

SB0267S01 compared with SB0267

~~text~~ shows text that was in SB0267 but was deleted in SB0267S01.

Inserted text shows text that was not in SB0267 but was inserted into SB0267S01.

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Senator Ralph Okerlund proposes the following substitute bill:

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

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- ▶ 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:

ENACTS:

- 59-7-621**, Utah Code Annotated 1953
- 59-10-1038**, Utah Code Annotated 1953
- 63N-4-301**, Utah Code Annotated 1953
- 63N-4-302**, Utah Code Annotated 1953
- 63N-4-303**, Utah Code Annotated 1953
- 63N-4-304**, Utah Code Annotated 1953
- 63N-4-305**, Utah Code Annotated 1953
- 63N-4-306**, Utah Code Annotated 1953
- 63N-4-307**, Utah Code Annotated 1953
- 63N-4-308**, Utah Code Annotated 1953
- 63N-4-309**, Utah Code Annotated 1953

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

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

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

(1) As used in this section~~;~~

~~(a) }, "{Affiliate" means the same as that term is defined in Section 63N-4-302.~~

~~(b) "Office}office" means the Governor's Office of Economic Development created in Section 63N-1-201.~~

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

(3) The tax credit under this section is the amount listed as the tax credit amount on a

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tax credit certificate that the office issues under Title 63N, Chapter 4, Part 3, Utah Rural Jobs Act, to the taxpayer for the taxable year.

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

~~— (5) } A taxpayer may carry forward a tax credit under this section for the next seven taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for ~~{that}~~ the taxable year in which the taxpayer claims the tax credit.~~

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

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

(1) As used in this section ~~{~~

~~— (a) }, "{Affiliate" means the same as that term is defined in Section 63N-4-302.~~

~~— (b) "Office}office" means the Governor's Office of Economic Development created in Section 63N-1-201.~~

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

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

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

~~— (5) } A taxpayer may carry forward a tax credit under this section for the next seven taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this chapter for ~~{that}~~ the taxable year in which the taxpayer claims the tax credit.~~

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

Part 3. Utah Rural Jobs Act

63N-4-301. Title.

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

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

63N-4-302. Definitions.

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As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

(a) has fewer than 150 employees;

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

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

(d) is engaged in an industry related to:

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- (i) aerospace;
- (ii) defense;
- (iii) energy and natural resources;
- (iv) financial services;
- (v) life sciences;
- (vi) outdoor products;
- (vii) software development;
- (viii) information technology;
- (ix) manufacturing; or
- (x) agribusiness.

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

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

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

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

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

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

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

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

(11) "Growth investment" means any capital or equity investment in an eligible small

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business or any loan to an eligible small business with a stated maturity at least one year after the date of issuance.

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

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

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

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

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

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

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

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

(ii) the product of:

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

(B) \$20,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The office shall:

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

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

(4) (a) If, after review and evaluation of an application, the office determines that the

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application does not meet the requirements of Subsection (2), the office shall:

(i) deny the application; or

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

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

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

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

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

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

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

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

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

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

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

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

(d) If the office approves multiple applications received simultaneously under

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Subsection (3) and the total amount of investment authority requested on those applications exceeds the amount of investment authority remaining, the office shall proportionally reduce the investment authority and credit-eligible capital contributions for each of these applications as necessary to avoid exceeding the amount of investment authority and credit-eligible capital contributions remaining.

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

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

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

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

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

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

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

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

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

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

63N-4-304. Tax credit.

(1) On the closing date, a claimant whose affidavit was included in an approved application submitted under Section 63N-4-303 shall earn a vested tax credit equal to the

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amount of the claimant's credit-eligible capital contribution to the rural investment company.

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

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

(b) provide a ~~copy of~~ report to the tax commission listing each claimant that received a tax credit certificate ~~to~~ under Subsection 2(a) and the ~~State Tax Commission~~ tax credit amount listed on the certificate.

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

(b) A claimant claiming a credit under this section shall ~~submit~~ retain a ~~copy of the~~ tax credit certificate ~~with~~ the ~~claimant's return for each taxable year for which the credit is claimed~~ claimant receives from the office for the same time period a person is required to keep books and records under Section 59-1-1406.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) (i) Subsection (1)(f) does not apply to investments in publicly traded securities by

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an eligible small business or an owner or affiliate of an eligible small business.

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

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

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

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

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

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

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

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

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

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

63N-4-306. Request for determination.

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

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

(3) If the office fails to notify the rural investment company of the office's

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determination in accordance with this section, the business in which the rural investment company proposes to invest shall be considered an eligible small business.

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

63N-4-307. Reporting obligations.

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

(a) a bank statement evidencing each growth investment;

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

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

(d) any other information required by the office.

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

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

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

63N-4-308. Annual fee.

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

(2) (a) The initial annual fee shall be due and payable to the office along with the evidence of receipt of the cash investment in the rural investment company as described in

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Subsection 63N-4-303(7)(d).

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

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

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

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

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

63N-4-309. Exit.

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

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

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

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

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

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

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

(a) the state repayment amount; and

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(b) the excess return.

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel†