

Representative Francis D. Gibson 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 **59-9-108**, Utah Code Annotated 1953

30 **63N-2-901**, Utah Code Annotated 1953

31 **63N-2-902**, Utah Code Annotated 1953

32 **63N-2-903**, Utah Code Annotated 1953

33 **63N-2-904**, Utah Code Annotated 1953

34 **63N-2-905**, Utah Code Annotated 1953

35 **63N-2-906**, Utah Code Annotated 1953

36 **63N-2-907**, Utah Code Annotated 1953

37 **63N-2-908**, Utah Code Annotated 1953

38 **63N-2-909**, Utah Code Annotated 1953

39

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

41 Section 1. Section **59-9-108** is enacted to read:

42 **59-9-108. Nonrefundable employment advantage tax credit.**

43 (1) As used in this section, "office" means the Governor's Office of Economic
44 Development created in Section [63N-1-201](#).

45 (2) Subject to the other provisions of this section, a taxpayer may claim a
46 nonrefundable Employment Advantage tax credit as provided in this section.

47 (3) The tax credit under this section is the amount listed as the tax credit amount on a
48 tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Employment
49 Advantage Act, to the taxpayer for the taxable year.

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

53 (5) An entity required to pay a retaliatory tax levied under this chapter for a reason
54 other than claiming the tax credit may claim the tax credit after the retaliatory tax amount is
55 calculated, and the tax credit may be used to offset retaliatory tax liability under Section
56 [31A-3-401](#).

57 (6) Notwithstanding the other provisions of this section, this section does not apply to
58 an admitted insurer to the extent that the admitted insurer writes workers' compensation
59 insurance in this state and has premiums taxed under Subsection 59-9-101(2).

60 (7) (a) On or before November 30, 2021, and every three years after 2021, the Revenue
61 and Taxation Interim Committee shall review the tax credit provided by this section and make
62 recommendations concerning whether the tax credit should be continued, modified, or
63 repealed.

64 (b) In conducting the review required by Subsection (7)(a), the Revenue and Taxation
65 Interim Committee shall:

66 (i) schedule time on at least one committee agenda to conduct the review;

67 (ii) invite state agencies, individuals, and organizations concerned with the tax credit
68 under review to provide testimony;

69 (iii) ensure that the recommendations described in this section include an evaluation of:

70 (A) the cost of the tax credit to the state;

71 (B) the purpose and effectiveness of the tax credit; and

72 (C) the extent to which the state benefits from the tax credit; and

73 (iv) undertake other review efforts as determined by the chairs of the Revenue and
74 Taxation Interim Committee.

75 Section 2. Section **63N-2-901** is enacted to read:

76 **Part 9. Employment Advantage Act**

77 **63N-2-901. Title.**

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

79 Section 3. Section **63N-2-902** is enacted to read:

80 **63N-2-902. Definitions.**

81 As used in this part:

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

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

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

88 (3) "Closing date" means the date on which an Employment Advantage fund has
89 collected all of the investments described in Subsection [63N-2-903\(7\)](#).

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

92 (a) is or will be eligible for a tax credit as evidenced by notification issued by the office
93 under Subsection [63N-2-903\(5\)\(c\)](#); and

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

97 (5) "Eligible business" means a business that at the time of an initial Employment
98 Advantage investment in the business by an Employment Advantage fund:

99 (a) has fewer than 150 employees;

100 (b) has less than \$3,000,000 in net income for the preceding taxable year;

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

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

103 (i) aerospace;

104 (ii) agribusiness;

105 (iii) construction;

106 (iv) defense;

107 (v) energy and natural resources;

108 (vi) financial services;

109 (vii) information technology;

110 (viii) life sciences;

111 (ix) manufacturing;

112 (x) outdoor products; or

113 (xi) software development.

114 (6) "Employment Advantage fund" means a fund approved by the office under Section
115 [63N-2-903](#).

116 (7) (a) "Employment Advantage investment" means a secured loan to, the provision of
117 a revolving line of credit to, or an equity investment in an eligible business.

118 (b) "Employment Advantage investment" may only include an investment in an eligible

119 business where the eligible business provides an affidavit to the office from the chief executive
120 officer of the eligible business attesting that the eligible business sought and was denied a
121 similar amount of financing from a commercial bank, venture capital firm, or private equity
122 firm.

123 (8) (a) "Excess return" means the difference between:

124 (i) the present value of all Employment Advantage investments made by an
125 Employment Advantage fund on the day the Employment Advantage fund applies to exit the
126 program under Section [63N-2-909](#), including the present value of all distributions and gains
127 from the Employment Advantage investments; and

128 (ii) the sum of the amount of the original Employment Advantage investment and an
129 amount equal to any projected increase in the equity holder's federal or state tax liability,
130 including penalties and interest, related to the equity holder's ownership, management, or
131 operation of the Employment Advantage fund.

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

134 (9) (a) "Full-time employee" means an employee that works at least 30 hours per week
135 throughout the year.

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

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

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

143 (11) "Investment authority" means the minimum amount of investment an Employment
144 Advantage fund must make in eligible businesses in order for credit-eligible contributions to
145 the Employment Advantage fund to qualify for a tax credit under Section [59-9-108](#).

146 (12) (a) "New annual jobs" means the difference between:

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

149 (B) if the preceding calendar year contains the initial Employment Advantage

150 investment, the monthly average of full-time employees who are paid a high wage at an eligible
151 business for the months including and after the initial Employment Advantage investment and
152 before the end of the preceding calendar year; and

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

155 (b) If the amount calculated in Subsection (12)(a) is less than zero, the new annual jobs
156 amount is equal to zero.

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

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

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

164 (b) For the purposes of this part, an out-of-state business that agrees to relocate
165 employees to this state to establish the business's principal business operations in this state
166 using the proceeds of an Employment Advantage investment is considered to have the
167 business's principal business operations in this state if the business satisfies the requirements of
168 Subsection (15)(a) within 180 days after receiving the Employment Advantage investment,
169 unless the office agrees to a later date.

170 (16) "Program" means the provisions of this part applicable to an Employment
171 Advantage fund.

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

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

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

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

178 (18) "Tax credit" means a tax credit created by Section [59-9-108](#).

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

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

- 181 (b) lists the person's taxpayer identification number;
- 182 (c) lists the amount of tax credit that the office authorizes the person to claim for the
- 183 taxable year against tax liability under Title 59, Chapter 9, Taxation of Admitted Insurers; and
- 184 (d) may include other information as determined by the office.

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

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

188 (b) suffers from a disability;

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

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

191 (21) "Tier three job" means all new annual jobs that are not tier one jobs or tier two

192 jobs.

193 (22) "Tier two job" means a new annual job held by an employee who received or had

194 a family member who received, with neither still receiving, benefits under Utah Medicaid, Utah

195 Unemployment Insurance, the Utah Supplemental Nutrition Assistance Program, the Utah

196 Children's Health Insurance Program, Utah Head Start, or the Utah Family Employment

197 Program.

198 Section 4. Section **63N-2-903** is enacted to read:

199 **63N-2-903. Application, approval, and allocations.**

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

201 submit an application to the office.

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

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

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

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

206 \$40,000,000;

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

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

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

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

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

212 contribution to the applicant, stating the amount of that commitment; and
213 (d) the sum of all credit-eligible capital contribution commitments described in
214 Subsection (2)(c), which must equal 75% of the total investment authority sought by the
215 applicant.
216 (3) The office shall:
217 (a) review and evaluate the applications submitted under this section within 30 days of
218 receipt in the order in which the applications are received; and
219 (b) consider applications received on the same day to have been received
220 simultaneously.
221 (4) (a) If, after review and evaluation of an application, the office determines that the
222 application does not meet the requirements of Subsection (2), the office shall:
223 (i) deny the application; or
224 (ii) if the applicant complied with Subsection (2)(c):
225 (A) notify the applicant that the application was inadequate and allow the applicant to
226 provide additional information to the office to complete, clarify, or cure defects identified by
227 the office in the application; and
228 (B) inform the applicant that the additional information described in Subsection
229 (4)(a)(ii)(A) shall be received by the office within five days of the notice in order to be
230 considered.
231 (b) If an applicant submits additional information to the office in accordance with
232 Subsection (4)(a)(ii), the office shall:
233 (i) consider the application to have been received on the date the application was
234 originally received by the office; and
235 (ii) review and evaluate the additional information within 10 days of receiving the
236 additional information.
237 (5) If, after review and evaluation of an application submitted under this section and
238 any additional information submitted in accordance with Subsection (4)(a)(ii), the office
239 determines that the application meets the requirements of Subsection (2), the office shall:
240 (a) determine the amount of investment authority to award an applicant in accordance
241 with Subsection (6);
242 (b) provide to the applicant a written notice of approval of an Employment Advantage

243 fund, specifying the amount of the applicant's investment authority; and

244 (c) notify each claimant whose affidavit was included in the application under
245 Subsection (2)(c) that the claimant qualifies for a tax credit that will be issued in accordance
246 with Section 63N-2-904.

247 (6) (a) The office may not approve more than \$40,000,000 in total investment authority
248 and not more than \$30,000,000 in total credit-eligible contributions under this part.

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

252 (c) The office may continue to accept applications under this section until the amount
253 of approved investment authority reaches \$40,000,000.

254 (d) If the office approves multiple applications received simultaneously under
255 Subsection (3)(b) and the total amount of investment authority requested on those applications
256 is greater than the amount of investment authority remaining, the office shall proportionally
257 reduce the investment authority and credit-eligible capital contributions for each of these
258 applications as necessary to avoid exceeding the amount of investment authority and
259 credit-eligible capital contributions remaining.

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

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

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

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

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

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

273 (a) the Employment Advantage fund's approval lapses and the corresponding

274 investment authority and credit-eligible capital contributions do not count toward the limits on
275 the program size described in Subsection (6)(a); and

276 (b) the office:

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

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

282 Section 5. Section **63N-2-904** is enacted to read:

283 **63N-2-904. Tax credit.**

284 (1) On the closing date, a claimant whose affidavit was included in an approved
285 application submitted under Section [63N-2-903](#) shall earn a vested tax credit equal to the
286 amount of the claimant's credit-eligible capital contribution to the Employment Advantage
287 fund.

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

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

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

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

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

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

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

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

305 Section 6. Section **63N-2-905** is enacted to read:

306 **63N-2-905. Revocation of tax credit certificates.**

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

311 (a) fails to invest two-thirds of the Employment Advantage fund's investment authority
312 in Employment Advantage investments in the state within two years of the closing date and
313 100% within three years;

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

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

321 (d) invests more than \$5,000,000 from the investment authority in the same eligible
322 business, including amounts invested in affiliates of the eligible business, exclusive of
323 Employment Advantage investments made with repaid or redeemed Employment Advantage
324 investments or interest or profits realized on the repaid or redeemed Employment Advantage
325 investments; or

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

328 (i) owns or has the right to acquire an ownership interest in the Employment
329 Advantage fund, an affiliate of the Employment Advantage fund, or an investor in the
330 Employment Advantage fund; or

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

333 (2) (a) (i) For the purposes of Subsection (1), an investment is maintained even if the
334 investment is sold or repaid if the Employment Advantage fund reinvests an amount equal to
335 the capital returned or recovered by the fund from the original investment, excluding any

336 profits realized, in other Employment Advantage investments in this state within 12 months of
337 the receipt of such capital.

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

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

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

347 (ii) Under Subsection (1)(e), an Employment Advantage fund is not considered an
348 affiliate of an eligible business solely as a result of the Employment Advantage fund's
349 Employment Advantage investment.

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

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

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

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

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

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

366 (b) the Employment Advantage fund's investment authority and credit-eligible capital

367 contributions shall not count toward the limits on the program size described in Subsection
368 63N-2-903(6)(a); and

369 (c) (i) the office shall, if the office awards lapsed investment authority to an
370 Employment Advantage fund, first award lapsed investment authority pro rata to each
371 Employment Advantage fund that was awarded less than the requested investment authority
372 under Subsection 63N-2-903(6)(d), which an Employment Advantage fund may allocate to the
373 Employment Advantage fund's investors at the Employment Advantage fund's discretion; and

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

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

377 Section 7. Section 63N-2-906 is enacted to read:

378 **63N-2-906. Request for determination.**

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

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

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

387 Section 8. Section 63N-2-907 is enacted to read:

388 **63N-2-907. Reporting obligations.**

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

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

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

395 (ii) the name, location, and industry of each business receiving an Employment
396 Advantage investment, including a determination letter provided as described in Section

397 63N-2-906 or evidence that the business qualified as an eligible business at the time the

398 investment was made;

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

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

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

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

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

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

407 and

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

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

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

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

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

419 (4) By the fifth business day after the third anniversary of the closing date, an
420 Employment Advantage fund shall submit a report to the office providing evidence that the
421 Employment Advantage fund is in compliance with the investment requirements of Section
422 [63N-2-905](#).

423 Section 9. Section **63N-2-908** is enacted to read:

424 **63N-2-908. Annual fee.**

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

428 (2) (a) The initial annual fee shall be due and payable to the office along with the

429 evidence of receipt of the cash investment in the Employment Advantage fund as described in
430 Subsection 63N-2-903(7)(d).

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

433 (c) An annual fee is not required once an Employment Advantage fund has exited the
434 program under Section 63N-2-909.

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

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

441 Section 10. Section **63N-2-909** is enacted to read:

442 **63N-2-909. Exit.**

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

445 (2) An application submitted under Subsection (1) shall be in a form and in accordance
446 with procedures prescribed by the office and shall include a calculation of the state
447 reimbursement amount and the total of all offsets reported in annual reports pursuant to
448 Subsection 63N-2-907(2)(a).

449 (3) In evaluating the exit application, if no tax credit certificates have been revoked and
450 the Employment Advantage fund has not received a notice of revocation that has remained
451 uncorrected under Subsection 63N-2-905(3)(b), the Employment Advantage fund is eligible for
452 exit.

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

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

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

458 (5) Within 60 days after the day on which the confirmation of the state reimbursement
459 amount is received by the Employment Advantage fund, the Employment Advantage fund shall

460 make a cash distribution to the state in an amount equal to the lesser of:

461 (a) the state reimbursement amount; and

462 (b) the excess return.

463 (6) The office shall notify the Employment Advantage fund once payments equal to the

464 amount described in Subsection (5) have been received.

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

466 **Section 11. Effective date.**

467 This bill takes effect on January 1, 2020.