

Senator Curtis S. Bramble proposes the following substitute bill:

EMPLOYMENT ADVANTAGE ACT

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Francis D. Gibson

LONG TITLE

General Description:

This bill enacts the Employment Advantage Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a state nonrefundable tax credit for investments by Employment Advantage funds in eligible businesses;
- ▶ authorizes the state to approve tax credits on up to \$30,000,000 invested in eligible businesses in the state;
- ▶ provides the requirements for receiving a tax credit certificate from the Governor's Office of Economic Development related to a contribution to an Employment Advantage fund investing in eligible businesses;
- ▶ provides the reporting requirements for an Employment Advantage fund investing in eligible businesses; and
- ▶ provides the requirements for an Employment Advantage fund exiting the program.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**

28 ENACTS:

29 **59-7-624**, Utah Code Annotated 1953

30 **59-10-1041**, Utah Code Annotated 1953

31 **63N-2-901**, Utah Code Annotated 1953

32 **63N-2-902**, Utah Code Annotated 1953

33 **63N-2-903**, Utah Code Annotated 1953

34 **63N-2-904**, Utah Code Annotated 1953

35 **63N-2-905**, Utah Code Annotated 1953

36 **63N-2-906**, Utah Code Annotated 1953

37 **63N-2-907**, Utah Code Annotated 1953

38 **63N-2-908**, Utah Code Annotated 1953

39 **63N-2-909**, Utah Code Annotated 1953



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

42 Section 1. Section **59-7-624** is enacted to read:

43 **59-7-624. Nonrefundable 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 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 2, Part 9, Employment
50 Advantage 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 **59-10-1041** is enacted to read:

55 **59-10-1041. Nonrefundable 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 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 2, Part 9, Employment
62 Advantage 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-2-901 is enacted to read:

67 **Part 9. Employment Advantage Act**

68 **63N-2-901. Title.**

69 This part is known as the "Employment Advantage Act."

70 Section 4. Section 63N-2-902 is enacted to read:

71 **63N-2-902. 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 an Employment Advantage fund has
80 collected all of the investments described in Subsection 63N-2-903(7).

81 (4) "Credit-eligible contribution" means an investment of cash by a claimant in an
82 Employment Advantage fund that:

83 (a) is or will be eligible for a tax credit as evidenced by notification issued by the office
84 under Subsection 63N-2-903(5)(c); and

85 (b) purchases an equity interest in the Employment Advantage fund or purchases, at par
86 value or premium, a debt instrument issued by the Employment Advantage fund that has a
87 maturity date at least five years after the closing date.

88 (5) "Eligible business" means a business that at the time of an initial Employment
89 Advantage investment in the business by an Employment Advantage fund:
90 (a) has fewer than 300 employees;
91 (b) has less than \$10,000,000 in net income for the preceding taxable year;
92 (c) maintains the business's principal business operations in the state; and
93 (d) is described in one of the following NAICS codes:
94 (i) 11, Agriculture, Forestry, Fishing and Hunting;
95 (ii) 21, Mining, Quarrying, and Oil and Gas Extraction;
96 (iii) 22, Utilities;
97 (iv) 23, Construction;
98 (v) 31-33, Manufacturing;
99 (vi) 48-49, Transportation and Warehousing;
100 (vii) 54, Professional, Scientific, and Technical Services; or
101 (viii) 62, Health Care and Social Assistance of the 2017 North American Industry
102 Classification System of the federal Executive Office of the President, Office of Management
103 and Budget.

104 (6) (a) "Excess return" means the difference between:
105 (i) the present value of all Employment Advantage investments made by an
106 Employment Advantage fund on the day the Employment Advantage fund applies to exit the
107 program under Section 63N-2-909, including the present value of all distributions and gains
108 from the Employment Advantage investments; and
109 (ii) the sum of the amount of the original Employment Advantage investment and an
110 amount equal to any projected increase in the equity holder's federal or state tax liability,
111 including penalties and interest, related to the equity holder's ownership, management, or
112 operation of the Employment Advantage fund.

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

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

117 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
118 office may make rules that establish additional hours or other criteria to determine what

119 constitutes a full-time employee.

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

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

124 (9) "Investment authority" means the minimum amount of investment an Employment
125 Advantage fund must make in eligible businesses in order for credit-eligible contributions to
126 the Employment Advantage fund to qualify for a tax credit under Section [59-7-624](#) or
127 [59-10-1041](#).

128 (10) (a) "New annual jobs" means the difference between:

129 (i) (A) the monthly average of full-time employees who are paid a high wage at an
130 eligible business for the preceding calendar year; or

131 (B) if the preceding calendar year contains the initial Employment Advantage
132 investment, the monthly average of full-time employees who are paid a high wage at an eligible
133 business for the months including and after the initial Employment Advantage investment and
134 before the end of the preceding calendar year; and

135 (ii) the number of full-time employees at the eligible business on the date of the initial
136 Employment Advantage investment.

137 (b) If the amount calculated in Subsection (10)(a) is less than zero, the new annual jobs
138 amount is equal to zero.

139 (11) "Offset" means the amount calculated for each annual report as described in
140 Subsection [63N-2-907\(2\)\(b\)](#).

141 (12) "Opportunity zone" means a low-income census tract located in the state and
142 designated by the United States Treasury Department as an opportunity zone.

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

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

150 Subsection (13)(a) within 180 days after receiving the Employment Advantage investment,
151 unless the office agrees to a later date.

152 (14) "Program" means the provisions of this part applicable to an Employment
153 Advantage fund.

154 (15) (a) "State reimbursement amount" means the difference between:

155 (i) an Employment Advantage fund's credit-eligible capital contributions; and

156 (ii) the sum of the annual offsets as reported in the Employment Advantage fund's exit
157 report described in Section [63N-2-909](#).

158 (b) If the amount calculated in Subsection (15)(a) is less than zero, the state
159 reimbursement amount is equal to zero.

160 (16) "Tax credit" means a tax credit created by Section [59-7-624](#) or [59-10-1041](#).

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

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

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

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

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

167 (18) "Tier one job" means a new annual job held by an employee who:

168 (a) served in the active military, naval, or air service and who was discharged or
169 released under conditions other than dishonorable;

170 (b) suffers from a disability;

171 (c) was found guilty of a crime and sentenced by a court to a prison term; or

172 (d) was not a resident of Utah within the 12 months prior to holding the job.

173 (19) "Tier three job" means all new annual jobs that are not tier one jobs or tier two
174 jobs.

175 (20) "Tier two job" means a new annual job held by an employee who received or had
176 a family member who received, with neither still receiving, benefits under Utah Medicaid, Utah
177 Unemployment Insurance, the Utah Supplemental Nutrition Assistance Program, the Utah
178 Children's Health Insurance Program, Utah Head Start, or the Utah Family Employment
179 Program.

180 (21) "Employment Advantage fund" means a fund approved by the office under

181 Section 63N-2-903.

182 (22) "Employment Advantage investment" means:

183 (a) any capital or equity investment in an eligible business; or

184 (b) any loan made from the investment authority to an eligible business with a stated

185 maturity at least one year after the date of issuance.

186 Section 5. Section **63N-2-903** is enacted to read:

187 **63N-2-903. Application, approval, and allocations.**

188 (1) (a) A person seeking approval to establish an Employment Advantage fund shall

189 submit an application to the office.

190 (b) The office shall begin accepting applications on November 1, 2019.

191 (2) An application submitted under Subsection (1) shall be in a form and in accordance

192 with procedures prescribed by the office and shall include the following:

193 (a) the total investment authority sought by the applicant, which may not exceed

194 \$40,000,000;

195 (b) a copy of the applicant's or an affiliate of the applicant's license as a federally

196 licensed rural business investment company or as a federally licensed small business

197 investment company, provided that any affiliate used to meet this requirement must have been

198 an affiliate of the applicant or its affiliates for at least four years;

199 (c) a signed affidavit from each claimant that commits to make a credit-eligible capital

200 contribution to the applicant, stating the amount of that commitment; and

201 (d) the sum of all credit-eligible capital contribution commitments described in

202 Subsection (2)(c), which must equal 75% of the total investment authority sought by the

203 applicant.

204 (3) The office shall:

205 (a) review and evaluate the applications submitted under this section within 30 days of

206 receipt in the order in which the applications are received; and

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

208 simultaneously.

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

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

211 (i) deny the application; or

212 (ii) if the applicant complied with Subsection (2)(c):
213 (A) notify the applicant that the application was inadequate and allow the applicant to
214 provide additional information to the office to complete, clarify, or cure defects identified by
215 the office in the application; and
216 (B) inform the applicant that the additional information described in Subsection
217 (4)(a)(ii)(A) shall be received by the office within five days of the notice in order to be
218 considered.
219 (b) If an applicant submits additional information to the office in accordance with
220 Subsection (4)(a)(ii), the office shall:
221 (i) consider the application to have been received on the date the application was
222 originally received by the office; and
223 (ii) review and evaluate the additional information within 10 days of receiving the
224 additional information.
225 (5) If, after review and evaluation of an application submitted under this section and
226 any additional information submitted in accordance with Subsection (4)(a)(ii), the office
227 determines that the application meets the requirements of Subsection (2), the office shall:
228 (a) determine the amount of investment authority to award an applicant in accordance
229 with Subsection (6);
230 (b) provide to the applicant a written notice of approval of an Employment Advantage
231 fund, specifying the amount of the applicant's investment authority; and
232 (c) notify each claimant whose affidavit was included in the application under
233 Subsection (2)(c) that the claimant qualifies for a tax credit that will be issued in accordance
234 with Section [63N-2-904](#).
235 (6) (a) The office may not approve more than \$40,000,000 in total investment authority
236 and not more than \$30,000,000 in total credit-eligible contributions under this part.
237 (b) Subject to Subsections (6)(a) and (d), if an application is approved under
238 Subsection (5), the office shall approve the amount of investment authority requested on the
239 application.
240 (c) The office may continue to accept applications under this section until the amount
241 of approved investment authority reaches \$40,000,000.
242 (d) If the office approves multiple applications received simultaneously under

243 Subsection (3)(b) and the total amount of investment authority requested on those applications
244 is greater than the amount of investment authority remaining, the office shall proportionally
245 reduce the investment authority and credit-eligible capital contributions for each of these
246 applications as necessary to avoid exceeding the amount of investment authority and
247 credit-eligible capital contributions remaining.

248 (7) Within 65 days after the day on which an Employment Advantage fund receives
249 approval under Subsection (5)(b), the Employment Advantage fund shall:

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

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

255 (c) collect one or more cash investments that, when added to the amounts collected
256 under Subsections (7)(a) and (b), equal the Employment Advantage fund's investment
257 authority; and

258 (d) provide sufficient documentation to the office to prove that the amounts described
259 in Subsections (7)(a) through (c) have been collected.

260 (8) If the Employment Advantage fund fails to fully comply with Subsection (7):

261 (a) the Employment Advantage fund's approval lapses and the corresponding
262 investment authority and credit-eligible capital contributions do not count toward the limits on
263 the program size described in Subsection (6)(a); and

264 (b) the office:

265 (i) shall first award lapsed investment authority pro rata to each Employment
266 Advantage fund that was awarded less than the requested investment authority under
267 Subsection (6)(d), which an Employment Advantage fund may allocate to the Employment
268 Advantage fund's investors at the fund's discretion; and

269 (ii) may award any remaining investment authority to new applicants.

270 Section 6. Section **63N-2-904** is enacted to read:

271 **63N-2-904. Tax credit.**

272 (1) On the closing date, a claimant whose affidavit was included in an approved
273 application submitted under Section [63N-2-903](#) shall earn a vested tax credit equal to the

274 amount of the claimant's credit-eligible capital contribution to the Employment Advantage
275 fund.

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

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

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

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

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

288 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
289 consistent with the provisions of this part, the office shall make rules describing:

290 (a) the documentation requirements for a claimant to receive a tax credit certificate
291 under this section; and

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

293 Section 7. Section **63N-2-905** is enacted to read:

294 **63N-2-905. Revocation of tax credit certificates.**

295 (1) Except as provided in Subsection (2), the office shall revoke a tax credit certificate
296 issued under Section [63N-2-904](#) if the Employment Advantage fund in which the
297 credit-eligible capital contribution was made does any of the following before the Employment
298 Advantage fund exits the program in accordance with Section [63N-2-909](#):

299 (a) fails to invest two-thirds of the Employment Advantage fund's investment authority
300 in Employment Advantage investments in the state within two years of the closing date and
301 100% within three years;

302 (b) fails to maintain Employment Advantage investments in the state equal to 100% of
303 the Employment Advantage fund's investment authority until the sixth anniversary of the
304 closing date in accordance with this section;

305 (c) makes a distribution or payment that results in the Employment Advantage fund
306 having less than 100% of the Employment Advantage fund's investment authority invested in
307 Employment Advantage investments in this state or available for investment in Employment
308 Advantage investments and held in cash and other marketable securities;

309 (d) invests more than \$5,000,000 from the investment authority in the same eligible
310 business, including amounts invested in affiliates of the eligible business, exclusive of
311 Employment Advantage investments made with repaid or redeemed Employment Advantage
312 investments or interest or profits realized on the repaid or redeemed Employment Advantage
313 investments; or

314 (e) makes an Employment Advantage investment in an eligible business that directly,
315 or indirectly through an affiliate:

316 (i) owns or has the right to acquire an ownership interest in the Employment
317 Advantage fund, an affiliate of the Employment Advantage fund, or an investor in the
318 Employment Advantage fund; or

319 (ii) makes a loan to or an investment in the Employment Advantage fund, an affiliate
320 of the Employment Advantage fund, or an investor in the Employment Advantage fund.

321 (2) (a) (i) For the purposes of Subsection (1), an investment is maintained even if the
322 investment is sold or repaid if the Employment Advantage fund reinvests an amount equal to
323 the capital returned or recovered by the fund from the original investment, excluding any
324 profits realized, in other Employment Advantage investments in this state within 12 months of
325 the receipt of such capital.

326 (ii) Amounts received periodically by an Employment Advantage fund are treated as
327 continually invested in Employment Advantage investments if the amounts are reinvested in
328 one or more Employment Advantage investments by the end of the following calendar year.

329 (iii) An Employment Advantage fund is not required to reinvest capital returned from
330 Employment Advantage investments after the fifth anniversary of the closing date and such
331 Employment Advantage investments are considered as being held continuously by the
332 Employment Advantage fund through the seventh anniversary of the closing date.

333 (b) (i) Subsection (1)(e) does not apply to investments in publicly traded securities by
334 an eligible business or an owner or affiliate of an eligible business.

335 (ii) Under Subsection (1)(e), an Employment Advantage fund is not considered an

336 affiliate of an eligible business solely as a result of the Employment Advantage fund's
337 Employment Advantage investment.

338 (3) (a) Before revoking one or more tax credit certificates under this section, the office
339 shall notify the Employment Advantage fund of the reasons for the pending revocation.

340 (b) If the Employment Advantage fund corrects any violation outlined in the notice to
341 the satisfaction of the office within 90 days after the day on which the notice was sent, the
342 office may not revoke the tax credit certificate.

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

346 (4) If an Employment Advantage fund's tax credit certificate is revoked under this
347 section:

348 (a) (i) the Employment Advantage fund shall make a cash distribution to the office in
349 an amount equal to the sum of all tax credits awarded to persons that have made credit-eligible
350 contributions to the Employment Advantage fund; and

351 (ii) if the Employment Advantage fund is able to provide documentation to the office
352 that proves that a tax credit described in Subsection (4)(a)(i) has not been claimed, the amount
353 owed under Subsection (4)(a)(i) shall be reduced by the amount of the unclaimed tax credit;

354 (b) the Employment Advantage fund's investment authority and credit-eligible capital
355 contributions shall not count toward the limits on the program size described in Subsection
356 [63N-2-903\(6\)\(a\)](#); and

357 (c) (i) the office shall, if the office awards lapsed investment authority to an
358 Employment Advantage fund, first award lapsed investment authority pro rata to each
359 Employment Advantage fund that was awarded less than the requested investment authority
360 under Subsection [63N-2-903\(6\)\(d\)](#), which an Employment Advantage fund may allocate to the
361 Employment Advantage fund's investors at the Employment Advantage fund's discretion; and

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

363 (5) The office may not revoke a tax credit certificate after an Employment Advantage
364 fund has exited the program in accordance with Section [63N-2-909](#).

365 Section 8. Section **63N-2-906** is enacted to read:

366 **63N-2-906. Request for determination.**

367 (1) Before making an Employment Advantage investment, an Employment Advantage
368 fund may request from the office a written determination as to whether the business in which
369 an Employment Advantage fund proposes to invest is an eligible business.

370 (2) The office shall notify the Employment Advantage fund of the office's
371 determination within 30 days after receipt of the request.

372 (3) If the office fails to notify the Employment Advantage fund of the office's
373 determination in accordance with Subsection (2), the business in which the Employment
374 Advantage fund proposes to invest shall be considered an eligible business.

375 Section 9. Section **63N-2-907** is enacted to read:

376 **63N-2-907. Reporting obligations.**

377 (1) Until the Employment Advantage fund has exited the program in accordance with
378 Section [63N-2-909](#), an Employment Advantage fund shall annually submit to the office on or
379 before the last day of February a report for the previous calendar year.

380 (2) (a) The annual report shall include documentation of the Employment Advantage
381 fund's Employment Advantage investments, including:

382 (i) a bank statement evidencing each Employment Advantage investment;

383 (ii) the name, location, and industry of each business receiving an Employment
384 Advantage investment, including a determination letter provided as described in Section
385 [63N-2-906](#) or evidence that the business qualified as an eligible business at the time the
386 investment was made;

387 (iii) the number of new annual jobs at each eligible business for the preceding calendar
388 year, accompanied by a report from a third-party accounting firm attesting that the number of
389 new annual jobs was calculated in accordance with procedures approved by the office;

390 (iv) the offset, calculated annually and in accordance with Subsection (2)(b); and

391 (v) any other information required by the office.

392 (b) (i) The offset shall equal the sum of the following:

393 (A) the product of the number of new annual jobs that are tier one jobs and \$40,000;

394 (B) the product of the number of new annual jobs that are tier two jobs and \$30,000;

395 and

396 (C) the product of the number of new annual jobs that are tier three jobs and \$20,000.

397 (ii) A \$10,000 bonus shall be added to the offset for each of the following:

398 (A) each new annual job at an eligible business whose principal business operations are
399 located in an opportunity zone; and

400 (B) each new annual job held by an employee who has received workforce training
401 either internally or externally, provided such training is verified by the president, chief
402 executive officer, chief financial officer, or similar officer of the eligible business and approved
403 by the office.

404 (3) Within 60 days of receipt of an annual report, the office shall provide written
405 confirmation to the Employment Advantage fund of the offset and the number of new annual
406 jobs the Employment Advantage fund has been credited with for the previous calendar year.

407 (4) By the fifth business day after the third anniversary of the closing date, an
408 Employment Advantage fund shall submit a report to the office providing evidence that the
409 Employment Advantage fund is in compliance with the investment requirements of Section
410 [63N-2-905](#).

411 Section 10. Section **63N-2-908** is enacted to read:

412 **63N-2-908. Annual fee.**

413 (1) The office shall calculate an annual fee to be paid by each Employment Advantage
414 fund by dividing \$50,000 by the number of Employment Advantage funds approved under this
415 part and shall notify each Employment Advantage fund of the amount of the annual fee.

416 (2) (a) The initial annual fee shall be due and payable to the office along with the
417 evidence of receipt of the cash investment in the Employment Advantage fund as described in
418 Subsection [63N-2-903\(7\)\(d\)](#).

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

421 (c) An annual fee is not required once an Employment Advantage fund has exited the
422 program under Section [63N-2-909](#).

423 (3) To maintain an aggregate annual fee of \$50,000, the office shall recalculate the
424 annual fee as needed upon the lapse of any approval under Subsection [63N-2-903\(8\)](#), the
425 revocation of a tax credit certificate under Section [63N-2-905](#), or an Employment Advantage
426 fund's exit from the program under Section [63N-2-909](#).

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

429 Section 11. Section **63N-2-909** is enacted to read:

430 **63N-2-909. Exit.**

431 (1) On or after the seventh anniversary of the closing date, an Employment Advantage
432 fund may apply to the office to exit the program and no longer be subject to this part.

433 (2) An application submitted under Subsection (1) shall be in a form and in accordance
434 with procedures prescribed by the office and shall include a calculation of the state
435 reimbursement amount and the total of all offsets reported in annual reports pursuant to
436 Subsection [63N-2-907\(2\)\(a\)](#).

437 (3) In evaluating the exit application, if no tax credit certificates have been revoked and
438 the Employment Advantage fund has not received a notice of revocation that has remained
439 uncorrected under Subsection [63N-2-905\(3\)\(b\)](#), the Employment Advantage fund is eligible for
440 exit.

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

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

444 (c) If the office denies the application, the office shall provide the reasons for the
445 determination to the Employment Advantage fund.

446 (5) Within 60 days after the day on which the confirmation of the state reimbursement
447 amount is received by the Employment Advantage fund, the Employment Advantage fund shall
448 make a cash distribution to the state in an amount equal to the lesser of:

449 (a) the state reimbursement amount; and

450 (b) the excess return.

451 (6) The office shall notify the Employment Advantage fund once payments equal to the
452 amount described in Subsection (5) have been received.

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

454 Section 12. **Effective date.**

455 This bill takes effect on January 1, 2020.