

1 **SMALL BUSINESS JOB CREATION TAX CREDIT ACT**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Mike Schultz

6

LONG TITLE

7 **General Description:**

8 This bill enacts the Small Business Job Creation Tax Credit Act.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ defines terms;
- 12 ▶ provides a state nonrefundable tax credit for investments by Small Business Job

13 Creation funds in eligible businesses;

- 14 ▶ authorizes the state to approve tax credits on up to \$30,000,000 invested in eligible
- 15 businesses in the state;

16 ▶ provides the requirements for receiving a tax credit certificate from the Governor's

17 Office of Economic Development related to a contribution to a Small Business Job

18 Creation fund investing in eligible businesses;

- 19 ▶ provides the reporting requirements for a Small Business Job Creation fund
- 20 investing in eligible businesses; and
- 21 ▶ provides the requirements for a Small Business Job Creation fund exiting the
- 22 program.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None



28 **Utah Code Sections Affected:**

29 ENACTS:

- 30 [59-7-625](#), Utah Code Annotated 1953
- 31 [59-10-1041](#), Utah Code Annotated 1953
- 32 [63N-2-901](#), Utah Code Annotated 1953
- 33 [63N-2-902](#), Utah Code Annotated 1953
- 34 [63N-2-903](#), Utah Code Annotated 1953
- 35 [63N-2-904](#), Utah Code Annotated 1953
- 36 [63N-2-905](#), Utah Code Annotated 1953
- 37 [63N-2-906](#), Utah Code Annotated 1953
- 38 [63N-2-907](#), Utah Code Annotated 1953
- 39 [63N-2-908](#), Utah Code Annotated 1953
- 40 [63N-2-909](#), Utah Code Annotated 1953



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

43 Section 1. Section **59-7-625** is enacted to read:

44 **59-7-625. Nonrefundable small business job creation tax credit.**

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

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

49 (3) The tax credit under this section is the amount listed as the tax credit amount on a
50 tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Small Business
51 Job Creation Tax Credit Act, to the taxpayer for the taxable year.

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

55 Section 2. Section **59-10-1041** is enacted to read:

56 **59-10-1041. Nonrefundable small business job creation tax credit.**

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

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

61 (3) The tax credit under this section is the amount listed as the tax credit amount on a
 62 tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Small Business
 63 Job Creation Tax Credit Act, to the taxpayer for the taxable year.

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

67 Section 3. Section **63N-2-901** is enacted to read:

68 **Part 9. Small Business Job Creation Tax Credit Act**

69 **63N-2-901. Title.**

70 This part is known as the "Small Business Job Creation Tax Credit Act."

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

72 **63N-2-902. Definitions.**

73 As used in this part:

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

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

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

80 (3) "Closing date" means the date on which a Small Business Job Creation fund has
 81 collected all of the investments described in Subsection [63N-2-903\(7\)](#).

82 (4) "Credit-eligible contribution" means an investment of cash by a claimant in a Small
 83 Business Job Creation fund that:

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

86 (b) shall purchase an equity interest in the Small Business Job Creation fund or
 87 purchase, at par value or premium, a debt instrument issued by the Small Business Job
 88 Creation fund that has a maturity date at least five years after the closing date.

89 (5) "Eligible business" means a business that at the time of an initial Small Business

90 Job Creation investment in the business by a Small Business Job Creation fund:

91 (a) has fewer than 300 employees;

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

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

94 (d) is described in one or more NAICS codes within the following NAICS Sectors of
95 the 2017 North American Industry Classification System of the federal Executive Office of the
96 President, Office of Management and Budget:

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

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

99 (iii) 22, Utilities;

100 (iv) 23, Construction;

101 (v) 31-33, Manufacturing;

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

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

104 (viii) 62, Health Care and Social Assistance.

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

106 (i) the present value on the day the Small Business Job Creation fund applies to exit the
107 program under Section [63N-2-909](#) of all Small Business Job Creation investments made by a
108 Small Business Job Creation fund, including the present value of all distributions and gains
109 from the Small Business Job Creation investments; and

110 (ii) the sum of the amount of the original Small Business Job Creation investment and
111 an amount equal to any projected increase in an equity holder's federal or state tax liability,
112 including penalties and interest, related to an equity holder's ownership, management, or
113 operation of the Small Business Job Creation fund.

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

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

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

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

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

125 (9) "Investment authority" means the minimum amount of investment a Small Business
126 Job Creation fund must make in eligible businesses in order for credit-eligible contributions to
127 the Small Business Job Creation fund to qualify for a Small Business Job Creation tax credit
128 under Section [59-7-625](#) or [59-10-1041](#).

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

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

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

136 (ii) the number of full-time employees at the eligible business on the date of the initial
137 Small Business Job Creation investment.

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

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

142 (12) "Opportunity zone" means an area that has been designated as a qualified
143 opportunity zone in the state under Section 1400Z-1, Internal Revenue Code.

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

147 (b) For the purposes of this part, an out-of-state business that agrees to relocate
148 employees to this state to establish the business's principal business operations in this state
149 using the proceeds of a Small Business Job Creation investment is considered to have the
150 business's principal business operations in this state if the business satisfies the requirements of
151 Subsection (13)(a) within 180 days after receiving the Small Business Job Creation investment.

152 unless the office agrees to a later date.

153 (14) "Program" means the provisions of this part applicable to a Small Business Job
154 Creation fund.

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

156 (i) a Small Business Job Creation fund's credit-eligible capital contributions; and

157 (ii) the sum of the annual Small Business Job Creation offsets as reported in the Small
158 Business Job Creation fund's exit report described in Section [63N-2-909](#).

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

161 (16) "Tax credit" means a tax credit created by Section [59-7-625](#) or [59-10-1041](#).

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

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

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

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

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

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

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

171 (b) suffers from a disability;

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

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

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

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

180 (21) "Small Business Job Creation fund" means a person approved by the office under
181 Section [63N-2-903](#).

182 (22) "Small Business Job Creation 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 as a Small Business Job Creation fund shall submit
189 an application to the office.

190 (b) The office shall begin accepting applications on November 1, 2020.

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) evidence that before the date the application is submitted, the applicant or affiliates
200 of the applicant have met the job creation requirements of any tax credit or similar state
201 government program or grant agreement;

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

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

207 (3) The office shall:

208 (a) review and evaluate each application submitted under this section within 30 days
209 after receiving the application in the order in which the application is received; and

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

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

214 (i) deny the application; or
215 (ii) if the applicant complied with Subsection (2)(d):
216 (A) notify the applicant that the application was inadequate and allow the applicant to
217 provide additional information to the office to complete, clarify, or cure defects identified by
218 the office in the application; and

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

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

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

226 (ii) review and evaluate the additional information within 10 days after receiving the
227 additional information.

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

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

233 (b) provide to the applicant a written notice of approval as a Small Business Job
234 Creation fund, specifying the amount of the applicant's investment authority; and

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

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

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

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

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

251 (7) Within 65 days after the day on which a Small Business Job Creation fund receives
252 approval under Subsection (5)(b), the Small Business Job Creation fund shall:

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

255 (b) collect one or more cash equity investments contributed by affiliates of the Small
256 Business Job Creation fund, including employees, officers, and directors of such affiliates, that
257 equal at least 10% of the Small Business Job Creation fund's investment authority;

258 (c) collect one or more cash investments that, when added to the amounts collected
259 under Subsections (7)(a) and (b), equal the Small Business Job Creation fund's investment
260 authority; and

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

263 (8) If the Small Business Job Creation fund fails to fully comply with Subsection (7):

264 (a) the Small Business Job Creation fund's approval shall lapse and the corresponding
265 investment authority and credit-eligible capital contributions shall not count toward the limits
266 on the program size described in Subsection (6)(a); and

267 (b) the office:

268 (i) shall first award lapsed investment authority pro rata to each Small Business Job
269 Creation fund that was awarded less than the requested investment authority under Subsection
270 (6)(d), which a Small Business Job Creation fund may allocate to the Small Business Job
271 Creation fund's investors at the fund's discretion; and

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

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

274 **63N-2-904. Tax credit.**

275 (1) On the closing date, a claimant whose affidavit was included in an approved

276 application submitted under Section 63N-2-903 shall earn a vested tax credit equal to the
277 amount of the claimant's credit-eligible capital contribution to the Small Business Job Creation
278 fund.

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

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

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

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

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

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

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

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

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

297 **63N-2-905. Revocation of tax credit certificates.**

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

302 (a) fails to invest two-thirds of the Small Business Job Creation fund's investment
303 authority in Small Business Job Creation investments in this state within two years of the
304 closing date and 100% within three years;

305 (b) fails to maintain Small Business Job Creation investments in this state equal to
306 100% of the Small Business Job Creation fund's investment authority until the sixth

307 anniversary of the closing date in accordance with this section;

308 (c) makes a distribution or payment that results in the Small Business Job Creation
309 fund having less than 100% of the Small Business Job Creation fund's investment authority
310 invested in Small Business Job Creation investments in this state or available for investment in
311 Small Business Job Creation investments and held in cash and other marketable securities;

312 (d) invests more than \$5,000,000 from the investment authority in the same eligible
313 business, including amounts invested in affiliates of the eligible business, exclusive of Small
314 Business Job Creation investments made with repaid or redeemed Small Business Job Creation
315 investments or interest or profits realized on the repaid or redeemed Small Business Job
316 Creation investments; or

317 (e) makes a Small Business Job Creation investment in an eligible business that
318 directly or indirectly through an affiliate:

319 (i) owns or has the right to acquire an ownership interest in the Small Business Job
320 Creation fund, an affiliate of the Small Business Job Creation fund, or an investor in the Small
321 Business Job Creation fund; or

322 (ii) makes a loan to or an investment in the Small Business Job Creation fund, an
323 affiliate of the Small Business Job Creation fund, or an investor in the Small Business Job
324 Creation fund.

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

330 (ii) Amounts received periodically by a Small Business Job Creation fund are treated as
331 continually invested in Small Business Job Creation investments if the amounts are reinvested
332 in one or more Small Business Job Creation investments by the end of the following calendar
333 year.

334 (iii) A Small Business Job Creation fund is not required to reinvest capital returned
335 from Small Business Job Creation investments after the fifth anniversary of the closing date
336 and such Small Business Job Creation investments are considered as being held continuously
337 by the Small Business Job Creation fund through the seventh anniversary of the closing date.

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

340 (ii) Under Subsection (1)(e), a Small Business Job Creation fund is not considered an
341 affiliate of an eligible business solely as a result of the Small Business Job Creation fund's
342 Small Business Job Creation investment.

343 (3) (a) Before revoking one or more tax credit certificates under this section, the office
344 shall notify the Small Business Job Creation fund of the reasons for the pending revocation.

345 (b) If the Small Business Job Creation fund corrects any violation outlined in the notice
346 to the satisfaction of the office within 90 days after the day on which the notice was sent, the
347 office may not revoke the tax credit certificate.

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

351 (4) If a Small Business Job Creation fund's tax credit certificates are revoked under this
352 section:

353 (a) (i) the Small Business Job Creation fund shall make a cash distribution to the office
354 in an amount equal to the sum of all tax credits awarded to persons that have made
355 credit-eligible contributions to the Small Business Job Creation fund; and

356 (ii) if the Small Business Job Creation fund is able to provide documentation to the
357 office that proves that a tax credit described in Subsection (4)(a)(i) has not been claimed, the
358 amount owed under Subsection (4)(a)(i) shall be reduced by the amount of the unclaimed tax
359 credit;

360 (b) the Small Business Job Creation fund's investment authority and credit-eligible
361 capital contributions shall not count toward the limits on the program size described in
362 Subsection [63N-4-503\(6\)\(a\)](#); and

363 (c) (i) the office shall, if the office awards lapsed investment authority to a Small
364 Business Job Creation fund, first award lapsed investment authority pro rata to each Small
365 Business Job Creation fund that was awarded less than the requested investment authority
366 under Subsection [63N-4-903\(6\)\(d\)](#), which a Small Business Job Creation fund may allocate to
367 the Small Business Job Creation fund's investors at the Small Business Job Creation fund's
368 discretion; and

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

370 (5) The office may not revoke a tax credit certificate after a Small Business Job

371 Creation fund has exited the program in accordance with Section [63N-2-909](#).

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

373 **63N-2-906. Request for determination.**

374 (1) Before making a Small Business Job Creation investment, a Small Business Job
375 Creation fund may request from the office a written determination as to whether the business in
376 which a Small Business Job Creation fund proposes to invest is an eligible business.

377 (2) The office shall notify the Small Business Job Creation fund of the office's
378 determination within 30 days after receipt of the request.

379 (3) If the office fails to notify the Small Business Job Creation fund of the office's
380 determination in accordance with Subsection (2), the business in which the Small Business Job
381 Creation fund proposes to invest shall be considered an eligible business.

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

383 **63N-2-907. Reporting obligations.**

384 (1) Until the Small Business Job Creation fund has exited the program in accordance
385 with Section [63N-2-909](#), a Small Business Job Creation fund shall annually submit to the
386 office on or before the last day of February a report for the previous calendar year.

387 (2) (a) The annual report shall include documentation of the Small Business Job
388 Creation fund's Small Business Job Creation investments, including:

389 (i) a bank statement evidencing each Small Business Job Creation investment;

390 (ii) the name, location, and industry of each business receiving a Small Business Job
391 Creation investment, including a determination letter provided as described in Section
392 [63N-2-906](#) or evidence that the business qualified as an eligible business at the time the
393 investment was made;

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

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

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

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

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

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

402 and

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

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

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

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

411 (3) Within 60 days after receipt of an annual report, the office shall provide written
412 confirmation to the Small Business Job Creation fund of the offset and the number of new
413 annual jobs the Small Business Job Creation fund has been credited with for the previous
414 calendar year.

415 (4) By the fifth business day after the third anniversary of the closing date, a Small
416 Business Job Creation fund shall submit a report to the office providing evidence that the Small
417 Business Job Creation fund is in compliance with the investment requirements of Section
418 63N-2-905.

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

420 **63N-2-908. Annual fee.**

421 (1) The office shall calculate an annual fee to be paid by each Small Business Job
422 Creation fund by dividing \$50,000 by the number of Small Business Job Creation funds
423 approved under this part and notify each Small Business Job Creation fund of the amount of
424 the annual fee.

425 (2) (a) The initial annual fee shall be due and payable to the office along with the
426 evidence of receipt of the cash investment in the Small Business Job Creation fund as
427 described in Subsection 63N-2-903(7)(d).

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

430 (c) An annual fee shall not be required once a Small Business Job Creation fund has

431 exited the program under Section 63N-2-909.

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

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

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

439 **63N-2-909. Exit.**

440 (1) On or after the seventh anniversary of the closing date, a Small Business Job
441 Creation fund may apply to the office to exit the program and no longer be subject to this part.

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

446 (3) In evaluating the exit application, if no tax credit certificates have been revoked and
447 the Small Business Job Creation fund has not received a notice of revocation that has remained
448 uncorrected under Subsection 63N-2-905(3)(b), the Small Business Job Creation fund is
449 eligible for exit.

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

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

453 (c) If the office denies the application, the office shall provide the reasons for the
454 determination to the Small Business Job Creation fund.

455 (5) Within 60 days after the day on which the confirmation of the state reimbursement
456 amount is received by the Small Business Job Creation fund, the Small Business Job Creation
457 fund shall make a cash distribution to the state in an amount equal to the lesser of:

458 (a) the state reimbursement amount; and

459 (b) the excess return.

460 (6) The office shall notify the Small Business Job Creation fund once payments equal
461 to the amount described in Subsection (5) have been received.

462

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