

## CHAPTER 74

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**GOVERNMENT - STATE**


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**HOUSE BILL 08-1305**

BY REPRESENTATIVE(S) Pommer, Buescher, White, Borodkin, Jahn, and McFadyen;  
also SENATOR(S) Johnson, Keller, Morse, and Penry.

**AN ACT**

**CONCERNING THE TRANSFER OF THE RESPONSIBILITIES FOR THE ADMINISTRATION OF THE ENTERPRISE ZONE PROGRAM FROM THE DEPARTMENT OF LOCAL AFFAIRS TO THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT.**

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

**SECTION 1.** 39-30-102 (3) (a), Colorado Revised Statutes, is amended to read:

**39-30-102. Legislative declaration.** (3) (a) It is the intent of the general assembly that state agencies, including but not limited to the division of ~~commerce and development~~ LOCAL GOVERNMENT in the department of local affairs, the department of labor and employment, the department of revenue, ~~and~~ the state board for community colleges and occupational education in the department of higher education, AND THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT CREATED IN THE OFFICE OF THE GOVERNOR, place special emphasis on providing assistance to designated enterprise zones.

**SECTION 2.** 39-30-103 (2), the introductory portion to 39-30-103 (3), 39-30-103 (3) (f) and (4) (a), the introductory portion to 39-30-103 (4) (b), 39-30-103 (4) (b) (XI), the introductory portion to 39-30-103 (4) (b.5), and 39-30-103 (4) (b.7), (4) (c) (II), (4) (c.5), and (4) (e), Colorado Revised Statutes, are amended to read:

**39-30-103. Zones established - termination.** (2) The ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT shall determine whether an area meets the criteria specified in subsection (1) of this section based on the most recent statistics available. ~~to the state demographer appointed by such executive director~~ ALL DECISIONS CONCERNING THE DESIGNATION OR TERMINATION OF AN ENTERPRISE ZONE OR ANY PORTION OF AN ENTERPRISE ZONE

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

SHALL BE MADE BY THE COLORADO ECONOMIC DEVELOPMENT COMMISSION CREATED IN SECTION 24-46-102, C.R.S., UPON THE RECOMMENDATIONS OF THE DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT.

(3) In proposing an area for designation as an enterprise zone, the local government shall submit to the ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT a development plan. This plan shall include information describing the following items:

(f) Any other pertinent information the ~~executive~~ director OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT OR THE COLORADO ECONOMIC DEVELOPMENT COMMISSION may require.

~~(4) (a) Except as otherwise provided in paragraph (c) of this subsection (4), The executive director of the department of local affairs~~ COLORADO ECONOMIC DEVELOPMENT COMMISSION, after consultation with the executive directors of the department of labor and employment and the department of revenue, may approve the designation of not more than sixteen areas as enterprise zones. The ~~executive director of the department of local affairs~~ COMMISSION shall designate an administrator for each enterprise zone ADMINISTRATIVE ENTITIES FOR ENTERPRISE ZONES.

~~(b) For any area designated as an enterprise zone or as a portion of an enterprise zone prior to July 1, 1996, the executive director of the department of local affairs shall require local governments that submitted development plans pertaining to areas selected as enterprise zones to develop and submit no later than September 1, 1996, specific economic development objectives to be achieved in the zones or portions thereof. For any area designated as an enterprise zone or as a portion of an enterprise zone prior to July 1, 1999, the executive director of the department of local affairs~~ COLORADO ECONOMIC DEVELOPMENT COMMISSION shall work with the zone administrator to ensure that the area has specific economic development objectives with outcomes that can be measured with specific, verifiable data. The ~~executive~~ director OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT shall require the zone administrators for each zone to submit annual documentation of efforts to improve conditions in areas designated as enterprise zones and the results of those efforts. Such annual documentation shall include specific, verifiable data that can be used to measure whether the zone has achieved the specific economic development objectives for the zone that have measurable outcomes. In order for the ~~executive director~~ COMMISSION to determine if the enterprise zones or portions thereof are achieving the specific economic development objectives submitted pursuant to this paragraph (b) or to paragraph (d) of subsection (3) of this section, such annual documentation shall include, but need not be limited to, the most recent statistics available for companies claiming enterprise zone tax credits on:

(XI) Any other information reasonably required by the zone administrator, ~~or the executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT, OR THE COLORADO ECONOMIC DEVELOPMENT COMMISSION to evaluate the effectiveness of each zone in accomplishing the specific measurable objectives of the zone.

(b.5) In addition to the annual documentation required pursuant to paragraph (b)

of this subsection (4), the ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT shall require the zone administrators for each enterprise zone to submit, to the extent practicable, annual documentation on the most recent statistics available on:

(b.7) The ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE COLORADO ECONOMIC DEVELOPMENT COMMISSION shall submit an annual report to the general assembly summarizing the annual documentation submitted by zone administrators to the ~~executive~~ director OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT each year pursuant to paragraphs (b) and (b.5) of this subsection (4). The ~~executive~~ director OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT, ON BEHALF OF THE COMMISSION, shall make an annual presentation to the legislative audit committee that reviews and summarizes the information in the report submitted to the general assembly pursuant to this paragraph (b.7).

(c) (II) The state auditor shall submit a report to the governor and the general assembly at a frequency to be established by the state auditor and the legislative audit committee, but in no event less than once every five years, evaluating the implementation of the enterprise zone program and its effect on the employment, unemployment rate, investment, overall growth rate, economic diversity, and per capita income in each enterprise zone and enhanced rural enterprise zone or county containing an enterprise zone or enhanced rural enterprise zone, evaluating the effectiveness of each zone in achieving its measurable objectives, making recommendations for statutory changes, if any, and including any other information requested by the governor or the general assembly. The evaluation shall be based upon the data included in the annual reports submitted by the ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE COLORADO ECONOMIC DEVELOPMENT COMMISSION to the general assembly pursuant to paragraph (b.7) of this subsection (4), and objective verifiable data submitted by the zone administrators and maintained by the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT, local governments, and zone administrators. The report shall also include information concerning the amounts of tax credits claimed and allowed under the program. For purposes of preparing the report required by this paragraph (c), the state auditor shall have access to all records and documents applicable to the program, whether maintained by the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT, local governments, or enterprise zone administrators.

(c.5) Companies claiming enterprise zone credits shall provide information reasonably required by zone administrators, ~~and~~ the ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT, AND THE COLORADO ECONOMIC DEVELOPMENT COMMISSION to evaluate the effectiveness of each zone in accomplishing the measurable economic development objectives to be achieved in the zone. Such information shall be considered public records as defined in section 24-72-202 (6), C.R.S., shall be preserved for at least five years by the zone administrator who collected the information, who shall be the custodian of such information, and shall be made available by the zone administrator for inspection by any person at reasonable times. Nothing in this paragraph (c.5) shall be construed to require the disclosure to the public of any information that reveals the amount of compensation paid to any individual employee of a company, any

Colorado income tax return, or any information regarding expenditures on research and development.

~~(e) Effective January 1, 1997, all decisions concerning the designation or termination of enterprise zones or portions thereof shall be made by the Colorado economic development commission created in section 24-46-102, C.R.S., upon the recommendations of the director of the Colorado office of economic development; except that no termination decision shall be effective prior to July 1, 1997, and no termination decision shall be effective prior to the submission of a report on the termination decision by the commission to the general assembly.~~

**SECTION 3.** 39-30-103.2 (2), (3), (4), and (5), Colorado Revised Statutes, are amended to read:

**39-30-103.2. Enhanced rural enterprise zones - criteria - termination.**

(2) By December 1, 2002, and every two years thereafter, the ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT shall determine whether each county meets two or more of the criteria specified in subsection (1) of this section. Such determination shall be based on the most recent statistics available. ~~to the state demographer appointed by the executive director.~~ The ~~executive~~ director OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT shall provide to each enterprise zone administrator and to the board of county commissioners of each eligible county a list of the counties that meet two or more of the criteria specified in subsection (1) of this section.

(3) If a county containing a previously designated enhanced rural enterprise zone does not appear on the biennial list of eligible counties provided by the ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT, the enterprise zone within such county shall be terminated as an enhanced rural enterprise zone as of January 1 following the issuance of such list. If the county appears again on a subsequent list of eligible counties, the portion of the county within an enterprise zone shall be designated as an enhanced rural enterprise zone.

(4) The termination of an enhanced rural enterprise zone shall not restrict, curtail, terminate, or otherwise cut off any tax credits that were earned by any taxpayer based on transactions completed while a county was designated as an enhanced rural enterprise zone. In addition, the ~~executive~~ director OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT shall establish procedures for recognizing and allowing credits to taxpayers who have taken actions in reliance on agreements reached with enhanced rural enterprise zone administrators or local governments for long-term investments.

(5) If the termination of an enhanced rural enterprise zone would prevent a taxpayer from qualifying for tax benefits under this article and the taxpayer can identify job creation or capital expansion activities that were planned before the ~~executive~~ director of the ~~department of local affairs~~ COLORADO OFFICE OF ECONOMIC DEVELOPMENT issued the list of eligible counties and that would have otherwise entitled the taxpayer to claim tax benefits under section 39-30-105, the enterprise zone administrator and the taxpayer shall jointly certify detailed information about such planned activities. A taxpayer who files such certification

with the taxpayer's state income tax return may claim tax benefits otherwise actually earned up to the limits of such certified information for a period not to exceed the five tax years following the year in which the enhanced rural enterprise zone was terminated. It is the intent of this subsection (5) to permit taxpayers to claim only those tax benefits on which they demonstrably relied in making business planning decisions, and, except as specifically provided in this subsection (5), nothing in this subsection (5) shall be construed to authorize any enterprise zone administrator to grant tax benefits that have been repealed by law or to grant tax benefits in excess of the limits established by law.

**SECTION 4.** 39-30-103.5 (1) (a) (I), (1) (e), (6), and (7), Colorado Revised Statutes, are amended to read:

**39-30-103.5. Credit against tax - contributions to enterprise zone administrators to implement economic development plans.** (1) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), for income tax years commencing on or after January 1, 1989, any taxpayer who makes a monetary or in-kind contribution for the purpose of implementing the economic development plan for the enterprise zone to the person or agency designated as the enterprise zone administrator by the department of local affairs, and on or after ~~January 1, 2000~~ ~~JULY 1, 2000~~ JULY 1, 2008, by the person or agency designated as the enterprise zone administrator by the Colorado economic development commission, shall be allowed a credit against the income tax imposed by article 22 of this title in an amount equal to fifty percent of the total value of the contribution as certified by the enterprise zone administrator.

(e) On or before November 1, 2000, and November 1 of each year thereafter, each zone administrator shall provide to the DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE Colorado economic development commission a list of all programs, projects, and organizations to which taxpayers may contribute during the next calendar year for the purpose of implementing the economic development plan of the zone and receiving a tax credit pursuant to this section. The list shall be accompanied by a description of each program, project, or organization, including the purpose and relationship of the program, project, or organization to the economic development goals of the enterprise zone, the expected benefits of the program, project, or organization to the enterprise zone, and an estimate of the amount of potential contributions to the program, project, or organization during the next calendar year. Any modifications to a list, including programs, projects, or organizations that are to be added thereto, shall be submitted to the DIRECTOR OF THE OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE commission by the zone administrator no later than thirty days after the modification is made. Commencing July 1, 1999, the commission is authorized to hold hearings and review any new program, project, or organization included on a list that is submitted to the DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE commission pursuant to this section, any modification to a list, and any other program, project, or organization that the commission determines has changed materially. A list or modification of a list that is submitted to the DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE commission pursuant to this section shall not be considered final until thirty days after the commission has received such information. The commission shall approve any program, project, or organization that it determines is eligible under the

requirements of this section or is essential to the mission of the enterprise zone upon a majority vote of the members of the commission present at a meeting at which such approval is considered. The DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE commission shall notify the zone administrator of any program, project, or organization that is not approved within thirty days of receipt of the list or modification of the list. Any program, project, or organization not approved by the commission may request that the commission reconsider its decision within thirty days after the date the notice indicating that the program, project, or organization was not approved was provided to the zone administrator. A zone administrator may accept contributions for any program, project, or organization it has submitted pursuant to this paragraph (e).

(6) No later than ninety days after making a certification of value pursuant to subsection (1) of this section, the enterprise zone administrator making the certification shall report to the DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE Colorado economic development commission the total value of the contribution as certified by the administrator, the source of the contribution, the purpose of the contribution, and the relationship of the stated purpose of the contribution to the enterprise zone's goals or job creation objectives.

(7) The DIRECTOR OF THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT ON BEHALF OF THE Colorado economic development commission or the enterprise zone administrator may release information concerning the source and amount of contributions made pursuant to this section, as well as the amount of the credits allowed pursuant to this section.

**SECTION 5.** Article 48.5 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**24-48.5-110. Administration of enterprise zone program - transfer of employee.** (1) ON AND AFTER JULY 1, 2008, ANY EMPLOYEE OF THE DEPARTMENT OF LOCAL AFFAIRS PRIOR TO SAID DATE WHOSE DUTIES AND FUNCTIONS CONCERNED THE ADMINISTRATION OF THE ENTERPRISE ZONE PROGRAM ASSUMED BY THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO ARTICLE 30 OF TITLE 39, C.R.S., SHALL BE TRANSFERRED TO THE OFFICE AND SHALL BECOME AN EMPLOYEE THEREOF.

(2) ANY EMPLOYEE TRANSFERRED TO THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION WHO IS A CLASSIFIED EMPLOYEE IN THE STATE PERSONNEL SYSTEM SHALL RETAIN ALL RIGHTS TO THE PERSONNEL SYSTEM AND RETIREMENT BENEFITS PURSUANT TO THE LAWS OF THIS STATE, AND THEIR SERVICE SHALL BE DEEMED TO HAVE BEEN CONTINUOUS.

(3) AFTER THE SEPARATION OR TERMINATION OF EMPLOYMENT OF ANY PERSON TRANSFERRED TO THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT PURSUANT TO SUBSECTION (1) OF THIS SECTION, ANY EMPLOYEE HIRED BY THE OFFICE TO ASSUME THE DUTIES AND FUNCTIONS CONCERNING THE ADMINISTRATION OF THE ENTERPRISE ZONE PROGRAM SHALL NOT BECOME A CLASSIFIED EMPLOYEE IN THE STATE PERSONNEL SYSTEM AND INSTEAD SHALL BE HIRED PURSUANT TO THE PROCEDURES ESTABLISHED BY THE OFFICE.

**SECTION 6. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 26, 2008