

## SB0196S02 compared with SB0196S01

~~{deleted text}~~ shows text that was in SB0196S01 but was deleted in SB0196S02.

Inserted text shows text that was not in SB0196S01 but was inserted into SB0196S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{Senator Curtis S}~~Representative Francis D. {Bramble}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

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#### 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

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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:

This bill provides a special effective date.

### Utah Code Sections Affected:

ENACTS:

~~{59-7-624}~~59-9-108, Utah Code Annotated 1953

~~{59-10-1041, Utah Code Annotated 1953}~~

~~{~~ 63N-2-901, Utah Code Annotated 1953

63N-2-902, Utah Code Annotated 1953

63N-2-903, Utah Code Annotated 1953

63N-2-904, Utah Code Annotated 1953

63N-2-905, Utah Code Annotated 1953

63N-2-906, Utah Code Annotated 1953

63N-2-907, Utah Code Annotated 1953

63N-2-908, Utah Code Annotated 1953

63N-2-909, Utah Code Annotated 1953

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

Section 1. Section ~~{59-7-624}~~59-9-108 is enacted to read:

~~{59-7-624}~~59-9-108. Nonrefundable ~~{job creation}~~employment advantage tax credit.

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

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

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

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tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Employment Advantage Act, to the taxpayer for the taxable year.

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

~~{Section 2. Section 59-10-1041 is enacted to read:~~

~~59-10-1041. Nonrefundable job creation tax credit.~~

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

~~(2) Subject to~~ (5) An entity required to pay a retaliatory tax levied under this chapter for a reason other than claiming the tax credit may claim the tax credit after the retaliatory tax amount is calculated, and the tax credit may be used to offset retaliatory tax liability under Section 31A-3-401.

~~(6) Notwithstanding the other provisions of this section, fa taxpayer may claim a nonrefundable tax credit for job creation as provided in this section.~~

~~(3) The~~ this section does not apply to an admitted insurer to the extent that the admitted insurer writes workers' compensation insurance in this state and has premiums taxed under Subsection 59-9-101(2).

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

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

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

(ii) invite state agencies, individuals, and organizations concerned with the tax credit under ~~this section is the amount listed as the tax credit amount on a tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Employment Advantage Act, to the taxpayer for the taxable year.~~

~~(4) A taxpayer may carry forward a tax credit under this section for the next seven taxable years if the amount~~ review to provide testimony;

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

(A) the cost of the tax credit {exceeds the taxpayer's tax liability under this chapter for the taxable year in which the taxpayer claims the tax credit.

Section 3} to the state;

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

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

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

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

### Part 9. Employment Advantage Act

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

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

Section ~~{4}~~3. Section 63N-2-902 is enacted to read:

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

As used in this part:

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

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

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

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

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

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

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

(5) "Eligible business" means a business that at the time of an initial Employment

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Advantage investment in the business by an Employment Advantage fund:

- (a) has fewer than ~~300~~150 employees;
- (b) has less than ~~\$10~~\$3,000,000 in net income for the preceding taxable year;
- (c) maintains the business's principal business operations in the state; and
- (d) is ~~described in one of the following NAICS codes:~~

~~(i) 11, Agriculture, Forestry, Fishing and Hunting;~~

~~(ii) 21, Mining, Quarrying, and Oil and Gas Extraction;~~

~~(iii) 22, Utilities;~~

~~(iv) 23, Construction;~~ engaged in an industry related to:

(i) aerospace;

(ii) agribusiness;

(iii) construction;

~~(v) 31-33, Manufacturing;~~ (iv) defense;

(v) energy and natural resources;

(vi) financial services;

(vii) information technology;

(viii) life sciences;

(ix) manufacturing;

~~(vi) 48-49, Transportation and Warehousing;~~

~~(vii) 54, Professional, Scientific, and Technical Services; or~~

~~(viii) 62, Health Care and Social Assistance of the 2017 North American Industry~~

~~Classification System of the federal Executive Office of the President, Office of Management and Budget.~~

~~(6;x) outdoor products; or~~

(xi) software development.

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

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

(b) "Employment Advantage investment" may only include an investment in an eligible business where the eligible business provides an affidavit to the office from the chief executive

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officer of the eligible business attesting that the eligible business sought and was denied a similar amount of financing from a commercial bank, venture capital firm, or private equity firm.

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

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

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

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

~~(7)9~~ (a) "Full-time employee" means an employee that works at least 30 hours per week throughout the year ~~or meets the customary practices accepted by an industry as full-time~~.

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

~~(8)10~~ (a) "High wage" means a wage that is at least 100% of the county average wage.

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

~~(9)11~~ "Investment authority" means the minimum amount of investment an Employment Advantage fund must make in eligible businesses in order for credit-eligible contributions to the Employment Advantage fund to qualify for a tax credit under Section ~~59-7-624 or 59-10-1041~~ 59-9-108.

~~(10)12~~ (a) "New annual jobs" means the difference between:

(i) (A) the monthly average of full-time employees who are paid a high wage at an

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eligible business for the preceding calendar year; or

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

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

(b) If the amount calculated in Subsection (~~§10~~§12)(a) is less than zero, the new annual jobs amount is equal to zero.

(~~§11~~§13) "Offset" means the amount calculated for each annual report as described in Subsection 63N-2-907(2)(b).

(~~§12~~§14) "Opportunity zone" means a low-income census tract located in the state and designated by the United States Treasury Department as an opportunity zone.

(~~§13~~§15) (a) "Principal business operations" means the location where at least 60% of a business's employees work or where employees that are paid at least 60% of a business's payroll work.

(b) For the purposes of this part, an out-of-state business that agrees to relocate employees to this state to establish the business's principal business operations in this state using the proceeds of an Employment Advantage investment is considered to have the business's principal business operations in this state if the business satisfies the requirements of Subsection (~~§13~~§15)(a) within 180 days after receiving the Employment Advantage investment, unless the office agrees to a later date.

(~~§14~~§16) "Program" means the provisions of this part applicable to an Employment Advantage fund.

(~~§15~~§17) (a) "State reimbursement amount" means the difference between:

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

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

(b) If the amount calculated in Subsection (~~§15~~§17)(a) is less than zero, the state reimbursement amount is equal to zero.

(~~§16~~§18) "Tax credit" means a tax credit created by Section ~~§59-7-624~~ or

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~~59-10-1041~~59-9-108.

~~(17)~~19 "Tax credit certificate" means a certificate issued by the office that:

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

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

(c) lists the amount of tax credit that the office authorizes the person to claim for the taxable year against tax liability under Title 59, Chapter 9, Taxation of Admitted Insurers; and

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

~~(18)~~20 "Tier one job" means a new annual job held by an employee who:

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

(b) suffers from a disability;

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

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

~~(19)~~21 "Tier three job" means all new annual jobs that are not tier one jobs or tier two jobs.

~~(20)~~22 "Tier two job" means a new annual job held by an employee who received or had a family member who received, with neither still receiving, benefits under Utah Medicaid, Utah Unemployment Insurance, the Utah Supplemental Nutrition Assistance Program, the Utah Children's Health Insurance Program, Utah Head Start, or the Utah Family Employment Program.

~~(21)~~ "Employment Advantage fund" means a fund approved by the office under Section 63N-2-903.

~~(22)~~ "Employment Advantage investment" means:

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

~~(b)~~ any loan made from the investment authority to an eligible business with a stated maturity at least one year after the date of issuance.

~~5~~4. Section **63N-2-903** is enacted to read:

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

(1) (a) A person seeking approval to establish an Employment Advantage fund shall submit an application to the office.

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



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

(a) the total investment authority sought by the applicant, which may not exceed \$40,000,000;

(b) a copy of the applicant's or an affiliate of the applicant's license as a federally licensed rural business investment company or as a federally licensed small business investment company, provided that any affiliate used to meet this requirement must have been an affiliate of the applicant or its affiliates for at least four years;

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

(d) the sum of all credit-eligible capital contribution commitments described in Subsection (2)(c), which must equal 75% of the total investment authority sought by the applicant.

(3) The office shall:

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

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

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

(i) deny the application; or

(ii) if the applicant complied with Subsection (2)(c):

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

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

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

(i) consider the application to have been received on the date the application was

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originally received by the office; and

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

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

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

(b) provide to the applicant a written notice of approval of an Employment Advantage fund, specifying the amount of the applicant's investment authority; and

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

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

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

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

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

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

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

(b) collect one or more cash equity investments contributed by affiliates of the

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Employment Advantage fund, including employees, officers, and directors of such affiliates, that equal at least 10% of the Employment Advantage fund's investment authority;

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

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

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

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

(b) the office:

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

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

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

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

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

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

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

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

(3) (a) A claimant may not claim a tax credit under this section unless the claimant has

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a tax credit certificate issued by the office.

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

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

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

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

Section ~~77~~6. Section **63N-2-905** is enacted to read:

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

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

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

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

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

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

(e) makes an Employment Advantage investment in an eligible business that directly,

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or indirectly through an affiliate:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) any other information required by the office.

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

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

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

and

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

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

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

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

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

(4) By the fifth business day after the third anniversary of the closing date, an

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Employment Advantage fund shall submit a report to the office providing evidence that the Employment Advantage fund is in compliance with the investment requirements of Section 63N-2-905.

Section ~~{10}~~9. Section **63N-2-908** is enacted to read:

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

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

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

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

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

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

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

Section ~~{11}~~10. Section **63N-2-909** is enacted to read:

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

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

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

(3) In evaluating the exit application, if no tax credit certificates have been revoked and the Employment Advantage fund has not received a notice of revocation that has remained



## SB0196S02 compared with SB0196S01

uncorrected under Subsection 63N-2-905(3)(b), the Employment Advantage fund is eligible for exit.

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

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

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

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

(a) the state reimbursement amount; and

(b) the excess return.

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

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

Section ~~{12}~~ 11. **Effective date.**

This bill takes effect on January 1, 2020.