```
28
                 makes technical and conforming amendments.
29
      Money Appropriated in this Bill:
30
             None
31
      Other Special Clauses:
32
             This bill takes effect on \hat{S} \rightarrow [July 1] September 2 \leftarrow \hat{S}, 2014.
33
      Utah Code Sections Affected:
34
      AMENDS:
             31A-3-102, as last amended by Laws of Utah 1994, Chapter 243
35
             59-7-102, as last amended by Laws of Utah 2012, Chapter 369
36
             63I-1-263, as last amended by Laws of Utah 2013, Chapters 28, 62, 101, 167, 250, and
37
      413
38
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
             63M-1-3403, Utah Code Annotated 1953
43
44
             63M-1-3404, Utah Code Annotated 1953
45
             63M-1-3405, Utah Code Annotated 1953
             63M-1-3406, Utah Code Annotated 1953
46
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
52
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
```

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 <b>59-9-107</b> 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). Ŝ→ The office shall issue a tax credit certificate to an entity
107a	that is allocated tax credits under Subsection 63M-1-3403(11)(e).
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	<u>calculated</u> $\hat{S} \rightarrow$ , and the tax credit may be used to offset retaliatory tax liability $\leftarrow \hat{S}$ .
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	<u>Subsection 59-9-101(2).</u>
120	Section 4. Section <b>63I-1-263</b> is amended to read:

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	$\hat{S} \rightarrow [\underline{(a)}]$ 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.] (a) the date on which the qualified
227a	equity investment is initially made; and
227b	(b) each of the six anniversary dates of the date described in Subsection (4)(a). ←Ŝ
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	<u>and</u>
234	(b) with no repayment, amortization, or prepayment features before its original
235	maturity date.
236	$\hat{S} \rightarrow [\underline{(7)} \text{ "Pass-through entity" is as defined in Section 59-10-1402.}]$
237	(8) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.
238	(9) (7) (5) "Purchase price" means the amount paid to the qualified community
238a	<u>development</u>
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	<u>63M-1-3403.</u>
242	\$→ [(10)] (8) ←\$ (a) "Qualified active low-income community business" is as defined in
242a	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

-8-

245	in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is
246	<u>made.</u>
247	(b) Notwithstanding Subsection \$→ [(10)] (8) ←\$ (a), "qualified active low-income
247a	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)] (9) ←\$ (a) "Qualified community development entity" is as defined in Section
260a	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	$\hat{S} \rightarrow [\underline{(12)}]$ (10) $\leftarrow \hat{S}$ (a) "Qualified equity investment" means an equity investment in, or
270a	<u>long-term</u>
271	debt security issued by, a qualified community development entity that:
272	(i) is acquired on or after \$→ [July 1,] September 2, ←\$ 2014, at its original issuance
272a	solely in exchange for
273	<u>cash;</u>
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

2/6	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 <b>\$→</b> [(12)] (10) ← <b>\$</b> (a), "qualified equity investment"
280a	includes a
281	qualified equity investment that does not meet the provisions of Subsection $\hat{S} \rightarrow [\underbrace{(12)}]$ (10) $\leftarrow \hat{S}$ (a)
281a	<u>if the</u>
282	investment was a qualified equity investment in the hands of a prior holder.
283	\$→ [(13)] (11) ←\$ "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	$\hat{S} \rightarrow [\underbrace{(14)}]$ (12) $\leftarrow \hat{S}$ "Tax credit certificate" is a certificate issued by the office under
292a	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 <b>63M-1-3403</b> 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] September 2 ←\$, 2014. The qualified community development entity
305a	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	$\hat{S} \rightarrow [\underline{(c)}]$ 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.: (c) a certificate executed by an executive officer of the applicant
315a	attesting that the allocation agreement remains in effect and has not been revoked or cancelled
315b	by the Community Development Financial Institutions Fund. ←Ŝ
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 \$→, which is deposited into the General Fund and \$2,500 of which is a dedicated
329a	credit for the office to cover the administrative costs related to this part \( \mathcal{L} \hat{\hat{S}} \); and
330	(h) if applicable, the refundable performance deposit required by Subsection
331	<u>63M-1-3406(1).</u>
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	<u>63M-1-3406(1).</u>
346	(3) (a) \$→ [Subject to Subsection (3)(b), if] If ←\$ the application is complete, the office
346a	<u>shall</u>
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	<del>and (ii).</del>
356	(c) (b) $\leftarrow$ 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 $\$ \rightarrow [\$100,000,000] \$50,000,000 \leftarrow \$$ in qualified equity
376a	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.

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 \$→ beginning with calendar year 2016 ←\$ an entity is eligible
439a	for a tax credit under this section and
440	Section 59-9-107, the office shall issue to the entity a tax credit certificate Ŝ→ for use after
440a	January 1, 2017 and provide the State Tax Commission a copy of the tax credit certificate ←Ŝ .
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	Ŝ→ [(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).] The office shall calculate the tax credit amount and the tax credit amount
453a	shall be equal to the applicable percentage for the credit allowance date multiplied by the
453b	purchase price paid to the qualified community development entity for the qualified equity
453c	<u>investment.</u> ←Ŝ
454	\$→ [ <u>(e) A tax credit claimed by a pass-through entity shall be allocated to a pass-through</u>
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). (e) A tax
456a	credit earned by a partnership, limited liability company, or S-corporation may be allocated to
456b	the partners, members, or shareholders of the partnership, limited liability company, or S-
456c	
4300	corporation for the partners', members', or shareholders' direct use in accordance with the

- 15 -

457	(f) An entity may not sell a tax credit allowed under this section on the open market.
457a	$\hat{S} \rightarrow (12)(a)$ An entity that claims a tax credit under Section 59-9-107 and this section shall
457b	provide the office with a document that expressly directs and authorizes the State Tax
457c	Commission to disclose the entity's tax returns and other information concerning the entity
457d	that are required by the office and that would otherwise be subject to confidentiality under
457e	Section 59-1-403 or Section 6103, Internal Revenue Code, to the office.
457f	(b) The office shall submit the document described in Subsection (12)(a) to the State
457g	Tax Commission.
457h	(c) Upon receipt of the document described in Subsection (12)(a), the State Tax
457i	Commission shall provide the office with the information requested by the office that the entity
457j	authorized the State Tax Commission to provide to the office in the document described in
457k	Subsection (12)(a). $\leftarrow$ Ŝ
458	Section 8. Section <b>63M-1-3404</b> is enacted to read:
459	<u>63M-1-3404.</u> 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

463

464

465

466

467

468

469

470

471

472

473

474

475

476

477

478

479

480

481

482

483

484

485

486

487

488

489

490

491

492

492a

(a) If any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this part is recaptured under Section 45D, Internal Revenue Code, the office may recapture the tax credit in an amount that is proportionate to the federal recapture with respect to the qualified equity investment. (b) If the qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment before the seventh anniversary of the issuance of the qualified equity investment, the office may recapture an amount proportionate to the amount of the redemption or repayment with respect to the qualified equity investment. (c) (i) If the qualified community development entity fails to invest an amount equal to 85% of the purchase price of the qualified equity investment in qualified low-income community investments in Utah within 12 months of the issuance of the qualified equity investment and maintains at least 85% of the level of investment in qualified low-income community investments in Utah until the last credit allowance date for the qualified equity investment, the office may recapture the tax credit. (ii) For purposes of this part, an investment is considered held by a qualified community development entity even if the investment has been sold or repaid if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of the capital. (iii) Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. (iv) A qualified community development entity is not required to reinvest capital returned from a qualified low-income community investment after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low-income community investment shall be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance. (d) If a qualified community development entity \$→ [engages in] makes ←\$ a distribution or debt

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	$\hat{S} \rightarrow [\underline{(3)}]$ 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	<u>and</u>
553	(b) has not forfeited a deposit made under this section. ←Ŝ
554	Section 11. Section <b>63M-1-3407</b> is enacted to read:

- 18 -

02-21-14 3:56 PM	S.B.	233

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 <b>63M-1-3411</b> is enacted to read:
651	<u>63M-1-3411.</u> Scope of part.
652	This part applies only to a return or report originally due on or after $\hat{S} \rightarrow [\underline{July 1}]$ September
652a	<u>2</u> ←\$ <u>. 2014.</u>
653	Section 16. Effective date.
654	This bill takes effect on \$→ [July 1] September 2 ←\$ , 2014.

Legislative Review Note as of 2-21-14 9:47 AM

Office of Legislative Research and General Counsel