

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UTAH RURAL JOBS ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Utah Rural Jobs Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ provides a state nonrefundable tax credit for investments in eligible small businesses primarily located in rural counties;
 - ▶ authorizes the state to approve up to \$24 million in tax credits if \$30 million is invested in certain small businesses in the state;
 - ▶ provides the requirements for the Governor's Office of Economic Development to approve a rural investment company, whose investors may qualify for a tax credit;
- and
- ▶ provides the requirements for receiving a tax credit certificate from the Governor's Office of Economic Development related to a contribution to a rural investment company.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 ENACTS:

- 29 [59-7-621](#), Utah Code Annotated 1953
- 30 [59-10-1038](#), Utah Code Annotated 1953
- 31 [63N-4-301](#), Utah Code Annotated 1953
- 32 [63N-4-302](#), Utah Code Annotated 1953
- 33 [63N-4-303](#), Utah Code Annotated 1953
- 34 [63N-4-304](#), Utah Code Annotated 1953
- 35 [63N-4-305](#), Utah Code Annotated 1953
- 36 [63N-4-306](#), Utah Code Annotated 1953
- 37 [63N-4-307](#), Utah Code Annotated 1953
- 38 [63N-4-308](#), Utah Code Annotated 1953
- 39 [63N-4-309](#), Utah Code Annotated 1953

40

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

42 Section 1. Section **59-7-621** is enacted to read:

43 **59-7-621. Nonrefundable rural job creation tax credit.**

44 (1) As used in this section:

45 (a) "Affiliate" means the same as that term is defined in Section [63N-4-302](#).

46 (b) "Office" means the Governor's Office of Economic Development created in Section
47 [63N-1-201](#).

48 (2) Subject to the other provisions of this section, a taxpayer may claim a
49 nonrefundable tax credit for rural job creation as provided in this section.

50 (3) The tax credit under this section is the amount listed as the tax credit amount on a
51 tax credit certificate that the office issues under Title 63N, Chapter 4, Part 3, Utah Rural Jobs
52 Act, to the taxpayer for the taxable year.

53 (4) The tax credit under this section may not be sold, transferred, or allocated to any
54 other entity other than an affiliate of the taxpayer subject to a tax under this chapter or Chapter
55 10, Individual Income Tax Act.

56 (5) A taxpayer may carry forward a tax credit under this section if the amount of the
57 tax credit exceeds the taxpayer's tax liability under this chapter for that taxable year.

58 Section 2. Section **59-10-1038** is enacted to read:

59 **59-10-1038. Nonrefundable rural job creation tax credit.**

60 (1) As used in this section:

61 (a) "Affiliate" means the same as that term is defined in Section [63N-4-302](#).

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

64 (2) Subject to the other provisions of this section, a taxpayer may claim a
65 nonrefundable tax credit for rural job creation as provided in this section.

66 (3) The tax credit under this section is the amount listed as the tax credit amount on a
67 tax credit certificate that the office issues under Title 63N, Chapter 4, Part 3, Utah Rural Jobs
68 Act, to the taxpayer for the taxable year.

69 (4) The tax credit under this section may not be sold, transferred, or allocated to any
70 other entity other than an affiliate of the taxpayer subject to a tax under this chapter or Chapter
71 7, Corporate Franchise and Income Taxes.

72 (5) A taxpayer may carry forward a tax credit under this section if the amount of the
73 tax credit exceeds the taxpayer's tax liability under this chapter for that taxable year.

74 Section 3. Section **63N-4-301** is enacted to read:

75 **Part 3. Utah Rural Jobs Act**

76 **63N-4-301. Title.**

77 This part is known as the "Utah Rural Jobs Act."

78 Section 4. Section **63N-4-302** is enacted to read:

79 **63N-4-302. Definitions.**

80 As used in this part:

81 (1) (a) "Affiliate" means a person that directly, or indirectly through one or more
82 intermediaries, controls, is controlled by, or is under common control with another person.

83 (b) For the purposes of this part, a person controls another person if the person holds,
84 directly or indirectly, the majority voting or ownership interest in the controlled person or has
85 control over the day-to-day operations of the controlled person by contract or by law.

86 (2) (a) "Annual-net-full-time equivalents" means the difference between:

87 (i) (A) the monthly average of full-time equivalents at an eligible small business for the
88 preceding calendar year; or

89 (B) if the preceding calendar year contains the initial growth investment, the monthly

90 average of full-time equivalents at an eligible small business for the months including and after
91 the initial growth investment and before the end of the preceding calendar year; and

92 (ii) the number of full-time equivalents at the eligible small business on the date of the
93 initial growth investment.

94 (b) If the amount calculated in Subsection (2)(a) is less than zero, the
95 annual-net-full-time equivalents is equal to zero.

96 (3) "Claimant" means a resident or nonresident person that has state taxable income.

97 (4) "Closing date" means the date on which a rural investment company has collected
98 all of the investments described in Subsection 63N-4-303(7).

99 (5) (a) "Credit-eligible contribution" means an investment of cash by a claimant in a
100 rural investment company that is or will be eligible for a tax credit as evidenced by notification
101 issued by the office under Subsection 63N-4-304(5)(c).

102 (b) The investment shall purchase an equity interest in the rural investment company or
103 purchase, at par value or premium, a debt instrument issued by the rural investment company
104 that has a maturity date at least five years after the closing date.

105 (6) "Eligible small business" means a business that at the time of an initial growth
106 investment in the business by a rural investment company:

107 (a) has fewer than 150 employees;

108 (b) has less than \$10 million in net income for the preceding taxable year;

109 (c) maintains the business's principal business operations in the state; and

110 (d) is engaged in an industry related to:

111 (i) aerospace;

112 (ii) defense;

113 (iii) energy and natural resources;

114 (iv) financial services;

115 (v) life sciences;

116 (vi) outdoor products;

117 (vii) software development;

118 (viii) information technology;

119 (ix) manufacturing; or

120 (x) agribusiness.

121 (7) (a) "Excess return" means the difference between:

122 (i) the present value of all growth investments made by a rural investment company on
123 the day the rural investment company applies to exit the program under Section [63N-4-309](#),
124 including the present value of all distributions and gains from the growth investments; and

125 (ii) the sum of the amount of the original growth investment and an amount equal to
126 any projected increase in the equity holder's federal or state tax liability, including penalties and
127 interest, related to the equity holder's ownership, management, or operation of the rural
128 investment company.

129 (b) If the amount calculated in subsection (7)(a) is less than zero, the excess return is
130 equal to zero.

131 (8) "Federally licensed rural business investment company" means a person licensed as
132 a rural business investment company under 7 U.S.C. Sec. 2009cc.

133 (9) "Federally licensed small business investment company" means a person licensed
134 as a small business investment company under 15 U.S.C. Sec. 681.

135 (10) (a) "Full-time equivalent" means an employee who is employed by an eligible
136 small business for at least 35 hours per week or who renders any other standard of service
137 generally accepted by custom or practice as full-time employment.

138 (b) "Full-time equivalent" includes 35 hours of employment per week at an eligible
139 small business, regardless of whether the hours of employment were completed by one or more
140 employees.

141 (11) "Growth investment" means any capital or equity investment in an eligible small
142 business or any loan to an eligible small business with a stated maturity at least one year after
143 the date of issuance.

144 (12) "Investment authority" means the minimum amount of investment a rural
145 investment company must make in eligible small businesses in order for credit-eligible
146 contributions to the rural investment company to qualify for a rural job creation tax credit
147 under Section [59-7-621](#) or [59-10-1038](#).

148 (13) (a) "Principal business operations" means the location where at least 60% of a
149 business's employees work or where employees that are paid at least 60% of a business's
150 payroll work.

151 (b) An out-of-state business that agrees to relocate employees to this state to establish

152 the business's principal business operations in this state using the proceeds of a growth
153 investment is deemed to have the business's principal business operations in this state if the
154 business satisfies the requirements of Subsection (13)(a) within 180 days after receiving the
155 growth investment, unless the office agrees to a later date.

156 (14) "Program" means the provisions of this part applicable to a rural investment
157 company.

158 (15) "Rural county" means any county in this state except Salt Lake, Utah, Davis, and
159 Weber counties.

160 (16) "Rural investment company" means a person approved by the office under Section
161 [63N-4-303](#).

162 (17) (a) "State repayment amount" means the difference between:

163 (i) 50% of the rural investment company's credit-eligible capital contributions; and

164 (ii) the product of:

165 (A) the total sum of annual-net-full-time equivalents reported to the state in the rural
166 investment company's exit report described in Section [63N-4-309](#); and

167 (B) \$20,000.

168 (b) If the amount calculated in Subsection (17)(a) is less than zero, the state repayment
169 amount is equal to zero.

170 (18) "Tax credit" means a rural job creation tax credit created by Section [59-7-621](#) or
171 [59-10-1038](#).

172 (19) "Tax credit certificate" means a certificate issued by the office that:

173 (a) lists the name of the person to which the office authorizes a tax credit;

174 (b) lists the person's taxpayer identification number;

175 (c) lists the amount of tax credit that the office authorizes the person to claim for the
176 taxable year; and

177 (d) may include other information as determined by the office.

178 Section 5. Section **63N-4-303** is enacted to read:

179 **63N-4-303. Application, approval, and allocations.**

180 (1) (a) A person seeking approval as a rural investment company shall submit an
181 application to the office.

182 (b) The office shall begin accepting applications on July 1, 2017.

183 (2) An application submitted under Subsection (1) shall be in a form and in accordance
184 with procedures prescribed by the office, and shall include the following:

185 (a) the total investment authority sought by the applicant, which may not exceed \$30
186 million;

187 (b) a copy of the applicant's or an affiliate of the applicant's license as a federally
188 licensed rural business investment company or as a federally licensed small business
189 investment company;

190 (c) evidence that before the date the application is submitted, the applicant or affiliates
191 of the applicant have invested at least \$50 million in nonpublic companies located in counties
192 in the United States with fewer than 50,000 inhabitants;

193 (d) a signed affidavit from each claimant that commits to make a credit-eligible capital
194 contribution to the applicant, stating the amount of that commitment; and

195 (e) the sum of all credit-eligible capital contribution commitments described in
196 Subsection (2)(d), which must equal 80% of the total investment authority sought by the
197 applicant.

198 (3) The office shall:

199 (a) review and evaluate the applications submitted under this section within 30 days of
200 receipt in the order in which the applications are received; and

201 (b) consider applications received on the same day to have been received
202 simultaneously.

203 (4) (a) If, after review and evaluation of an application, the office determines that the
204 application does not meet the requirements of Subsection (2), the office shall:

205 (i) deny the application; or

206 (ii) (A) notify the applicant that the application was inadequate and allow the applicant
207 to provide additional information to the office to complete, clarify, or cure defects identified by
208 the office in the application; and

209 (B) inform the applicant that the additional information described in Subsection
210 (4)(a)(ii)(A) must be received by the office within five days of the notice in order to be
211 considered.

212 (b) If an applicant submits additional information to the office in accordance with
213 Subsection (4)(a)(ii), the office shall:

214 (i) consider the application to have been received on the date it was originally received
215 by the office; and

216 (ii) review and evaluate the additional information within 10 days of receiving the
217 additional information.

218 (5) If, after review and evaluation of an application submitted under this section and
219 any additional information submitted in accordance with Subsection (4)(a)(ii), the office
220 determines that the application meets the requirements of Subsection (2), the office shall:

221 (a) determine the amount of investment authority to award the applicant in accordance
222 with Subsection (6);

223 (b) provide to the applicant a written notice of approval as a rural investment company
224 specifying the amount of the applicant's investment authority; and

225 (c) notify each claimant whose affidavit was included in the application under
226 Subsection (2) that the claimant qualifies for a tax credit that will be issued in accordance with
227 Section [63N-4-304](#).

228 (6) (a) The office may not approve more than \$30 million in total investment authority
229 and not more than \$24 million in total credit-eligible contributions under this part.

230 (b) Subject to Subsection (6)(d), if an application is approved under Subsection (5), the
231 office shall approve the amount of investment authority requested on the application.

232 (c) The office may continue to accept applications under this section until the amount
233 of approved investment authority reaches \$30 million.

234 (d) If the office approves multiple applications received simultaneously under
235 Subsection (3) and the total amount of investment authority requested on those applications
236 exceeds the amount of investment authority remaining, the office shall proportionally reduce
237 the investment authority and credit-eligible capital contributions for each of these applications
238 as necessary to avoid exceeding the amount of investment authority and credit-eligible capital
239 contributions remaining.

240 (7) Within 65 days after the day on which a rural investment company receives
241 approval under Subsection (5)(b), the rural investment company shall:

242 (a) collect the total amount of committed credit-eligible capital contributions from each
243 claimant whose affidavit was included in the application under Subsection (2);

244 (b) collect one or more cash equity investments contributed by affiliates of the rural

245 investment company, including employees, officers, and directors of such affiliates, that equal
246 at least 10% of the rural investment company's investment authority;

247 (c) collect one or more cash investments that, when added to the amounts collected
248 under Subsections (7)(a) and (b), equal the rural investment company's investment authority;

249 and

250 (d) send sufficient documentation to the office to prove that the amounts described in
251 this Subsection (7) have been collected.

252 (8) If the rural investment company fails to fully comply with Subsection (7):

253 (a) the rural investment company's approval shall lapse and the corresponding
254 investment authority and credit-eligible capital contributions shall not count toward the limits
255 on the program size described in Subsection (6);

256 (b) if the office awards lapsed investment authority to a rural investment company, the
257 office shall first award lapsed investment authority pro rata to each rural investment company
258 that was awarded less than the requested investment authority under Subsection (6)(d), which a
259 rural investment company may allocate to the rural investment company's investors at the
260 company's discretion; and

261 (c) the office may award any remaining investment authority to new applicants.

262 Section 6. Section **63N-4-304** is enacted to read:

263 **63N-4-304. Tax credit.**

264 (1) On the closing date, a claimant whose affidavit was included in an approved
265 application submitted under Section [63N-4-303](#) shall earn a vested tax credit equal to the
266 amount of the claimant's credit-eligible capital contribution to the rural investment company.

267 (2) In each of the taxable years that includes the fourth through seventh anniversaries
268 of the closing date, the office shall:

269 (a) issue a tax credit certificate to each approved claimant, specifying a tax credit
270 amount for the taxable year equal to 25% of the claimant's total credit-eligible capital
271 contribution; and

272 (b) provide a copy of the tax credit certificate to the State Tax Commission.

273 (3) (a) A claimant may not claim a tax credit under this section unless the claimant has
274 a tax credit certificate issued by the office.

275 (b) A claimant claiming a credit under this section shall submit a copy of the tax credit

276 certificate with the claimant's return for each taxable year for which the credit is claimed.

277 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
278 office shall make rules describing:

279 (a) the documentation requirements for a business entity to receive a tax credit
280 certificate under this section; and

281 (b) administration of the program, including relevant timelines and deadlines.

282 Section 7. Section **63N-4-305** is enacted to read:

283 **63N-4-305. Revocation of tax credit certificates and exit.**

284 (1) Except as provided in Subsection (2), the office shall revoke a tax credit certificate
285 issued under Section [63N-4-304](#) if the rural investment company in which the credit-eligible
286 capital contribution was made does any of the following before the rural investment company
287 exits the program in accordance with Section [63N-4-309](#):

288 (a) fails to invest 100% of the rural investment company's investment authority in
289 growth investments in this state within three years of the closing date;

290 (b) fails to maintain growth investments in this state equal to 100% of the rural
291 investment company's investment authority until the seventh anniversary of the closing date in
292 accordance with this section;

293 (c) makes a distribution or payment that results in the rural investment company having
294 less than 100% of the rural investment company's investment authority invested in growth
295 investments in this state or available for investment in growth investments and held in cash and
296 other marketable securities;

297 (d) fails to maintain growth investments equal to 70% of the rural investment
298 company's investment authority in eligible small businesses that maintain their principal
299 business operations in a rural county;

300 (e) invests more than \$5 million in the same eligible small business, including amounts
301 invested in affiliates of the eligible small business, exclusive of growth investments made with
302 repaid or redeemed growth investments or interest or profits realized on the repaid or redeemed
303 growth investments; or

304 (f) makes a growth investment in an eligible small business that directly, or indirectly
305 through an affiliate:

306 (i) owns or has the right to acquire an ownership interest in the rural investment

307 company, an affiliate of the rural investment company, or an investor in the rural investment
308 company; or

309 (ii) makes a loan to or an investment in the rural investment company, an affiliate of
310 the rural investment company, or an investor in the rural investment company.

311 (2) (a) (i) For the purposes of Subsection (1), an investment is maintained even if the
312 investment is sold or repaid if the rural investment company reinvests an amount equal to the
313 capital returned or recovered by the fund from the original investment, exclusive of any profits
314 realized, in other growth investments in this state within 12 months of the receipt of such
315 capital.

316 (ii) Amounts received periodically by a rural investment company are treated as
317 continually invested in growth investments if the amounts are reinvested in one or more growth
318 investments by the end of the following calendar year.

319 (iii) A rural investment company is not required to reinvest capital returned from
320 growth investments after the sixth anniversary of the closing date and such growth investments
321 are considered as being held continuously by the rural investment company through the seventh
322 anniversary of the closing date.

323 (b) (i) Subsection (1)(f) does not apply to investments in publicly traded securities by
324 an eligible small business or an owner or affiliate of an eligible small business.

325 (ii) Under Subsection (1)(f), a rural investment company is not considered an affiliate
326 of a business concern solely as a result of the rural investment company's growth investment.

327 (3) (a) Before revoking one or more tax credit certificates under this section, the office
328 shall notify the rural investment company of the reasons for the pending revocation.

329 (b) If the rural investment company corrects any violation outlined in the notice to the
330 satisfaction of the office within 90 days after the day on which the notice was sent, the office
331 may not revoke the tax credit certificate.

332 (4) If tax credit certificates are revoked under this section:

333 (a) the rural investment company shall make a cash distribution to the state in an
334 amount equal to the sum of all tax credits claimed by persons that have made credit-eligible
335 contributions to the rural investment company;

336 (b) the rural investment company's investment authority and credit-eligible capital
337 contributions will not count toward the limits on the program size described in Subsection

338 [63N-4-303\(6\)](#);

339 (c) if the office awards lapsed investment authority to a rural investment company, the
340 office shall first award lapsed investment authority pro rata to each rural investment company
341 that was awarded less than the requested investment authority under Subsection
342 [63N-4-303\(6\)\(d\)](#), which a rural investment company may allocate to the rural investment
343 company's investors at the rural investment company's discretion; and

344 (d) the office may award any remaining investment authority to new applicants.

345 (5) The office may not revoke a tax credit certificate after a rural investment company
346 has exited the program in accordance with Section [63N-4-309](#).

347 Section 8. Section **63N-4-306** is enacted to read:

348 **63N-4-306. Request for determination.**

349 (1) A rural investment company, before making a growth investment, may request from
350 the office a written opinion as to whether the business in which a rural investment company
351 proposes to invest is an eligible small business.

352 (2) The office shall notify the rural investment company of the office's determination
353 within 30 days after receipt of the request.

354 (3) If the office fails to notify the rural investment company of the office's
355 determination in accordance with this section, the business in which the rural investment
356 company proposes to invest shall be considered an eligible small business.

357 Section 9. Section **63N-4-307** is enacted to read:

358 **63N-4-307. Reporting obligations.**

359 (1) A rural investment company shall submit an annual report to the office on or before
360 the last day of February for each previous calendar year until the rural investment company has
361 exited the program in accordance with Section [63N-4-309](#). The annual report shall provide
362 documentation as to the rural investment company's growth investments and include:

363 (a) a bank statement evidencing each growth investment;

364 (b) the name, location, and industry of each business concern receiving a growth
365 investment, including either the determination letter set forth in Section [63N-4-306](#) or evidence
366 that the business qualified as an eligible small business at the time the investment was made;

367 (c) the number of annual-net-full-time equivalents at each eligible small business for
368 the preceding year, accompanied by a report from a third-party accounting firm attesting that

369 the number of annual-net-full-time equivalents was calculated in accordance with procedures
370 approved by the office; and

371 (d) any other information required by the office.

372 (2) Within 60 days of receipt of an annual report, the office shall provide written
373 confirmation to the rural investment company of the number of annual-net-full-time
374 equivalents the rural investment company has been credited with for the previous calendar
375 year.

376 (3) By the fifth business day after the third anniversary of the closing date, a rural
377 investment company shall submit a report to the office providing evidence that the rural
378 investment company is in compliance with the investment requirements of Section [63N-4-305](#).

379 Section 10. Section **63N-4-308** is enacted to read:

380 **63N-4-308. Annual fee.**

381 (1) The office shall calculate an annual fee to be paid by each rural investment
382 company by dividing \$25,000 by the number of rural investment companies approved under
383 this part and notify each rural investment company of the amount of the annual fee.

384 (2) (a) The initial annual fee shall be due and payable to the office along with the
385 evidence of receipt of the cash investment in the rural investment company as described in
386 Subsection [63N-4-303\(7\)\(d\)](#).

387 (b) After the initial annual fee, an annual fee shall be due and payable to the office on
388 or before the last day of February of each year.

389 (c) An annual fee shall not be required once a rural investment company has exited the
390 program under Section [63N-4-309](#).

391 (3) To maintain an aggregate annual fee of \$25,000, the office shall recalculate the
392 annual fee as needed upon the lapse of any approval under Subsection [63N-4-303\(8\)](#), the
393 revocation of tax credit certificates under Section [63N-4-305](#), or a rural investment company's
394 exit from the program under Section [63N-4-309](#).

395 (4) The annual fee collected under this section shall be deposited into the General Fund
396 as a dedicated credit for use by the office to implement this part.

397 Section 11. Section **63N-4-309** is enacted to read:

398 **63N-4-309. Exit.**

399 (1) On or after the seventh anniversary of the closing date, a rural investment company

400 may apply to the office to exit the program and no longer be subject to this part.

401 (2) An application submitted under Subsection (1) shall be in a form and in accordance
402 with procedures prescribed by the office and shall include a calculation of the state repayment
403 amount.

404 (3) In evaluating the exit application, if no tax credit certificates have been revoked and
405 the rural investment company has not received a notice of revocation that has remained
406 uncorrected under Subsection [63N-4-305\(3\)\(b\)](#), the rural investment company is eligible for
407 exit.

408 (4) (a) The office shall respond to the application within 30 days of receipt and include
409 confirmation of the state repayment amount.

410 (b) The office shall not unreasonably deny an application submitted under this section.

411 (c) If the office denies the application, the office shall provide the reasons for the
412 determination to the rural investment company.

413 (5) Within 60 days after the day on which the confirmation of the state repayment
414 amount is received by the rural investment company, the rural investment company shall make
415 a cash distribution to the state in an amount equal to the lesser of:

416 (a) the state repayment amount; and

417 (b) the excess return.

418 (6) The office shall notify the rural investment company once payments equal to the
419 amount described in Subsection (4) have been received.

420 (7) Any amounts collected under this section shall be deposited into the General Fund.

Legislative Review Note
Office of Legislative Research and General Counsel