

Senator Ralph Okerlund proposes the following substitute bill:

UTAH RURAL JOBS ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: Brad R. Wilson

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:



26 None

27 **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, "office" means the Governor's Office of Economic
45 Development created in Section [63N-1-201](#).

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

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

51 (4) A taxpayer may carry forward a tax credit under this section for the next seven
52 taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this
53 chapter for the taxable year in which the taxpayer claims the tax credit.

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

55 **59-10-1038. Nonrefundable rural job creation tax credit.**

56 (1) As used in this section, "office" means the Governor's Office of Economic

57 Development created in Section 63N-1-201.

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

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

63 (4) A taxpayer may carry forward a tax credit under this section for the next seven
64 taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this
65 chapter for the taxable year in which the taxpayer claims the tax credit.

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

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

68 **63N-4-301. Title.**

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

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

71 **63N-4-302. Definitions.**

72 As used in this part:

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

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

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

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

81 (B) if the preceding calendar year contains the initial growth investment, the monthly
82 average of full-time equivalents at an eligible small business for the months including and after
83 the initial growth investment and before the end of the preceding calendar year; and

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

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

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

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

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

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

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

99 (a) has fewer than 150 employees;

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

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

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

103 (i) aerospace;

104 (ii) defense;

105 (iii) energy and natural resources;

106 (iv) financial services;

107 (v) life sciences;

108 (vi) outdoor products;

109 (vii) software development;

110 (viii) information technology;

111 (ix) manufacturing; or

112 (x) agribusiness.

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

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

117 (ii) the sum of the amount of the original growth investment and an amount equal to
118 any projected increase in the equity holder's federal or state tax liability, including penalties and

119 interest, related to the equity holder's ownership, management, or operation of the rural
120 investment company.

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

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

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

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

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

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

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

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

143 (b) An out-of-state business that agrees to relocate employees to this state to establish
144 the business's principal business operations in this state using the proceeds of a growth
145 investment is deemed to have the business's principal business operations in this state if the
146 business satisfies the requirements of Subsection (13)(a) within 180 days after receiving the
147 growth investment, unless the office agrees to a later date.

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

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

152 (16) "Rural investment company" means a person approved by the office under Section
153 63N-4-303.

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

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

156 (ii) the product of:

157 (A) the total sum of annual-net-full-time equivalents reported to the state in the rural

158 investment company's exit report described in Section 63N-4-309; and

159 (B) \$20,000.

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

162 (18) "Tax credit" means a rural job creation tax credit created by Section 59-7-621 or
163 59-10-1038.

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

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

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

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

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

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

171 **63N-4-303. Application, approval, and allocations.**

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

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

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

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

179 (b) a copy of the applicant's or an affiliate of the applicant's license as a federally
180 licensed rural business investment company or as a federally licensed small business

181 investment company;

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

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

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

190 (3) The office shall:

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

193 (b) consider applications received on the same day to have been received
194 simultaneously.

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

197 (i) deny the application; or

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

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

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

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

208 (ii) review and evaluate the additional information within 10 days of receiving the
209 additional information.

210 (5) If, after review and evaluation of an application submitted under this section and
211 any additional information submitted in accordance with Subsection (4)(a)(ii), the office

212 determines that the application meets the requirements of Subsection (2), the office shall:

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

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

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

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

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

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

226 (d) If the office approves multiple applications received simultaneously under
227 Subsection (3) and the total amount of investment authority requested on those applications
228 exceeds the amount of investment authority remaining, the office shall proportionally reduce
229 the investment authority and credit-eligible capital contributions for each of these applications
230 as necessary to avoid exceeding the amount of investment authority and credit-eligible capital
231 contributions remaining.

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

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

236 (b) collect one or more cash equity investments contributed by affiliates of the rural
237 investment company, including employees, officers, and directors of such affiliates, that equal
238 at least 10% of the rural investment company's investment authority;

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

242 (d) send sufficient documentation to the office to prove that the amounts described in

243 this Subsection (7) have been collected.

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

245 (a) the rural investment company's approval shall lapse and the corresponding
246 investment authority and credit-eligible capital contributions shall not count toward the limits

247 on the program size described in Subsection (6);

248 (b) if the office awards lapsed investment authority to a rural investment company, the
249 office shall first award lapsed investment authority pro rata to each rural investment company

250 that was awarded less than the requested investment authority under Subsection (6)(d), which a
251 rural investment company may allocate to the rural investment company's investors at the

252 company's discretion; and

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

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

255 **63N-4-304. Tax credit.**

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

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

261 (a) issue a tax credit certificate to each approved claimant, specifying a tax credit
262 amount for the taxable year equal to 25% of the claimant's total credit-eligible capital

263 contribution; and

264 (b) provide a report to the tax commission listing each claimant that received a tax
265 credit certificate under Subsection 2(a) and the tax credit amount listed on the certificate.

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

268 (b) A claimant claiming a credit under this section shall retain a tax credit certificate
269 the claimant receives from the office for the same time period a person is required to keep
270 books and records under Section [59-1-1406](#).

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

273 (a) the documentation requirements for a business entity to receive a tax credit

274 certificate under this section; and

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

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

277 **63N-4-305. Revocation of tax credit certificates and exit.**

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

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

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

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

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

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

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

300 (i) owns or has the right to acquire an ownership interest in the rural investment
301 company, an affiliate of the rural investment company, or an investor in the rural investment
302 company; or

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

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

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

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

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

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

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

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

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

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

330 (b) the rural investment company's investment authority and credit-eligible capital
331 contributions will not count toward the limits on the program size described in Subsection
332 [63N-4-303\(6\)](#);

333 (c) if the office awards lapsed investment authority to a rural investment company, the
334 office shall first award lapsed investment authority pro rata to each rural investment company
335 that was awarded less than the requested investment authority under Subsection

336 63N-4-303(6)(d), which a rural investment company may allocate to the rural investment
337 company's investors at the rural investment company's discretion; and

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

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

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

342 **63N-4-306. Request for determination.**

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

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

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

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

352 **63N-4-307. Reporting obligations.**

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

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

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

361 (c) the number of annual-net-full-time equivalents at each eligible small business for
362 the preceding year, accompanied by a report from a third-party accounting firm attesting that
363 the number of annual-net-full-time equivalents was calculated in accordance with procedures
364 approved by the office; and

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

366 (2) Within 60 days of receipt of an annual report, the office shall provide written

367 confirmation to the rural investment company of the number of annual-net-full-time
368 equivalents the rural investment company has been credited with for the previous calendar
369 year.

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

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

374 **63N-4-308. Annual fee.**

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

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

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

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

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

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

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

392 **63N-4-309. Exit.**

393 (1) On or after the seventh anniversary of the closing date, a rural investment company
394 may apply to the office to exit the program and no longer be subject to this part.

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

398 (3) In evaluating the exit application, if no tax credit certificates have been revoked and
399 the rural investment company has not received a notice of revocation that has remained
400 uncorrected under Subsection 63N-4-305(3)(b), the rural investment company is eligible for
401 exit.

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

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

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

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

410 (a) the state repayment amount; and

411 (b) the excess return.

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

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