

Representative Mike Schultz proposes the following substitute bill:

SMALL BUSINESS JOB CREATION TAX CREDIT ACT

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Mike Schultz

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a state nonrefundable tax credit for investments by Small Business Job Creation funds in eligible businesses;
- ▶ authorizes the state to approve tax credits on up to \$24,000,000 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 a Small Business Job Creation fund investing in eligible businesses;
- ▶ provides the reporting requirements for a Small Business Job Creation fund investing in eligible businesses; and
- ▶ provides the requirements for a Small Business Job Creation fund exiting the program.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 This bill provides retrospective operation.

28 **Utah Code Sections Affected:**

29 ENACTS:

30 **59-7-625**, Utah Code Annotated 1953

31 **59-9-108**, Utah Code Annotated 1953

32 **59-10-1041**, Utah Code Annotated 1953

33 **63N-2-901**, Utah Code Annotated 1953

34 **63N-2-902**, Utah Code Annotated 1953

35 **63N-2-903**, Utah Code Annotated 1953

36 **63N-2-904**, Utah Code Annotated 1953

37 **63N-2-905**, Utah Code Annotated 1953

38 **63N-2-906**, Utah Code Annotated 1953

39 **63N-2-907**, Utah Code Annotated 1953

40 **63N-2-908**, Utah Code Annotated 1953

41 **63N-2-909**, Utah Code Annotated 1953



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

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

45 **59-7-625. Nonrefundable small business job creation tax credit.**

46 (1) As used in this section, "office" means the Governor's Office of Economic

47 Development created in Section [63N-1-201](#).

48 (2) Subject to the other provisions of this section, a taxpayer may claim a

49 nonrefundable tax credit for job creation as provided in this section.

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

51 tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Small Business

52 Job Creation Tax Credit Act, to the taxpayer for the taxable year.

53 (4) A taxpayer may carry forward a tax credit under this section for the next seven

54 taxable years if the amount of the tax credit exceeds the taxpayer's tax liability under this

55 chapter for the taxable year in which the taxpayer claims the tax credit.

56 Section 2. Section **59-9-108** is enacted to read:

57 **59-9-108. Nonrefundable small business job creation tax credit.**

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

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

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

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

68 (5) Notwithstanding the other provisions of this section, an admitted insurer may not
69 utilize a tax credit earned under the Small Business Job Creation Tax Credit Act against tax
70 liability owed on workers' compensation premium income received from workers'
71 compensation insurance written in the state under Subsection 59-9-101(2).

72 Section 3. Section **59-10-1041** is enacted to read:

73 **59-10-1041. Nonrefundable small business job creation tax credit.**

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

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

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

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

84 Section 4. Section **63N-2-901** is enacted to read:

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

86 **63N-2-901. Title.**

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

88 Section 5. Section 63N-2-902 is enacted to read:

89 **63N-2-902. Definitions.**

90 As used in this part:

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

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

96 (2) "Claimant" means a person or entity that has state taxable income or that is subject
97 to taxation under Title 59, Chapter 9, Taxation of Admitted Insurers.

98 (3) "Closing date" means the date on which a Small Business Job Creation fund has
99 collected all of the investments described in Subsection 63N-2-903(7).

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

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

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

107 (5) "Eligible business" means a business that at the time of an initial Small Business
108 Job Creation investment in the business by a Small Business Job Creation fund:

109 (a) has fewer than 99 employees;

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

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

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

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

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

117 (iii) 22, Utilities;

118 (iv) 23, Construction;

- 119 (v) 31-33, Manufacturing;
- 120 (vi) 48-49, Transportation and Warehousing;
- 121 (vii) 54, Professional, Scientific, and Technical Services; or
- 122 (viii) 62, Health Care and Social Assistance.
- 123 (6) (a) "Excess return" means the difference between:
- 124 (i) the present value on the day the Small Business Job Creation fund applies to exit the
- 125 program under Section [63N-2-909](#) of all Small Business Job Creation investments made by a
- 126 Small Business Job Creation fund, including the present value of all distributions and gains
- 127 from the Small Business Job Creation investments; and
- 128 (ii) the sum of the amount of the original Small Business Job Creation investment
- 129 authority and an amount equal to any projected increase in an equity holder's federal or state
- 130 tax liability, including penalties and interest, related to an equity holder's ownership,
- 131 management, or operation of the Small Business Job Creation fund.
- 132 (b) If the amount calculated in Subsection (6)(a) is less than zero, the excess return is
- 133 equal to zero.
- 134 (7) (a) "Full-time employee" means an employee who is a resident of the state and who
- 135 works at least 30 hours per week throughout the year or meets the customary practices accepted
- 136 by an industry as full time.
- 137 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 138 office may make rules that establish additional hour or other criteria to determine what
- 139 constitutes a full-time employee.
- 140 (8) (a) "High wage" means a wage that is at least 100% of the average county wage.
- 141 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 142 office may make rules that establish additional criteria to determine what constitutes a high
- 143 wage.
- 144 (9) "Investment authority" means the minimum amount of investment a Small Business
- 145 Job Creation fund must make in eligible businesses in order for credit-eligible contributions to
- 146 the Small Business Job Creation fund to qualify for a Small Business Job Creation tax credit
- 147 under Section [59-7-625](#), [59-9-108](#), or [59-10-1041](#).
- 148 (10) (a) "New annual jobs" means the difference between:
- 149 (i) (A) the monthly average of full-time employees who are paid a high wage at an

150 eligible business for the preceding calendar year; or

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

155 (ii) the number of full-time employees who are paid a high wage at the eligible
156 business on the date of the initial Small Business Job Creation investment.

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

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

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

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

166 (b) For the purposes of this part, an out-of-state business that agrees to relocate
167 employees to this state to establish the business's principal business operations in this state
168 using the proceeds of a Small Business Job Creation investment is considered to have the
169 business's principal business operations in this state if the business satisfies the requirements of
170 Subsection (13)(a) within 180 days after receiving the Small Business Job Creation investment,
171 unless the office agrees to a later date.

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

174 (15) "Rural county" means any county in the state except Salt Lake, Utah, Davis,
175 Weber, Washington, Cache, Tooele, and Summit counties.

176 (16) (a) "State reimbursement amount" means the difference between:

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

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

180 (b) If the amount calculated in Subsection (16)(a) is less than zero, the state

181 reimbursement amount is equal to zero.

182 (17) "Tax credit" means a tax credit described in Section [59-7-625](#), [59-9-108](#), or
183 [59-10-1041](#).

184 (18) "Tax credit certificate" means a certificate issued by the office that:

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

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

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

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

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

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

193 (b) was previously convicted of a felony.

194 (20) "Tier three job" means all new annual jobs that are not tier one jobs or tier two
195 jobs.

196 (21) "Tier two job" means a new annual job held by an employee who has received a
197 benefit in the state, or whose spouse or dependent child has received a benefit in the state,
198 anytime during the six months immediately before the employee's date of hire under any of the
199 following programs:

200 (a) Medicaid;

201 (b) unemployment insurance;

202 (c) the Supplemental Nutrition Assistance Program;

203 (d) the Children's Health Insurance Program; or

204 (e) the Family Employment Program.

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

207 (23) (a) "Small Business Job Creation investment" means:

208 (i) any capital or equity investment in an eligible business; or

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

211 (b) "Small Business Job Creation investment" may include a secured loan or revolving

212 line of credit to an eligible business, but only if the Small Business Job Creation Fund obtains
213 an affidavit from the president or chief executive of the eligible business attesting that the
214 business applied for but was denied similar financing from a commercial bank.

215 Section 6. Section **63N-2-903** is enacted to read:

216 **63N-2-903. Application, approval, and allocations.**

217 (1) (a) A person seeking approval as a Small Business Job Creation fund shall submit
218 an application to the office.

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

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

222 (a) the total investment authority sought by the applicant, which may not exceed
223 \$40,000,000;

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

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

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

233 (e) the sum of all credit-eligible capital contribution commitments described in
234 Subsection (2)(d), which must equal at least 60% of the total investment authority sought by
235 the applicant.

236 (3) The office shall:

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

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

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

243 (i) deny the application; or
244 (ii) if the applicant complied with Subsection (2)(d):
245 (A) notify the applicant that the application was inadequate and allow the applicant to
246 provide additional information to the office to complete, clarify, or cure defects identified by
247 the office in the application; and
248 (B) inform the applicant that the additional information described in Subsection
249 (4)(a)(ii)(A) must be received by the office within five days after the notice in order to be
250 considered.
251 (b) If an applicant submits additional information to the office in accordance with
252 Subsection (4)(a)(ii), the office shall:
253 (i) consider the application to have been received on the date the application was
254 originally received by the office; and
255 (ii) review and evaluate the additional information within 10 days after receiving the
256 additional information.
257 (5) If, after review and evaluation of an application submitted under this section and
258 any additional information submitted in accordance with Subsection (4)(a)(ii), the office
259 determines that the application meets the requirements of Subsection (2), the office shall:
260 (a) determine the amount of investment authority to award an applicant in accordance
261 with Subsection (6);
262 (b) provide to the applicant a written notice of approval as a Small Business Job
263 Creation fund, specifying the amount of the applicant's investment authority; and
264 (c) notify each claimant whose affidavit was included in the application under
265 Subsection (2)(d) that the claimant qualifies for a tax credit that will be issued in accordance
266 with Section [63N-2-904](#).
267 (6) (a) The office may not approve more than \$40,000,000 in total investment authority
268 and not more than \$24,000,000 in total credit-eligible contributions under this part.
269 (b) Subject to Subsections (6)(a) and (d), if an application is approved under
270 Subsection (5), the office shall approve the amount of investment authority requested on the
271 application.
272 (c) The office may continue to accept applications under this section until the amount
273 of approved investment authority reaches \$40,000,000.

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

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

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

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

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

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

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

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

296 (b) the office:

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

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

302 Section 7. Section **63N-2-904** is enacted to read:

303 **63N-2-904. Tax credit.**

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

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

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

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

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

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

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

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

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

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

325 (5) (a) A tax credit earned under this section is not transferrable or refundable.

326 (b) A tax credit earned by or allocated to a partnership, limited liability company, or S
327 corporation under this section shall be allocated to the partners, members, or shareholders, of
328 the partnership, limited liability company, or S corporation in accordance with the provisions
329 of any written agreement among such partners, members, or shareholders.

330 Section 8. Section 63N-2-905 is enacted to read:

331 **63N-2-905. Revocation of tax credit certificates.**

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

336 (a) fails to invest two-thirds of the Small Business Job Creation fund's investment
337 authority in Small Business Job Creation investments in this state within two years of the
338 closing date and 100% within three years, at least 30% of which have been made on eligible
339 businesses that maintain their principal business operations in a rural county or opportunity
340 zone;

341 (b) fails to maintain Small Business Job Creation investments in this state equal to
342 100% of the Small Business Job Creation fund's investment authority until the sixth
343 anniversary of the closing date in accordance with this section;

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

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

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

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

358 (ii) makes a loan to or an investment in the Small Business Job Creation fund, an
359 affiliate of the Small Business Job Creation fund, or an investor in the Small Business Job
360 Creation fund.

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

366 (ii) Amounts received periodically by a Small Business Job Creation fund are treated as

367 continually invested in Small Business Job Creation investments if the amounts are reinvested
368 in one or more Small Business Job Creation investments by the end of the following calendar
369 year.

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

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

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

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

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

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

388 (4) The following provisions apply if a Small Business Job Creation fund's tax credit
389 certificates are revoked or recaptured under this section:

390 (a) (i) if a tax credit is recaptured, the office shall notify the State Tax Commission and
391 the State Tax Commission shall enforce the recapture; and

392 (ii) if the Small Business Job Creation fund is able to provide documentation to the
393 office that proves that a tax credit described in Subsection (4)(a)(i) has not been claimed, the
394 unused credits shall be revoked and are not available for use by any taxpayer;

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

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

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

405 (5) The office may not revoke or recapture a tax credit certificate after a Small
406 Business Job Creation fund has exited the program in accordance with Section [63N-2-909](#).

407 Section 9. Section **63N-2-906** is enacted to read:

408 **63N-2-906. Request for determination.**

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

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

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

417 Section 10. Section **63N-2-907** is enacted to read:

418 **63N-2-907. Reporting obligations.**

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

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

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

425 (ii) the name, location, and industry of each business receiving a Small Business Job
426 Creation investment, including a determination letter provided as described in Section
427 [63N-2-906](#) or evidence that the business qualified as an eligible business at the time the
428 investment was made;

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

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

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

434 (b) The offset shall equal the sum of the amounts calculated in Subsections 2(c)
435 through (g).

436 (c) The product of \$40,000 and the number of new annual jobs that are tier one jobs.

437 (d) The product of \$30,000 and the number of new annual jobs that are tier two jobs.

438 (e) The product of \$10,000 and the number of new annual jobs that are:

439 (i) tier one or tier two jobs; and

440 (ii) at an eligible business whose principal business operations are located in an
441 opportunity zone.

442 (f) The product of \$5,000 and the number of new annual jobs that are:

443 (i) tier one or tier two jobs; and

444 (ii) held by an employee who has received workforce training either internally or
445 externally, provided such training is verified by the president, chief executive officer, chief
446 financial officer, or similar officer of the eligible business to have been provided as a result of
447 the Small Business Job Creation investment, has an estimated cost that is more than \$1,000,
448 and is approved by the office.

449 (g) The sum of the following, except that the maximum amount of the offset described
450 in this Subsection (2)(g) may be no more than 15% of the total Small Business Job Creation
451 fund's credit eligible capital contributions:

452 (i) the product of \$20,000 and the number of new annual jobs that are tier three jobs;

453 (ii) the product of \$10,000 and the number of tier three jobs that are at an eligible
454 business whose principal business operations are located in an opportunity zone; and

455 (iii) the product of \$2,500 and the number of tier three jobs that are held by an
456 employee who has received workforce training either internally or externally, provided such
457 training is verified by the president, chief executive officer, chief financial officer, or similar
458 officer of the eligible business to have been provided as a result of the Small Business Job
459 Creation investment, has an estimated cost that is more than \$1,000, and is approved by the

460 office.

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

465 (4) By the fifth business day after the third anniversary of the closing date, a Small
466 Business Job Creation fund shall submit a report to the office providing evidence that the Small
467 Business Job Creation fund is in compliance with the investment requirements of Section
468 63N-2-905.

469 Section 11. Section **63N-2-908** is enacted to read:

470 **63N-2-908. Annual fee.**

471 (1) The office shall calculate an annual fee to be paid by each Small Business Job
472 Creation fund by dividing an administrative fee as determined by the office by the number of
473 Small Business Job Creation funds approved under this part and notify each Small Business
474 Job Creation fund of the amount of the annual fee.

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

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

480 (c) An annual fee shall not be required once a Small Business Job Creation fund has
481 exited the program under Section 63N-2-909.

482 (3) To maintain an aggregate annual fee in an amount determined by the office, the
483 office shall recalculate the annual fee as needed upon the lapse of any approval under
484 Subsection 63N-2-903(8), the revocation of tax credit certificates under Section 63N-2-905, or
485 a Small Business Job Creation fund's exit from the program under Section 63N-2-909.

486 (4) The annual fee collected under this section shall be deposited into the General Fund
487 as a dedicated credit for use by the office to implement this part, including for the costs related
488 to data sharing with the Department of Workforce Services.

489 Section 12. Section **63N-2-909** is enacted to read:

490 **63N-2-909. Exit.**

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

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

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

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

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

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

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

509 (a) the state reimbursement amount; and

510 (b) the excess return.

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

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

514 **Section 13. Retrospective operation.**

515 This bill has retrospective operation for a taxable year beginning on or after January 1,
516 2020.