 IMPACT, WITH THE COLORADO ECONOMIC DEVELOPMENT COMMISSION
3 AND THE DEPARTMENT OF REVENUE TO DEVELOP THE CAPABILITY TO
4 ALLOW TAXPAYERS THAT INTEND TO CLAIM ONE OR MORE INCOME TAX
5 CREDITS PURSUANT TO THIS ARTICLE TO SUBMIT PRE-CERTIFICATION
6 FORMS, CERTIFICATION FORMS, AND REQUIRED REPORTING INFORMATION
7 IN AN ELECTRONIC FORMAT. THE COLORADO OFFICE OF ECONOMIC
8 DEVELOPMENT SHALL IMPLEMENT THE ELECTRONIC SUBMISSION SYSTEM
9 BY JANUARY 1, 2013.

10 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION SHALL BE
11 CONSTRUED TO PROHIBIT A TAXPAYER THAT INTENDS TO CLAIM ONE OR
12 MORE INCOME TAX CREDITS PURSUANT TO THIS ARTICLE FROM
13 SUBMITTING PRINTED COPIES OF PRE-CERTIFICATION FORMS,
14 CERTIFICATION FORMS, OR REQUIRED REPORTING INFORMATION.

15 **39-30-111. Department of revenue - enterprise zone data.**

16 (1) FOR THE 2012 INCOME TAX YEAR AND EACH INCOME TAX YEAR
17 THEREAFTER, THE DEPARTMENT OF REVENUE SHALL AGGREGATE AND
18 REPORT DATA ON ALL OF THE INCOME TAX CREDITS THAT ARE CLAIMED
19 PURSUANT TO THIS ARTICLE FOR EACH INCOME TAX YEAR. THE
20 DEPARTMENT SHALL CATEGORIZE SUCH AGGREGATED DATA BY THE DATE
21 THAT THE INCOME TAX CREDIT WAS AUTHORIZED BY AN ENTERPRISE ZONE
22 ADMINISTRATOR, THE SPECIFIC INCOME TAX CREDIT ALLOWED PURSUANT
23 TO THIS ARTICLE THAT EACH TAXPAYER WAS AUTHORIZED TO CLAIM, AND
24 THE TOTAL AMOUNT OF THE INCOME TAX CREDITS CLAIMED FOR EACH
25 INCOME TAX CREDIT ALLOWED PURSUANT TO THIS ARTICLE.

26 (2) THE DEPARTMENT OF REVENUE SHALL SUBMIT THE DATA
27 COLLECTED PURSUANT TO SUBSECTION (1) OF THIS SECTION TO THE

1 COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON AUGUST 1, 2013, AND
2 ON AUGUST 1 EACH YEAR THEREAFTER.

3 **SECTION 4. Act subject to petition - specified effective date.**

4 This act shall take effect January 1, 2012; except that, if a referendum
5 petition is filed pursuant to section 1 (3) of article V of the state
6 constitution against this act or an item, section, or part of this act within
7 the ninety-day period after final adjournment of the general assembly,
8 then the act, item, section, or part shall not take effect unless approved by
9 the people at the general election to be held in November 2010 and shall
10 take effect on January 1, 2012, or on the date of the official declaration
11 of the vote thereon by the governor, whichever is later.