

UTAH SMALL BUSINESS JOBS ACT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

This bill modifies provisions to create a small business job tax credit and investment program.

Highlighted Provisions:

This bill:

- ▶ addresses the relationship between the premium tax and corporate taxes;
- ▶ establishes a tax credit against premium tax liability;
- ▶ provides a sunset date;
- ▶ enacts the Utah Small Business Jobs Act, including:
 - defining terms;
 - providing for the certification of qualified equity investments;
 - granting rulemaking authority to the office;
 - allowing for recapture of the tax credit after a time to cure;
 - requiring under certain circumstances a refundable performance deposit;
 - creating the Small Business Jobs Performance Guarantee Account;
 - establishing investment requirements;
 - providing for ceasing of certification;
 - imposing limitations on fees being paid;
 - imposing new capital requirements; and
 - requiring reporting; and



28 ▶ makes technical and conforming amendments.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill takes effect on July 1, 2014.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **31A-3-102**, as last amended by Laws of Utah 1994, Chapter 243

36 **59-7-102**, as last amended by Laws of Utah 2012, Chapter 369

37 **63I-1-263**, as last amended by Laws of Utah 2013, Chapters 28, 62, 101, 167, 250, and

38 413

39 ENACTS:

40 **59-9-107**, Utah Code Annotated 1953

41 **63M-1-3401**, Utah Code Annotated 1953

42 **63M-1-3402**, Utah Code Annotated 1953

43 **63M-1-3403**, Utah Code Annotated 1953

44 **63M-1-3404**, Utah Code Annotated 1953

45 **63M-1-3405**, Utah Code Annotated 1953

46 **63M-1-3406**, Utah Code Annotated 1953

47 **63M-1-3407**, Utah Code Annotated 1953

48 **63M-1-3408**, Utah Code Annotated 1953

49 **63M-1-3409**, Utah Code Annotated 1953

50 **63M-1-3410**, Utah Code Annotated 1953

51 **63M-1-3411**, Utah Code Annotated 1953



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

54 Section 1. Section **31A-3-102** is amended to read:

55 **31A-3-102. Exclusive fees and taxes.**

56 (1) The taxes and fees under this chapter, the premium taxes under Sections **59-9-101**
57 through **59-9-104**, the fees under Section **31A-31-108**, and the examination costs under Section
58 **31A-2-205** are in place of all other license fees or assessments that might otherwise be levied

59 by the state or any other taxing body within the state.

60 (2) An insurer that [~~pays~~] is subject to premium taxes under Sections 59-9-101 through
61 59-9-104 is not subject to corporate franchise taxes.

62 (3) Unless otherwise exempt, a licensee under this title is subject to real and personal
63 property taxes.

64 Section 2. Section 59-7-102 is amended to read:

65 **59-7-102. Exemptions.**

66 (1) Except as provided in this section, the following are exempt from a tax under this
67 chapter:

68 (a) an organization exempt under Section 501, Internal Revenue Code;

69 (b) an organization exempt under Section 528, Internal Revenue Code;

70 (c) an insurance company that is [~~otherwise taxed~~] subject to taxation on the insurance
71 company's premiums under Chapter 9, Taxation of Admitted Insurers;

72 (d) a local building authority as defined in Section 17D-2-102;

73 (e) a farmers' cooperative; or

74 (f) a public agency, as defined in Section 11-13-103, with respect to or as a result of an
75 ownership interest in:

76 (i) a project, as defined in Section 11-13-103; or

77 (ii) facilities providing additional project capacity, as defined in Section 11-13-103.

78 (2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts
79 Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a
80 person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to a
81 tax imposed by Section 59-7-104, 59-7-201, 59-7-701, or 59-8-104, because of:

82 (a) that person's ownership of tangible personal property located at the premises of a
83 printer's facility in this state with which the person has contracted for printing; or

84 (b) the activities of the person's employees or agents who are:

85 (i) located solely at the premises of a printer's facility; and

86 (ii) performing services:

87 (A) related to:

88 (I) quality control;

89 (II) distribution; or

90 (III) printing services; and
91 (B) performed by the printer's facility in this state with which the person has contracted
92 for printing.

93 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
94 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
95 8, Unrelated Business Income, to the extent provided in Part 8.

96 (4) Notwithstanding Subsection (1)(b), to the extent the income of an organization
97 described in Subsection (1)(b) is taxable for federal tax purposes under Section 528, Internal
98 Revenue Code, the organization's income is also taxable under this chapter.

99 Section 3. Section **59-9-107** is enacted to read:

100 **59-9-107. Nonrefundable small business jobs credit.**

101 (1) As used in this section:

102 (a) "Credit allowance date" is as defined in Section [63M-1-3402](#).

103 (b) "Office" is as defined in Section [63M-1-102](#).

104 (c) "Tax credit certificate" is as defined in Section [63M-1-3402](#).

105 (2) An entity may claim a nonrefundable tax credit against a tax liability under this
106 chapter in accordance with this section if the entity is issued a tax credit certificate by the office
107 under Subsection [63M-1-3403](#)(11).

108 (3) The tax credit under this section is the amount listed as the tax credit amount on the
109 tax credit certificate issued to the entity for the calendar year.

110 (4) An entity may carry forward a tax credit under this section for seven years if:

111 (a) the entity is allowed to claim a tax credit under this section for a calendar year; and

112 (b) the amount of the tax credit exceeds the entity's tax liability under this chapter for
113 that calendar year.

114 (5) An entity required to pay a retaliatory tax levied under this chapter for a reason
115 other than claiming the tax credit may claim the tax credit after the retaliatory tax amount is
116 calculated.

117 (6) Notwithstanding the other provisions of this section, this section does not apply to
118 an admitted insurer writing workers' compensation insurance in this state and taxed under
119 Subsection [59-9-101](#)(2).

120 Section 4. Section **63I-1-263** is amended to read:

121 **63I-1-263. Repeal dates, Titles 63A to 63M.**

122 (1) Section [63A-4-204](#), authorizing the Risk Management Fund to provide coverage to
123 any public school district which chooses to participate, is repealed July 1, 2016.

124 (2) Subsections [63A-5-104](#)(4)(d) and (e) are repealed on July 1, 2014.

125 (3) Section [63A-5-603](#), State Facility Energy Efficiency Fund, is repealed July 1, 2016.

126 (4) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July
127 1, 2018.

128 (5) Section [53B-24-402](#), rural residency training program, is repealed July 1, 2015.

129 (6) Title 63C, Chapter 13, Prison Relocation and Development Authority Act, is
130 repealed July 1, 2014.

131 (7) Title 63C, Chapter 14, Federal Funds Commission, is repealed July 1, 2018.

132 (8) Subsection [63G-6a-1402](#)(7) authorizing certain transportation agencies to award a
133 contract for a design-build transportation project in certain circumstances, is repealed July 1,
134 2015.

135 (9) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
136 2020.

137 (10) The Resource Development Coordinating Committee, created in Section
138 [63J-4-501](#), is repealed July 1, 2015.

139 (11) Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is repealed July 1, 2018.

140 (12) (a) Title 63M, Chapter 1, Part 11, Recycling Market Development Zone Act, is
141 repealed January 1, 2021.

142 (b) Subject to Subsection (12)(c), Sections [59-7-610](#) and [59-10-1007](#) regarding tax
143 credits for certain persons in recycling market development zones, are repealed for taxable
144 years beginning on or after January 1, 2021.

145 (c) A person may not claim a tax credit under Section [59-7-610](#) or [59-10-1007](#):

146 (i) for the purchase price of machinery or equipment described in Section [59-7-610](#) or
147 [59-10-1007](#), if the machinery or equipment is purchased on or after January 1, 2021; or

148 (ii) for an expenditure described in Subsection [59-7-610](#)(1)(b) or [59-10-1007](#)(1)(b), if
149 the expenditure is made on or after January 1, 2021.

150 (d) Notwithstanding Subsections (12)(b) and (c), a person may carry forward a tax
151 credit in accordance with Section [59-7-610](#) or [59-10-1007](#) if:

- 152 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and
- 153 (ii) (A) for the purchase price of machinery or equipment described in Section
- 154 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31,
- 155 2020; or
- 156 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
- 157 expenditure is made on or before December 31, 2020.
- 158 (13) (a) Section 63M-1-2507, Health Care Compact is repealed on July 1, 2014.
- 159 (b) (i) The Legislature shall, before reauthorizing the Health Care Compact:
- 160 (A) direct the Health System Reform Task Force to evaluate the issues listed in
- 161 Subsection (13)(b)(ii), and by January 1, 2013, develop and recommend criteria for the
- 162 Legislature to use to negotiate the terms of the Health Care Compact; and
- 163 (B) prior to July 1, 2014, seek amendments to the Health Care Compact among the
- 164 member states that the Legislature determines are appropriate after considering the
- 165 recommendations of the Health System Reform Task Force.
- 166 (ii) The Health System Reform Task Force shall evaluate and develop criteria for the
- 167 Legislature regarding:
- 168 (A) the impact of the Supreme Court ruling on the Affordable Care Act;
- 169 (B) whether Utah is likely to be required to implement any part of the Affordable Care
- 170 Act prior to negotiating the compact with the federal government, such as Medicaid expansion
- 171 in 2014;
- 172 (C) whether the compact's current funding formula, based on adjusted 2010 state
- 173 expenditures, is the best formula for Utah and other state compact members to use for
- 174 establishing the block grants from the federal government;
- 175 (D) whether the compact's calculation of current year inflation adjustment factor,
- 176 without consideration of the regional medical inflation rate in the current year, is adequate to
- 177 protect the state from increased costs associated with administering a state based Medicaid and
- 178 a state based Medicare program;
- 179 (E) whether the state has the flexibility it needs under the compact to implement and
- 180 fund state based initiatives, or whether the compact requires uniformity across member states
- 181 that does not benefit Utah;
- 182 (F) whether the state has the option under the compact to refuse to take over the federal

183 Medicare program;

184 (G) whether a state based Medicare program would provide better benefits to the
185 elderly and disabled citizens of the state than a federally run Medicare program;

186 (H) whether the state has the infrastructure necessary to implement and administer a
187 better state based Medicare program;

188 (I) whether the compact appropriately delegates policy decisions between the
189 legislative and executive branches of government regarding the development and
190 implementation of the compact with other states and the federal government; and

191 (J) the impact on public health activities, including communicable disease surveillance
192 and epidemiology.

193 (14) (a) Title 63M, Chapter 1, Part 34, Utah Small Business Jobs Act, is repealed
194 January 1, 2021.

195 (b) Section 59-9-107 regarding tax credits against premium taxes is repealed for
196 calendar years beginning on or after January 1, 2021.

197 (c) Notwithstanding Subsection (14)(b), an entity may carry forward a tax credit in
198 accordance with Section 59-9-107 if:

199 (i) the person is entitled to a tax credit under Section 59-9-107 on or before December
200 31, 2020; and

201 (ii) the qualified equity investment that is the basis of the tax credit is certified under
202 Section 63M-1-3403 on or before December 31, 2020.

203 ~~[(14)]~~ (15) The Crime Victim Reparations and Assistance Board, created in Section
204 63M-7-504, is repealed July 1, 2017.

205 ~~[(15)]~~ (16) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1,
206 2017.

207 Section 5. Section **63M-1-3401** is enacted to read:

208 **Part 34. Utah Small Business Jobs Act**

209 **63M-1-3401. Title.**

210 This part is known as the "Utah Small Business Jobs Act."

211 Section 6. Section **63M-1-3402** is enacted to read:

212 **63M-1-3402. Definitions.**

213 As used in this part:

- 214 (1) "Affiliate" means an entity that directly, or indirectly through one or more
215 intermediaries, controls, or is controlled by, or is under common control with, the entity
216 specified.
- 217 (2) "Applicable percentage" means:
218 (a) 0% for the first two credit allowance dates;
219 (b) 12% for the next three credit allowance dates; and
220 (c) 11% for the next two credit allowance dates.
- 221 (3) "Community Development Financial Institutions Fund" means the fund created in
222 12 U.S.C. Sec. 4703.
- 223 (4) "Credit allowance date" means with respect to a qualified equity investment:
224 (a) the January 1 immediately following the date on which the qualified equity
225 investment is initially made; and
226 (b) the January 1 immediately following each of the six anniversary dates of the date
227 on which the qualified equity investment is initially made.
- 228 (5) "Federal New Markets Tax Credit Program" means the program created under
229 Section 45D, Internal Revenue Code.
- 230 (6) "Long-term debt security" means a debt instrument issued by a qualified
231 community development entity:
232 (a) with an original maturity date of at least seven years from the date of its issuance;
233 and
234 (b) with no repayment, amortization, or prepayment features before its original
235 maturity date.
- 236 (7) "Pass-through entity" is as defined in Section [59-10-1402](#).
237 (8) "Pass-through entity taxpayer" is as defined in Section [59-10-1402](#).
238 (9) "Purchase price" means the amount paid to the qualified community development
239 entity that issues a qualified equity investment for the qualified equity investment that may not
240 exceed the amount of qualified equity investment authority certified pursuant to Section
241 [63M-1-3403](#).
- 242 (10) (a) "Qualified active low-income community business" is as defined in Section
243 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses
244 meeting the United States Small Business Administration size eligibility standards established

245 in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is
246 made.

247 (b) Notwithstanding Subsection (10)(a), "qualified active low-income community
248 business" does not include a business that derives or projects to derive 15% or more of its
249 annual revenue from the rental or sale of real estate, unless the business is controlled by or
250 under common control with another business if the second business:

251 (i) does not derive or project to derive 15% or more of its annual revenue from the
252 rental or sale of real estate; and

253 (ii) is the primary tenant of the real estate leased from the initial business.

254 (c) A business is considered a qualified active low-income community business for the
255 duration of the qualified community development entity's investment in, or loan to, the
256 business if the qualified community development entity reasonably expects, at the time it
257 makes the investment or loan, that the business will continue to satisfy the requirements for
258 being a qualified active low-income community business, other than the United States Small
259 Business Administration size standards, throughout the entire period of the investment or loan.

260 (11) (a) "Qualified community development entity" is as defined in Section 45D,
261 Internal Revenue Code, if the entity has entered into an allocation agreement with the
262 Community Development Financial Institutions Fund of the United States Treasury
263 Department with respect to credits authorized by Section 45D, Internal Revenue Code, that
264 includes Utah within the service area set forth in the allocation agreement.

265 (b) An entity may not be considered to be controlled by another entity solely as a result
266 of the entity having made a direct or indirect equity investment in the other entity that earns tax
267 credits under Section 45D, Internal Revenue Code, or in a similar state program.

268 (c) "Qualified community development entity" includes a subsidiary community
269 development entity of a qualified community development entity.

270 (12) (a) "Qualified equity investment" means an equity investment in, or long-term
271 debt security issued by, a qualified community development entity that:

272 (i) is acquired on or after July 1, 2014, at its original issuance solely in exchange for
273 cash;

274 (ii) has at least 85% of its cash purchase price used by the qualified community
275 development entity to make qualified low-income community investments in qualified active

276 low-income community businesses located in this state by the first anniversary of the initial
277 credit allowance date; and

278 (iii) is designated by the qualified community development entity as a qualified equity
279 investment and is certified by the office pursuant to Section 63M-1-3403.

280 (b) Notwithstanding Subsection (12)(a), "qualified equity investment" includes a
281 qualified equity investment that does not meet the provisions of Subsection (12)(a) if the
282 investment was a qualified equity investment in the hands of a prior holder.

283 (13) "Qualified low-income community investment" means a capital or equity
284 investment in, or a loan to, a qualified active low-income community business, except, with
285 respect to any one qualified active low-income community business, the maximum amount of
286 qualified low-income community investments made in such business, on a collective basis with
287 all of the business's affiliates, with the proceeds of qualified equity investments certified under
288 Section 63M-1-3403 shall be \$4,000,000, exclusive of qualified low-income community
289 investments made with repaid or redeemed qualified low-income community investments or
290 interest or profits realized on the repaid or redeemed qualified low-income community
291 investments.

292 (14) "Tax credit certificate" is a certificate issued by the office under Subsection
293 63M-1-3403(11) to an entity eligible for a tax credit under Section 59-9-107 that:

294 (a) lists the name of the entity eligible for a tax credit;

295 (b) lists the entity's taxpayer identification number;

296 (c) lists the amount of tax credit that the office determines the entity is eligible for the
297 calendar year; and

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

299 Section 7. Section **63M-1-3403** is enacted to read:

300 **63M-1-3403. Certification of qualified equity investments -- Issuance of tax credit**
301 **related certificates.**

302 (1) A qualified community development entity that seeks to have an equity investment
303 or long-term debt security certified as a qualified equity investment and as eligible for tax
304 credits under Section 59-9-107 shall apply to the office. The office shall begin accepting
305 applications on July 1, 2014. The qualified community development entity shall include the
306 following in the qualified community development entity's application:

- 307 (a) evidence of the applicant's certification as a qualified community development
308 entity, including evidence of the service area of the applicant that includes this state;
- 309 (b) a copy of an allocation agreement executed by the applicant, or its controlling
310 entity, and the Community Development Financial Institutions Fund;
- 311 (c) a certificate executed by an executive officer of the applicant attesting that:
312 (i) the allocation agreement remains in effect and has not been revoked or cancelled by
313 the Community Development Financial Institutions Fund; and
- 314 (ii) the applicant is not subject to, or controlled by an entity subject to the requirements
315 of 12 U.S.C. Sec. 2901 et seq.;
- 316 (d) a description of the proposed amount, structure, and purchaser of the qualified
317 equity investment;
- 318 (e) examples of the types of qualified active low-income businesses in which the
319 applicant, its controlling entity, or affiliates of its controlling entity have invested under the
320 Federal New Markets Tax Credit Program, except that when submitting an application an
321 applicant is not required to identify qualified active low-income community businesses in
322 which the applicant will invest;
- 323 (f) the amount of qualified equity investment authority the applicant agrees to
324 designate as a federal qualified equity investment under Section 45D, Internal Revenue Code,
325 including a copy of the screen shot from the Community Development Financial Institutions
326 Fund's Allocation Tracking System of the applicant's remaining federal qualified equity
327 investment authority;
- 328 (g) a nonrefundable application fee of \$5,000 paid to the office for each application
329 submitted; and
- 330 (h) if applicable, the refundable performance deposit required by Subsection
331 [63M-1-3406\(1\)](#).
- 332 (2) (a) Within 30 days after receipt of a completed application containing the
333 information set forth in Subsection (1), including the payment of the application fee and, if
334 applicable, the refundable performance deposit, the office shall grant or deny the application in
335 full or in part.
- 336 (b) If the office denies any part of the application, the office shall inform the applicant
337 of the grounds for the denial. If the applicant provides additional information required by the

338 office or otherwise completes its application within 15 days of the notice of denial, the
339 application shall be considered completed as of the original date of submission.

340 (c) If the applicant fails to provide the information or complete its application within
341 the 15-day period:

342 (i) the application is denied;

343 (ii) the applicant shall resubmit an application in full with a new submission date; and

344 (iii) the office shall return any refundable performance deposit required by Subsection
345 63M-1-3406(1).

346 (3) (a) Subject to Subsection (3)(b), if the application is complete, the office shall
347 certify the proposed equity investment or long-term debt security as a qualified equity
348 investment, subject to the limitations contained in Subsection (6).

349 (b) The office may not certify qualified equity investments for an applicant, on a
350 combined basis with all of its affiliates, in excess of \$50,000,000 unless the applicant has:

351 (i) already had qualified equity investments certified under this section;

352 (ii) satisfied the requirements of Subsection (8) with respect to the qualified equity
353 investments that have been certified; and

354 (iii) filed a new application after satisfying the requirements of Subsections (3)(b)(i)
355 and (ii).

356 (c) The office shall provide written notice of the certification to the qualified
357 community development entity.

358 (4) The office shall certify qualified equity investments in the order applications are
359 received by the office. Applications received on the same day are considered to have been
360 received simultaneously.

361 (5) For applications that are complete and received on the same day, the office shall
362 certify, consistent with remaining qualified equity investment capacity, qualified equity
363 investments of applicants as follows:

364 (a) First, the office shall certify applications by applicants that agree to designate
365 qualified equity investments as federal qualified equity investments in accordance with
366 Subsection (1)(f) in proportionate percentages based upon the ratio of the amount of qualified
367 equity investments requested in an application to be designated as federal qualified equity
368 investments to the total amount of qualified equity investments to be designated as federal

369 qualified equity investments requested in all applications received on the same day.

370 (b) After complying with Subsection (5)(a), the office shall certify the qualified equity
371 investments of all other applicants, including the remaining qualified equity investment
372 authority requested by applicants not designated as federal qualified equity investments in
373 accordance with Subsection (1)(f), in proportionate percentages based upon the ratio of the
374 amount of qualified equity investments requested in the applications to the total amount of
375 qualified equity investments requested in all applications received on the same day.

376 (6) (a) The office shall certify \$100,000,000 in qualified equity investments pursuant to
377 this section. If a pending request cannot be fully certified due to this limit, the office shall
378 certify the portion that may be certified unless the qualified community development entity
379 elects to withdraw its request rather than receive partial certification.

380 (b) If a qualified community development entity withdraws its request pursuant to
381 Subsection (6)(a), the office shall return any refundable performance deposit required by
382 Subsection [63M-1-3406\(1\)](#).

383 (c) A partial certification does not decrease the amount of the refundable performance
384 deposit required under Subsection [63M-1-3406\(1\)](#).

385 (7) An approved applicant may transfer all or a portion of its certified qualified equity
386 investment authority to its controlling entity or a subsidiary qualified community development
387 entity of the controlling entity, provided that the applicant and the transferee notify the office of
388 the transfer with the notice set forth in Subsection (8) and include with the notice the
389 information required in the application with respect to the transferee.

390 (8) (a) Within 45 days of the applicant receiving notice of certification, the qualified
391 community development entity or any transferee under Subsection (7) shall:

392 (i) issue the qualified equity investment;

393 (ii) receive cash in the amount of the certified amount; and

394 (iii) if applicable, designate the required amount of qualified equity investment
395 authority as federal qualified equity investments.

396 (b) The qualified community development entity or transferee under Subsection (7)
397 shall provide the office with evidence of the receipt of the cash investment and designation of
398 the qualified equity investment as a federal qualified equity investment within 50 days of the
399 applicant receiving notice of certification.

400 (c) The certification under this section lapses and the qualified community
401 development entity may not issue the qualified equity investment without reapplying to the
402 office for certification if, within 45 days following receipt of the certification notice, the
403 qualified community development entity or any transferee under Subsection (7) does not:

404 (i) receive the cash investment;

405 (ii) issue the qualified equity investment; and

406 (iii) if applicable, designate the required amount of qualified equity investment
407 authority as federal qualified equity investments.

408 (d) A lapsed certification under this Subsection (8) reverts back to the office and shall
409 be reissued as follows:

410 (i) first, pro rata to applicants whose qualified equity investment allocations were
411 reduced under Subsection (5)(a), if applicable;

412 (ii) second, pro rata to applicants whose qualified equity investment allocations were
413 reduced under Subsection (5)(b); and

414 (iii) after complying with Subsections (8)(d)(i) and (ii), in accordance with the
415 application process.

416 (9) A qualified community development entity that issues a debt instrument described
417 in Subsection [63M-1-3402](#)(6) may not make cash interest payments on the debt instrument
418 during the period beginning on the date of issuance and ending on the final credit allowance
419 date in an amount that exceeds the cumulative operating income, as defined by regulations
420 adopted under Section 45D, Internal Revenue Code, of the qualified community development
421 entity for that period before giving effect to the interest expense of the long-term debt security.
422 This Subsection (9) does not limit the holder of the debt instrument's ability to accelerate
423 payments on the debt instrument in situations when the qualified community development
424 entity has defaulted on covenants designed to ensure compliance with this part or Section 45D,
425 Internal Revenue Code.

426 (10) (a) A qualified community development entity that issues qualified equity
427 investments shall notify the office of the names of the entities that are eligible to use tax credits
428 under this section and Section [59-9-107](#):

429 (i) pursuant to an allocation of tax credits;

430 (ii) pursuant to a change in allocation of tax credits; or

- 431 (iii) due to a transfer of a qualified equity investment.
- 432 (b) The office may by rule, made in accordance with Title 63G, Chapter 3, Utah
433 Administrative Rulemaking Act, provide for the form and content of the notice required under
434 this Subsection (10).
- 435 (11) (a) An entity may claim a tax credit under Section 59-9-107 against tax liability
436 under Title 59, Chapter 9, Taxation of Admitted Insurers, if the entity:
- 437 (i) makes a qualified equity investment; and
- 438 (ii) obtains a tax credit certificate in accordance with Subsection (11)(b).
- 439 (b) For each calendar year an entity is eligible for a tax credit under this section and
440 Section 59-9-107, the office shall issue to the entity a tax credit certificate.
- 441 (c) On each credit allowance date of the qualified equity investment, the entity that
442 made the qualified equity investment, or the subsequent holder of the qualified equity
443 investment, may claim a portion of the tax credit during the calendar year that includes the
444 credit allowance date.
- 445 (d) The tax credit amount is equal to an amount calculated by the office as follows, the
446 office shall:
- 447 (i) multiply the applicable percentage for the credit allowance date by the purchase
448 price paid to the qualified community development entity for the qualified equity investment;
449 and
- 450 (ii) if the entity that makes a qualified equity investment is a pass-through entity,
451 allocate the amount calculated under Subsection (11)(d)(i) to the pass-through entity taxpayers
452 in accordance with the agreement among the pass-through entity taxpayers as provided in
453 Subsection (11)(e).
- 454 (e) A tax credit claimed by a pass-through entity shall be allocated to a pass-through
455 entity taxpayer in accordance with the agreement among the pass-through entity taxpayers. An
456 allocation under this Subsection (11)(e) is not considered a violation of Subsection (11)(f).
- 457 (f) An entity may not sell a tax credit allowed under this section on the open market.
- 458 Section 8. Section **63M-1-3404** is enacted to read:
- 459 **63M-1-3404. Recapture.**
- 460 (1) The office may recapture a tax credit from an entity that claimed the tax credit
461 allowed under Section 59-9-107 on a return, if any of the following occur:

462 (a) If any amount of a federal tax credit available with respect to a qualified equity
463 investment that is eligible for a tax credit under this part is recaptured under Section 45D,
464 Internal Revenue Code, the office may recapture the tax credit in an amount that is
465 proportionate to the federal recapture with respect to the qualified equity investment.

466 (b) If the qualified community development entity redeems or makes principal
467 repayment with respect to a qualified equity investment before the seventh anniversary of the
468 issuance of the qualified equity investment, the office may recapture an amount proportionate
469 to the amount of the redemption or repayment with respect to the qualified equity investment.

470 (c) (i) If the qualified community development entity fails to invest an amount equal to
471 85% of the purchase price of the qualified equity investment in qualified low-income
472 community investments in Utah within 12 months of the issuance of the qualified equity
473 investment and maintains at least 85% of the level of investment in qualified low-income
474 community investments in Utah until the last credit allowance date for the qualified equity
475 investment, the office may recapture the tax credit.

476 (ii) For purposes of this part, an investment is considered held by a qualified
477 community development entity even if the investment has been sold or repaid if the qualified
478 community development entity reinvests an amount equal to the capital returned to or
479 recovered by the qualified community development entity from the original investment,
480 exclusive of any profits realized, in another qualified low-income community investment
481 within 12 months of the receipt of the capital.

482 (iii) Periodic amounts received as repayment of principal pursuant to regularly
483 scheduled amortization payments on a loan that is a qualified low-income community
484 investment shall be treated as continuously invested in a qualified low-income community
485 investment if the amounts are reinvested in one or more qualified low-income community
486 investments by the end of the following calendar year.

487 (iv) A qualified community development entity is not required to reinvest capital
488 returned from a qualified low-income community investment after the sixth anniversary of the
489 issuance of the qualified equity investment, and the qualified low-income community
490 investment shall be considered held by the qualified community development entity through
491 the seventh anniversary of the qualified equity investment's issuance.

492 (d) If a qualified community development entity engages in a distribution or debt

493 payment in violation of Subsection 63M-1-3407(1), the office may recapture the tax credit.

494 (e) If there is a violation of Section 63M-1-3409, the office may recapture the tax
495 credit.

496 (2) A recaptured tax credit and the related qualified equity investment authority revert
497 back to the office and shall be reissued:

498 (a) first, pro rata to applicants whose qualified equity investment allocations were
499 reduced under Subsection 63M-1-3403(5)(a);

500 (b) second, pro rata to applicants whose qualified equity investment allocations were
501 reduced under Subsection 63M-1-3403(5)(b); and

502 (c) after complying with Subsections (2)(a) and (b), in accordance with the application
503 process.

504 Section 9. Section **63M-1-3405** is enacted to read:

505 **63M-1-3405. Notice of noncompliance.**

506 Enforcement of a recapture provision under Subsection 63M-1-3404(1) is subject to a
507 six-month cure period. The office may not recapture a tax credit until the office notifies the
508 qualified community development entity of noncompliance and affords the qualified
509 community development entity six months from the date of the notice to cure the
510 noncompliance.

511 Section 10. Section **63M-1-3406** is enacted to read:

512 **63M-1-3406. Refundable performance deposit -- Small Business Jobs**

513 **Performance Guarantee Account.**

514 (1) (a) A qualified community development entity that seeks to have an equity
515 investment or long-term debt security certified as a qualified equity investment and as eligible
516 for tax credits under Section 59-9-107 shall pay a deposit in the amount of .5% of the amount
517 of the equity investment or long-term debt security requested in an application to be certified as
518 a qualified equity investment to the office for deposit into the Small Business Jobs
519 Performance Guarantee Account.

520 (b) (i) There is created in the General Fund a restricted account known as the "Small
521 Business Jobs Performance Guarantee Account" that consists of deposits made under
522 Subsection (1)(a).

523 (ii) The Small Business Jobs Performance Guarantee Account does not earn interest.

524 (iii) At the end of a fiscal year, any amount in the Small Business Jobs Performance
525 Guarantee Account that a qualified community development entity forfeits under this section is
526 to be transferred to the General Fund.

527 (iv) The office shall work with the Division of Finance to ensure that money in the
528 Small Business Jobs Performance Guarantee Account is properly accounted for at the end of
529 each fiscal year.

530 (c) A qualified community development entity shall forfeit the deposit required under
531 Subsection (1)(a) in its entirety if:

532 (i) the qualified community development entity and its subsidiary qualified community
533 development entities fail to issue the total amount of qualified equity investments certified by
534 the office and receive cash in the total amount certified under Section [63M-1-3403](#); or

535 (ii) the qualified community development entity or any subsidiary qualified community
536 development entity that issues a qualified equity investment certified under this part fails to
537 make qualified low-income community investments in qualified active low-income community
538 businesses in Utah equal to at least 85% of the purchase price of the qualified equity
539 investment by the second credit allowance date of such qualified equity investment.

540 (d) The six-month cure period established under Section [63M-1-3405](#) is not applicable
541 to the forfeiture of a deposit under Subsection (1)(c).

542 (2) A deposit required under Subsection (1) shall be paid to the office and held in the
543 Small Business Jobs Performance Guarantee Account until such time as compliance with this
544 Subsection (2) is established. A qualified community development entity may request a refund
545 of the deposit from the office no sooner than 30 days after the qualified community
546 development entity and all transferees under Subsection [63M-1-3403](#)(7) have invested 85% of
547 the purchase price of the qualified equity investment authority certified by the office pursuant
548 to Subsection [63M-1-3403](#)(3). The office has 30 days to comply with the request for a refund
549 or give notice of noncompliance.

550 (3) The office may not require a deposit from an applicant that:

551 (a) has had proposed qualified equity investments certified under Section [63M-1-3403](#);
552 and

553 (b) has not forfeited a deposit made under this section.

554 Section 11. Section **63M-1-3407** is enacted to read:

555 **63M-1-3407. 150% investment requirement -- Ceasing of certification.**

556 (1) (a) Once certified under Section 63M-1-3403, a qualified equity investment shall
557 remain certified until all of the requirements of Subsection (2) have been met.

558 (b) Until such time as the qualified equity investments issued by a qualified community
559 development entity are no longer certified, the qualified community development entity may
560 not distribute to its equity holders or make cash payments on long-term debt securities that
561 have been certified as qualified equity investments in an amount that exceeds the sum of:

562 (i) the cumulative operating income, as defined by regulations adopted under Section
563 45D, Internal Revenue Code, earned by the qualified community development entity since
564 issuance of the qualified equity investment, before giving effect to any interest expense from
565 long-term debt securities certified as qualified equity investments; and

566 (ii) 50% of the purchase price of the qualified equity investments issued by the
567 qualified community development entity.

568 (2) Subject to the other provisions of this section, a qualified equity investment ceases
569 to be certified when:

570 (a) it is beyond its seventh credit allowance date;

571 (b) the qualified community development entity issuing the qualified equity investment
572 has been in compliance with Section 63M-1-3404 through its seventh credit allowance date,
573 including any cures under Section 63M-1-3405;

574 (c) the qualified community development entity issuing such qualified equity
575 investment has used the cash purchase of such qualified equity investment, together with
576 capital returned, repaid or redeemed or profits realized with qualified low-income community
577 investments, to invest in qualified active low-income community businesses such that the total
578 qualified low income community investments made, cumulatively including reinvestments,
579 exceeds 150% of the qualified equity investment; and

580 (d) the qualified community development complies with Subsection (4).

581 (3) For purposes of making the calculation under Subsection (2)(c), qualified
582 low-income community investments to any one qualified active low-income community
583 business, on a collective basis with its affiliates, in excess of \$4,000,000 may not be included,
584 unless such investments are made with capital returned or repaid from qualified low-income
585 community investments made by the qualified community development entity in other

586 qualified active low-income community businesses or interest earned on or profits realized
587 from any qualified low-income community investments.

588 (4) A qualified community development entity shall file a request for ceasing
589 certification of a qualified equity investment in a form, provided by the office, that establishes
590 that the qualified community development entity has met the requirements of Subsection (2)
591 along with evidence supporting the request for ceasing certification. Subsection (2)(b) shall be
592 considered to be met if no recapture action has been commenced by the office as of the seventh
593 credit allowance date.

594 (5) (a) A request for ceasing certification may not be unreasonably denied and the
595 office shall respond to the request within 30 days of the office receiving the request.

596 (b) Upon grant of a request for ceasing certification, the qualified community
597 development entity is no longer subject to Section [63M-1-3410](#).

598 (c) If the request is denied for any reason, the office has the burden of proof in any
599 administrative or legal proceeding that follows.

600 Section 12. Section **63M-1-3408** is enacted to read:

601 **63M-1-3408. Limitation on fees.**

602 (1) A qualified community development entity or purchaser of a qualified equity
603 investment may not pay to any qualified community development entity or affiliate of a
604 qualified community development entity any fee in connection with any activity under this part
605 before meeting the requirements of Subsection [63M-1-3407](#)(2) with respect to all qualified
606 equity investments issued by such qualified community development entity and its affiliates.

607 (2) Subsection (1) does not prohibit the allocation or distribution of income earned by a
608 qualified community development entity or purchaser of a qualified equity investment to the
609 qualified community development entity's or purchaser's equity owners or the payment of
610 reasonable interest on amounts lent to a qualified community development entity or purchaser
611 of a qualified equity investment.

612 Section 13. Section **63M-1-3409** is enacted to read:

613 **63M-1-3409. New capital requirement.**

614 (1) A qualified active low-income community business that receives a qualified
615 low-income community investment from a qualified community development entity that issues
616 qualified equity investments under this part, or any affiliates of a qualified active low-income

617 community business, may not directly or indirectly:

618 (a) own or have the right to acquire an ownership interest in a qualified community
619 development entity or member or affiliate of a qualified community development entity,
620 including a holder of a qualified equity investment issued by the qualified community
621 development entity; or

622 (b) loan to or invest in a qualified community development entity or member or
623 affiliate of a qualified community development entity, including a holder of a qualified equity
624 investment issued by a qualified community development entity when the proceeds of the loan
625 or investment are directly or indirectly used to fund or refinance the purchase of a qualified
626 equity investment under this part.

627 (2) For purposes of this section, a qualified community development entity may not be
628 considered an affiliate of a qualified active low-income community business solely as a result
629 of its qualified low-income community investment in the business.

630 Section 14. Section **63M-1-3410** is enacted to read:

631 **63M-1-3410. Reporting.**

632 (1) A qualified community development entity that issues qualified equity investments
633 shall submit a report to the office within the first five business days after the first anniversary
634 of the initial credit allowance date that provides documentation as to the investment of 85% of
635 the purchase price in qualified low-income community investments in qualified active
636 low-income community businesses located in Utah. The report shall include:

637 (a) a bank statement of the qualified community development entity evidencing each
638 qualified low-income community investment; and

639 (b) evidence that the business was a qualified active low-income community business
640 at the time of the qualified low-income community investment.

641 (2) After the initial report under Subsection (1), a qualified community development
642 entity shall submit an annual report to the office within 60 days of the beginning of the
643 calendar year during the compliance period. An annual report is not due before the first
644 anniversary of the initial credit allowance date. The annual report shall include the following:

645 (a) the number of employment positions created and retained as a result of qualified
646 low-income community investments;

647 (b) the average annual salary of positions described in Subsection (2)(a); and

648 (c) certification from the qualified community development entity that the grounds for
649 recapture under Section [63M-1-3404](#) have not occurred.

650 Section 15. Section **63M-1-3411** is enacted to read:

651 **63M-1-3411. Scope of part.**

652 This part applies only to a return or report originally due on or after July 1, 2014.

653 Section 16. **Effective date.**

654 This bill takes effect on July 1, 2014.

Legislative Review Note
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Office of Legislative Research and General Counsel