

**Senator Ralph Okerlund** proposes the following substitute bill:

**UTAH RURAL JOBS ACT**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ralph Okerlund**

House Sponsor: \_\_\_\_\_

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**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 \$24,050,000 in tax credits if \$37,000,000 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



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

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

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

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

87 (5) "Eligible small business" means a business that at the time of an initial growth

88 investment in the business by a rural investment company:

89 (a) has fewer than 150 employees;

90 (b) has less than \$10,000,000 in net income for the preceding taxable year;

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

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

93 (i) aerospace;

94 (ii) defense;

95 (iii) energy and natural resources;

96 (iv) financial services;

97 (v) life sciences;

98 (vi) outdoor products;

99 (vii) software development;

100 (viii) information technology;

101 (ix) manufacturing; or

102 (x) agribusiness.

103 (6) (a) "Excess return" means the difference between:

104 (i) the present value of all growth investments made by a rural investment company on  
105 the day the rural investment company applies to exit the program under Section [63N-4-309](#),

106 including the present value of all distributions and gains from the growth investments; and

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

111 (b) If the amount calculated in Subsection (6)(a) is less than zero, the excess return is  
112 equal to zero.

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

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

117 (9) (a) "Full-time employee" means an employee that throughout the year works at least  
118 30 hours per week or meets the customary practices accepted by that industry as full time.

119 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
120 office may make rules that establish additional hour or other criteria to determine what  
121 constitutes a full-time employee.

122 (10) "Growth investment" means any capital or equity investment in an eligible small  
123 business or any loan made from the investment authority to an eligible small business with a  
124 stated maturity at least one year after the date of issuance.

125 (11) (a) "High wage" means a wage that is at least 100% of the county average wage.

126 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
127 office may make rules that establish additional criteria to determine what constitutes a high  
128 wage.

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

133 (13) (a) "New annual jobs" means the difference between:

134 (i) (A) the monthly average of full-time employees that are paid a high wage at an  
135 eligible small business for the preceding calendar year; or

136 (B) if the preceding calendar year contains the initial growth investment, the monthly  
137 average of full-time employees that are paid a high wage at an eligible small business for the  
138 months including and after the initial growth investment and before the end of the preceding  
139 calendar year; and

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

142 (b) If the amount calculated in Subsection (2)(a) is less than zero, the new annual jobs  
143 amount is equal to zero.

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

147 (b) For the purposes of this part, an out-of-state business that agrees to relocate  
148 employees to this state to establish the business's principal business operations in this state  
149 using the proceeds of a growth investment is considered to have the business's principal

150 business operations in this state if the business satisfies the requirements of Subsection (14)(a)  
151 within 180 days after receiving the growth investment, unless the office agrees to a later date.

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

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

156 (17) "Rural investment company" means a person approved by the office under Section  
157 [63N-4-303](#).

158 (18) (a) "State reimbursement amount" means the difference between:

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

160 (ii) the product of:

161 (A) the total sum of new annual jobs reported to the state in the rural investment  
162 company's exit report described in Section [63N-4-309](#); and

163 (B) \$20,000.

164 (b) If the amount calculated in Subsection (18)(a) is less than zero, the state  
165 reimbursement amount is equal to zero.

166 (19) "Tax credit" means a rural job creation tax credit created by Section [59-7-621](#) or  
167 [59-10-1038](#).

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

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

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

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

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

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

175 **63N-4-303. Application, approval, and allocations.**

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

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

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

181 (a) the total investment authority sought by the applicant, which may not exceed  
182 \$37,000,000;

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

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

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

191 (e) the sum of all credit-eligible capital contribution commitments described in  
192 Subsection (2)(d), which must equal 65% of the total investment authority sought by the  
193 applicant.

194 (3) The office shall:

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

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

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

201 (i) deny the application; or

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

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

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

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

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

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

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

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

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

224 (6) (a) The office may not approve more than \$37,000,000 in total investment authority  
225 and not more than \$24,050,000 in total credit-eligible contributions under this part.

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

228 (c) The office may continue to accept applications under this section until the amount  
229 of approved investment authority reaches \$37,000,000.

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

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

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

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



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

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

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

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

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

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

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

259 **63N-4-304. Tax credit.**

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

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

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

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

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

272 (b) A claimant claiming a credit under this section shall retain a tax credit certificate  
273 the claimant receives from the office for the same time period a person is required to keep

274 books and records under Section 59-1-1406.

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

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

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

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

281 **63N-4-305. Revocation of tax credit certificates and exit.**

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

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

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

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

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

298 (e) invests more than \$5,000,000 from the investment authority in the same eligible  
299 small business, including amounts invested in affiliates of the eligible small business, exclusive  
300 of growth investments made with repaid or redeemed growth investments or interest or profits  
301 realized on the repaid or redeemed growth investments; or

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

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

305 company, an affiliate of the rural investment company, or an investor in the rural investment  
306 company; or

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

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

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

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

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

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

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

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

330 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
331 office may make rules that establish criteria to determine what constitutes a correction under  
332 Subsection (3)(b).

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

334 (a) (i) the rural investment company shall make a cash distribution to the office in an  
335 amount equal to the sum of all tax credits awarded to persons that have made credit-eligible

336 contributions to the rural investment company; and

337 (ii) if the rural investment company is able to provide documentation to the office that  
338 proves that a tax credit described in Subsection (4)(a)(i) has not been claimed, the amount  
339 owed under Subsection (4)(a)(i) shall be reduced by the amount of the unclaimed tax credit;

340 (b) the rural investment company's investment authority and credit-eligible capital  
341 contributions will not count toward the limits on the program size described in Subsection  
342 63N-4-303(6);

343 (c) if the office awards lapsed investment authority to a rural investment company, the  
344 office shall first award lapsed investment authority pro rata to each rural investment company  
345 that was awarded less than the requested investment authority under Subsection  
346 63N-4-303(6)(d), which a rural investment company may allocate to the rural investment  
347 company's investors at the rural investment company's discretion; and

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

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

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

352 **63N-4-306. Request for determination.**

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

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

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

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

362 **63N-4-307. Reporting obligations.**

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

- 367 (a) a bank statement evidencing each growth investment;  
368 (b) the name, location, and industry of each business concern receiving a growth  
369 investment, including either the determination letter set forth in Section [63N-4-306](#) or evidence  
370 that the business qualified as an eligible small business at the time the investment was made;  
371 (c) the number of new annual jobs at each eligible small business for the preceding  
372 year, accompanied by a report from a third-party accounting firm attesting that the number of  
373 new annual jobs was calculated in accordance with procedures approved by the office; and  
374 (d) any other information required by the office.
- 375 (2) Within 60 days of receipt of an annual report, the office shall provide written  
376 confirmation to the rural investment company of the number of new annual jobs the rural  
377 investment company has been credited with for the previous calendar year.
- 378 (3) By the fifth business day after the third anniversary of the closing date, a rural  
379 investment company shall submit a report to the office providing evidence that the rural  
380 investment company is in compliance with the investment requirements of Section [63N-4-305](#).
- 381 Section 10. Section **63N-4-308** is enacted to read:
- 382 **63N-4-308. Annual fee.**
- 383 (1) The office shall calculate an annual fee to be paid by each rural investment  
384 company by dividing \$50,000 by the number of rural investment companies approved under  
385 this part and notify each rural investment company of the amount of the annual fee.
- 386 (2) (a) The initial annual fee shall be due and payable to the office along with the  
387 evidence of receipt of the cash investment in the rural investment company as described in  
388 Subsection [63N-4-303\(7\)\(d\)](#).
- 389 (b) After the initial annual fee, an annual fee shall be due and payable to the office on  
390 or before the last day of February of each year.
- 391 (c) An annual fee shall not be required once a rural investment company has exited the  
392 program under Section [63N-4-309](#).
- 393 (3) To maintain an aggregate annual fee of \$50,000, the office shall recalculate the  
394 annual fee as needed upon the lapse of any approval under Subsection [63N-4-303\(8\)](#), the  
395 revocation of tax credit certificates under Section [63N-4-305](#), or a rural investment company's  
396 exit from the program under Section [63N-4-309](#).
- 397 (4) The annual fee collected under this section shall be deposited into the General Fund

398 as a dedicated credit for use by the office to implement this part.

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

400 **63N-4-309. Exit.**

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

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

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

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

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

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

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

418 (a) the state reimbursement amount; and

419 (b) the excess return.

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

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