

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 \$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 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

Other Special Clauses:

None



Utah Code Sections Affected:

ENACTS:

59-7-625, 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

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

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

59-7-625. Nonrefundable small business 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 the other provisions of this section, a taxpayer may claim a nonrefundable 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 tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Small Business Job Creation Tax Credit 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 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 small business 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 the other provisions of this section, a taxpayer may claim a nonrefundable 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 tax credit certificate that the office issues under Title 63N, Chapter 2, Part 9, Small Business Job Creation Tax Credit 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 the taxpayer's tax liability under this chapter for the taxable year in which the taxpayer claims the tax credit.

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

Part 9. Small Business Job Creation Tax Credit Act

63N-2-901. Title.

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

Section 4. 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 a Small Business Job Creation 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 a Small Business Job Creation 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) shall purchase an equity interest in the Small Business Job Creation fund or purchase, at par value or premium, a debt instrument issued by the Small Business Job Creation 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 Small Business

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

(a) has fewer than 300 employees;

(b) has less than \$10,000,000 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 or more NAICS codes within the following NAICS Sectors of the 2017 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

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

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

(iii) 22, Utilities;

(iv) 23, Construction;

(v) 31-33, Manufacturing;

(vi) 48-49, Transportation and Warehousing;

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

(viii) 62, Health Care and Social Assistance.

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

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

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

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

(7) (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 hour or other criteria to determine what 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.

unless the office agrees to a later date.

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

(15) (a) "State reimbursement amount" means the difference between:
 (i) a Small Business Job Creation fund's credit-eligible capital contributions; and
 (ii) the sum of the annual Small Business Job Creation offsets as reported in the Small Business Job Creation fund's exit report described in Section 63N-2-909.

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

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

(17) "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; and

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

(18) "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; ~~or~~ ~~or~~

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

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

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

(20) "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 Utah Family Employment Program.

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

(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.

(d) If the office approves multiple applications received simultaneously under Subsection (3)(b) and the total amount of investment authority requested on those applications exceeds 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 a Small Business Job Creation fund receives approval under Subsection (5)(b), the Small Business Job Creation 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 Small Business Job Creation fund, including employees, officers, and directors of such affiliates, that equal at least 10% of the Small Business Job Creation 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 Small Business Job Creation 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 Small Business Job Creation fund fails to fully comply with Subsection (7):

(a) the Small Business Job Creation fund's approval shall lapse and the corresponding investment authority and credit-eligible capital contributions shall 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 Small Business Job Creation fund that was awarded less than the requested investment authority under Subsection (6)(d), which a Small Business Job Creation fund may allocate to the Small Business Job Creation fund's investors at the fund's discretion; and

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

Section 6. 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 Small Business Job Creation 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 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 7. 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 Small Business Job Creation fund in which the credit-eligible capital contribution was made does any of the following before the Small Business Job Creation fund exits the program in accordance with Section [63N-2-909](#):

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

(b) fails to maintain Small Business Job Creation investments in this state equal to 100% of the Small Business Job Creation 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 Small Business Job Creation fund having less than 100% of the Small Business Job Creation fund's investment authority invested in Small Business Job Creation investments in this state or available for investment in Small Business Job Creation 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 Small Business Job Creation investments made with repaid or redeemed Small Business Job Creation investments or interest or profits realized on the repaid or redeemed Small Business Job Creation investments; or

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

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

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

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

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

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

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

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

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

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

63N-2-906. Request for determination.

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

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

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

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

63N-2-907. Reporting obligations.

(1) Until the Small Business Job Creation fund has exited the program in accordance with Section [63N-2-909](#), a Small Business Job Creation 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 Small Business Job Creation fund's Small Business Job Creation investments, including:

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

(ii) the name, location, and industry of each business receiving a Small Business Job Creation 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) ~~Ĥ→ [(ĥ)] ←Ĥ~~ The offset shall equal the sum of the ~~Ĥ→ [following:] amounts~~ calculated in Subsections (2)(c) through (g). ~~←Ĥ~~

400 ~~Ĥ→ [(A) the]~~ (c) ~~The~~ ~~←Ĥ~~ product of the number of new annual jobs that are tier one jobs
400a and \$40,000 ~~Ĥ→ [1] . ←Ĥ~~

401 ~~Ĥ→ [(B) the]~~ (d) ~~The~~ ~~←Ĥ~~ product of the number of new annual jobs that are tier two jobs
401a and \$30,000 ~~Ĥ→ [1] . ←Ĥ~~

402 ~~Ĥ→ [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.]

410a (e) The product of \$10,000 and the number of new annual jobs that are:
410b (i) tier one or tier two jobs; and
410c (ii) at an eligible business whose principal business operations are located in an
410d opportunity zone;

410e (f) The product of \$10,000 and the number of new annual jobs that are:
410f (i) tier one or tier two jobs; and
410g (ii) held by an employee who has received workforce training either internally or
410h externally, provided such training is verified by the president, chief executive officer, chief
410i financial officer, or similar officer of the eligible business and approved by the office.

410j (g) The lesser of:
410k (i) the sum of the following:
410l (A) the product of the number of new annual jobs that are tier three jobs and \$20,000;
410m (B) the product of \$10,000 and the number of tier three jobs that are at an eligible
410n business whose principal business operations are located in an opportunity zone; and
410o (C) the product of \$10,000 and the number of tier three jobs that are held by an
410p employee who has received workforce training either internally or externally, provided such
410q training is verified by the president, chief executive officer, chief financial officer, or similar
410r officer of the eligible business and approved by the office; or

410s (ii) 17% of the sum of the amounts calculated in Subsections (2)(c) through (f). ←Ĥ
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 ☺

calendar year.

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

Section 10. 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 Small Business Job Creation fund by dividing \$50,000 by the number of Small Business Job Creation funds approved under this part and notify each Small Business Job Creation 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 Small Business Job Creation 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 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.