

**ECONOMIC DEVELOPMENT AND THE
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 related to economic development including creating a small business job tax credit and investment program.

Highlighted Provisions:

This bill:

- ▶ addresses the Industrial Assistance Account;
- ▶ 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;
 - requiring reporting;

- 30 • requiring revenue impact assessment; and
- 31 ▶ makes technical and conforming amendments.

32 Money Appropriated in this Bill:

33 This bill appropriates in fiscal year 2015:

- 34 ▶ to the Governor's Office of Economic Development - Business Development, as an
- 35 ongoing appropriation:
- 36 • from Dedicated Credits Revenue, \$100,000.

37 Other Special Clauses:

38 This bill provides an effective date.

39 Utah Code Sections Affected:

40 AMENDS:

- 41 **31A-3-102**, as last amended by Laws of Utah 1994, Chapter 243
- 42 **59-7-102**, as last amended by Laws of Utah 2012, Chapter 369
- 43 **63I-1-263**, as last amended by Laws of Utah 2013, Chapters 28, 62, 101, 167, 250, and
- 44 413
- 45 **63M-1-903**, as last amended by Laws of Utah 2012, Chapters 18 and 208

46 ENACTS:

- 47 **59-9-107**, Utah Code Annotated 1953
- 48 **63M-1-3401**, Utah Code Annotated 1953
- 49 **63M-1-3402**, Utah Code Annotated 1953
- 50 **63M-1-3403**, Utah Code Annotated 1953
- 51 **63M-1-3404**, Utah Code Annotated 1953
- 52 **63M-1-3405**, Utah Code Annotated 1953
- 53 **63M-1-3406**, Utah Code Annotated 1953
- 54 **63M-1-3407**, Utah Code Annotated 1953
- 55 **63M-1-3408**, Utah Code Annotated 1953
- 56 **63M-1-3409**, Utah Code Annotated 1953
- 57 **63M-1-3410**, Utah Code Annotated 1953

58 **63M-1-3411**, Utah Code Annotated 1953

59 **63M-1-3412**, Utah Code Annotated 1953

60

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

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

63 **31A-3-102. Exclusive fees and taxes.**

64 (1) The taxes and fees under this chapter, the premium taxes under Sections **59-9-101**
65 through **59-9-104**, the fees under Section **31A-31-108**, and the examination costs under Section
66 **31A-2-205** are in place of all other license fees or assessments that might otherwise be levied
67 by the state or any other taxing body within the state.

68 (2) An insurer that [~~pays~~] is subject to premium taxes under Sections **59-9-101** through
69 **59-9-104** is not subject to corporate franchise taxes.

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

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

73 **59-7-102. Exemptions.**

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

- 76 (a) an organization exempt under Section 501, Internal Revenue Code;
- 77 (b) an organization exempt under Section 528, Internal Revenue Code;
- 78 (c) an insurance company that is [~~otherwise taxed~~] subject to taxation on the insurance
79 company's premiums under Chapter 9, Taxation of Admitted Insurers;
- 80 (d) a local building authority as defined in Section **17D-2-102**;
- 81 (e) a farmers' cooperative; or
- 82 (f) a public agency, as defined in Section **11-13-103**, with respect to or as a result of an
83 ownership interest in:
 - 84 (i) a project, as defined in Section **11-13-103**; or
 - 85 (ii) facilities providing additional project capacity, as defined in Section **11-13-103**.

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

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

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

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

94 (ii) performing services:

95 (A) related to:

96 (I) quality control;

97 (II) distribution; or

98 (III) printing services; and

99 (B) performed by the printer's facility in this state with which the person has contracted
100 for printing.

101 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
102 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
103 8, Unrelated Business Income, to the extent provided in Part 8.

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

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

108 **59-9-107. Nonrefundable small business jobs credit.**

109 (1) As used in this section:

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

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

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

113 (2) An entity may claim a nonrefundable tax credit against a tax liability under this

114 chapter in accordance with this section if the entity is issued a tax credit certificate by the office
115 under Subsection 63M-1-3403(11). The office shall issue a tax credit certificate to an entity
116 that is allocated tax credits under Subsection 63M-1-3403(11)(e).

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

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

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

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

123 (5) An entity required to pay a retaliatory tax levied under this chapter for a reason
124 other than claiming the tax credit may claim the tax credit after the retaliatory tax amount is
125 calculated, and the tax credit may be used to offset retaliatory tax liability.

126 (6) Notwithstanding the other provisions of this section, this section does not apply to
127 an admitted insurer to the extent that the admitted insurer writes workers' compensation
128 insurance in this state and has premiums taxed under Subsection 59-9-101(2).

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

130 **63I-1-263. Repeal dates, Titles 63A to 63M.**

131 (1) Section **63A-4-204**, authorizing the Risk Management Fund to provide coverage to
132 any public school district which chooses to participate, is repealed July 1, 2016.

133 (2) Subsections **63A-5-104(4)(d)** and (e) are repealed on July 1, 2014.

134 (3) Section **63A-5-603**, State Facility Energy Efficiency Fund, is repealed July 1, 2016.

135 (4) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July
136 1, 2018.

137 (5) Section **53B-24-402**, rural residency training program, is repealed July 1, 2015.

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

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

141 (8) Subsection **63G-6a-1402(7)** authorizing certain transportation agencies to award a

142 contract for a design-build transportation project in certain circumstances, is repealed July 1,
143 2015.

144 (9) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
145 2020.

146 (10) The Resource Development Coordinating Committee, created in Section
147 [63J-4-501](#), is repealed July 1, 2015.

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

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

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

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

155 (i) for the purchase price of machinery or equipment described in Section [59-7-610](#) or
156 [59-10-1007](#), if the machinery or equipment is purchased on or after January 1, 2021; or

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

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

161 (i) the person is entitled to a tax credit under Section [59-7-610](#) or [59-10-1007](#); and

162 (ii) (A) for the purchase price of machinery or equipment described in Section
163 [59-7-610](#) or [59-10-1007](#), the machinery or equipment is purchased on or before December 31,
164 2020; or

165 (B) for an expenditure described in Subsection [59-7-610\(1\)\(b\)](#) or [59-10-1007\(1\)\(b\)](#), the
166 expenditure is made on or before December 31, 2020.

167 (13) (a) Section [63M-1-2507](#), Health Care Compact is repealed on July 1, 2014.

168 (b) (i) The Legislature shall, before reauthorizing the Health Care Compact:

169 (A) direct the Health System Reform Task Force to evaluate the issues listed in

170 Subsection (13)(b)(ii), and by January 1, 2013, develop and recommend criteria for the
171 Legislature to use to negotiate the terms of the Health Care Compact; and

172 (B) prior to July 1, 2014, seek amendments to the Health Care Compact among the
173 member states that the Legislature determines are appropriate after considering the
174 recommendations of the Health System Reform Task Force.

175 (ii) The Health System Reform Task Force shall evaluate and develop criteria for the
176 Legislature regarding:

177 (A) the impact of the Supreme Court ruling on the Affordable Care Act;

178 (B) whether Utah is likely to be required to implement any part of the Affordable Care
179 Act prior to negotiating the compact with the federal government, such as Medicaid expansion
180 in 2014;

181 (C) whether the compact's current funding formula, based on adjusted 2010 state
182 expenditures, is the best formula for Utah and other state compact members to use for
183 establishing the block grants from the federal government;

184 (D) whether the compact's calculation of current year inflation adjustment factor,
185 without consideration of the regional medical inflation rate in the current year, is adequate to
186 protect the state from increased costs associated with administering a state based Medicaid and
187 a state based Medicare program;

188 (E) whether the state has the flexibility it needs under the compact to implement and
189 fund state based initiatives, or whether the compact requires uniformity across member states
190 that does not benefit Utah;

191 (F) whether the state has the option under the compact to refuse to take over the federal
192 Medicare program;

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

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

197 (I) whether the compact appropriately delegates policy decisions between the

198 legislative and executive branches of government regarding the development and
199 implementation of the compact with other states and the federal government; and

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

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

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

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

208 (i) the person is entitled to a tax credit under Section 59-9-107 on or before December
209 31, 2020; and

210 (ii) the qualified equity investment that is the basis of the tax credit is certified under
211 Section 63M-1-3403 on or before December 31, 2023.

212 ~~[(14)]~~ (15) The Crime Victim Reparations and Assistance Board, created in Section
213 63M-7-504, is repealed July 1, 2017.

214 ~~[(15)]~~ (16) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1,
215 2017.

216 Section 5. Section **63M-1-903** is amended to read:

217 **63M-1-903. Industrial Assistance Account created -- Uses -- Administrator duties**
218 **-- Costs.**

219 (1) There is created a restricted account within the General Fund known as the
220 "Industrial Assistance Account" of which:

221 (a) up to 50% may be used in economically disadvantaged rural areas;

222 (b) up to 25% may be used to take timely advantage of economic opportunities as they
223 arise;

224 (c) up to 4% may be used to promote business and economic development in rural
225 areas of the state with the Business Expansion and Retention Initiative; and

226 (d) up to \$3,000,000 [~~one-time shall~~] may be used for the purpose of incubating
227 technology solutions related to economic and workforce development.

228 (2) The administrator shall administer:

229 (a) the restricted account created under Subsection (1), under the policy direction of the
230 board; and

231 (b) the Business Expansion and Retention Initiative for the rural areas of the state.

232 (3) The administrator may hire appropriate support staff to perform the duties required
233 under this section.

234 (4) The cost of administering the restricted account shall be paid from money in the
235 restricted account.

236 (5) Interest accrued from investment of money in the restricted account shall remain in
237 the restricted account.

238 Section 6. Section **63M-1-3401** is enacted to read:

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

240 **63M-1-3401. Title.**

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

242 Section 7. Section **63M-1-3402** is enacted to read:

243 **63M-1-3402. Definitions.**

244 As used in this part:

245 (1) "Affiliate" means an entity that directly, or indirectly through one or more
246 intermediaries, controls, or is controlled by, or is under common control with, the entity
247 specified.

248 (2) "Applicable percentage" means:

249 (a) 0% for the first two credit allowance dates;

250 (b) 12% for the next three credit allowance dates; and

251 (c) 11% for the next two credit allowance dates.

252 (3) "Community Development Financial Institutions Fund" means the fund created in
253 12 U.S.C. Sec. 4703.

254 (4) "Credit allowance date" means with respect to a qualified equity investment:

255 (a) the date on which the qualified equity investment is initially made; and

256 (b) each of the six anniversary dates of the date described in Subsection (4)(a).

257 (5) "Federal New Markets Tax Credit Program" means the program created under

258 Section 45D, Internal Revenue Code.

259 (6) "Long-term debt security" means a debt instrument issued by a qualified

260 community development entity:

261 (a) with an original maturity date of at least seven years from the date of its issuance;

262 and

263 (b) with no repayment, amortization, or prepayment features before its original

264 maturity date.

265 (7) "Purchase price" means the amount paid to the qualified community development

266 entity that issues a qualified equity investment for the qualified equity investment that may not

267 exceed the amount of qualified equity investment authority certified pursuant to Section

268 [63M-1-3403](#).

269 (8) (a) "Qualified active low-income community business" is as defined in Section

270 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses

271 meeting the United States Small Business Administration size eligibility standards established

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

273 made.

274 (b) Notwithstanding Subsection (8)(a), "qualified active low-income community

275 business" does not include a business that derives or projects to derive 15% or more of its

276 annual revenue from the rental or sale of real estate, unless the business is controlled by or

277 under common control with another business if the second business:

278 (i) does not derive or project to derive 15% or more of its annual revenue from the

279 rental or sale of real estate; and

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

281 (c) A business is considered a qualified active low-income community business for the

282 duration of the qualified community development entity's investment in, or loan to, the
283 business if the qualified community development entity reasonably expects, at the time it
284 makes the investment or loan, that the business will continue to satisfy the requirements for
285 being a qualified active low-income community business, other than the United States Small
286 Business Administration size standards, throughout the entire period of the investment or loan.

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

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

295 (c) "Qualified community development entity" includes a subsidiary community
296 development entity of a qualified community development entity.

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

299 (i) is acquired on or after September 2, 2014, at its original issuance solely in exchange
300 for cash;

301 (ii) has at least 85% of its cash purchase price used by the qualified community
302 development entity to make qualified low-income community investments in qualified active
303 low-income community businesses located in this state by the first anniversary of the initial
304 credit allowance date; and

305 (iii) is designated by the qualified community development entity as a qualified equity
306 investment and is certified by the office pursuant to Section [63M-1-3403](#).

307 (b) Notwithstanding Subsection (10)(a), "qualified equity investment" includes a
308 qualified equity investment that does not meet the provisions of Subsection (10)(a) if the
309 investment was a qualified equity investment in the hands of a prior holder.

310 (11) "Qualified low-income community investment" means a capital or equity
311 investment in, or a loan to, a qualified active low-income community business, except, with
312 respect to any one qualified active low-income community business, the maximum amount of
313 qualified low-income community investments made in such business, on a collective basis with
314 all of the business's affiliates, with the proceeds of qualified equity investments certified under
315 Section 63M-1-3403 shall be \$4,000,000, exclusive of qualified low-income community
316 investments made with repaid or redeemed qualified low-income community investments or
317 interest or profits realized on the repaid or redeemed qualified low-income community
318 investments.

319 (12) "Tax credit certificate" is a certificate issued by the office under Subsection
320 63M-1-3403(11) to an entity eligible for a tax credit under Section 59-9-107 that:

- 321 (a) lists the name of the entity eligible for a tax credit;
322 (b) lists the entity's taxpayer identification number;
323 (c) lists the amount of tax credit that the office determines the entity is eligible for the
324 calendar year; and
325 (d) may include other information as determined by the office.

326 Section 8. Section **63M-1-3403** is enacted to read:

327 **63M-1-3403. Certification of qualified equity investments -- Issuance of tax credit**
328 **related certificates.**

329 (1) A qualified community development entity that seeks to have an equity investment
330 or long-term debt security certified as a qualified equity investment and as eligible for tax
331 credits under Section 59-9-107 shall apply to the office. The office shall begin accepting
332 applications on September 2, 2014. The qualified community development entity shall include
333 the following in the qualified community development entity's application:

- 334 (a) evidence of the applicant's certification as a qualified community development
335 entity, including evidence of the service area of the applicant that includes this state;
336 (b) a copy of an allocation agreement executed by the applicant, or its controlling
337 entity, and the Community Development Financial Institutions Fund;

338 (c) a certificate executed by an executive officer of the applicant attesting that:
339 (i) the applicant or its controlling entity has received more than one allocation of
340 qualified equity investment authority under the Federal New Markets Tax Credit Program; and
341 (ii) the allocation agreement submitted with the application remains in effect and has
342 not been revoked or cancelled by the Community Development Financial Institutions Fund;
343 (d) a description of the proposed amount, structure, and purchaser of the qualified
344 equity investment;
345 (e) examples of the types of qualified active low-income businesses in which the
346 applicant, its controlling entity, or affiliates of its controlling entity have invested under the
347 Federal New Markets Tax Credit Program, except that when submitting an application an
348 applicant is not required to identify qualified active low-income community businesses in
349 which the applicant will invest;
350 (f) the amount of qualified equity investment authority the applicant agrees to
351 designate as a federal qualified equity investment under Section 45D, Internal Revenue Code,
352 including a copy of the screen shot from the Community Development Financial Institutions
353 Fund's Allocation Tracking System of the applicant's remaining federal qualified equity
354 investment authority;
355 (g) if applicable, the refundable performance deposit required by Subsection
356 [63M-1-3406\(1\)](#);
357 (h) a copy of a certificate of qualified equity investment authority under another state's
358 new markets tax credit program; and
359 (i) evidence that the applicant, its controlling entity, and subsidiary qualified
360 community development entities of the controlling entity have collectively made at least
361 \$40,000,000 in qualified low-income community investments under the Federal New Markets
362 Tax Credit Program and other state's new markets tax credit programs with a maximum
363 qualified low-income community investment size of \$4,000,000 per business.
364 (2) (a) Within 30 days after receipt of a completed application containing the
365 information set forth in Subsection (1), including, if applicable, the refundable performance

366 deposit, the office shall grant or deny the application in full or in part.

367 (b) If the office denies any part of the application, the office shall inform the applicant
368 of the grounds for the denial. If the applicant provides additional information required by the
369 office or otherwise completes its application within 15 days of the notice of denial, the
370 application shall be considered completed as of the original date of submission.

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

373 (i) the application is denied;

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

375 (iii) the office shall return any refundable performance deposit required by Subsection
376 63M-1-3406(1).

377 (3) (a) If the application is complete, the office shall certify the proposed equity
378 investment or long-term debt security as a qualified equity investment, subject to the limitation
379 contained in Subsection (6).

380 (b) The office shall provide written notice of the certification to the qualified
381 community development entity.

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

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

388 (a) First, the office shall certify applications by applicants that agree to designate
389 qualified equity investments as federal qualified equity investments in accordance with
390 Subsection (1)(f) in proportionate percentages based upon the ratio of the amount of qualified
391 equity investments requested in an application to be designated as federal qualified equity
392 investments to the total amount of qualified equity investments to be designated as federal
393 qualified equity investments requested in all applications received on the same day.

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

400 (6) (a) The office shall certify \$50,000,000 in qualified equity investments pursuant to
401 this section. If a pending request cannot be fully certified due to this limit, the office shall
402 certify the portion that may be certified unless the qualified community development entity
403 elects to withdraw its request rather than receive partial certification.

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

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

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

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

416 (i) issue the qualified equity investment;

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

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

420 (b) The qualified community development entity or transferee under Subsection (7)
421 shall provide the office with evidence of the receipt of the cash investment and designation of

422 the qualified equity investment as a federal qualified equity investment within 50 days of the
423 applicant receiving notice of certification.

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

- 428 (i) receive the cash investment;
- 429 (ii) issue the qualified equity investment; and
- 430 (iii) if applicable, designate the required amount of qualified equity investment
431 authority as federal qualified equity investments.

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

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

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

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

440 (e) (i) The office shall:

441 (A) calculate an annual fee to be paid by each applicant certified pursuant to
442 Subsection (3)(a), regardless of the number of transferees under Subsection (7), by dividing
443 \$100,000 by the number of applications certified pursuant to Subsection (3)(a); and

444 (B) notify each successful applicant of the amount of the annual fee.

445 (ii) The initial annual fee shall be due and payable to the office with the evidence of
446 receipt of cash investment set forth in Subsection (8)(b). After the initial annual fee, an annual
447 fee shall be due and payable to the office with each report submitted pursuant to Section
448 [63M-1-3410](#).

449 (iii) An annual fee may not be required once a qualified community development entity

450 together with all transferees under Subsection (7) have decertified all qualified equity
451 investments in accordance with Subsection 63M-1-3407(2).

452 (iv) To maintain an aggregate annual fee of \$100,000 for all qualified community
453 development entities, the office shall recalculate the annual fee as needed upon:

454 (A) the lapse of any certification under Subsection (8)(c);

455 (B) the recapture of tax credits pursuant to Section 63M-1-3404; or

456 (C) the decertification of qualified equity investments pursuant to Subsection
457 63M-1-3407(2).

458 (v) An annual fee collected under this Subsection (8)(e) shall be deposited into the
459 General Fund as a dedicated credit for use by the office to implement this part.

460 (9) A qualified community development entity that issues a debt instrument described
461 in Subsection 63M-1-3402(6) may not make cash interest payments on the debt instrument
462 during the period beginning on the date of issuance and ending on the final credit allowance
463 date in an amount that exceeds the cumulative operating income, as defined by regulations
464 adopted under Section 45D, Internal Revenue Code, of the qualified community development
465 entity for that period before giving effect to the interest expense of the long-term debt security.
466 This Subsection (9) does not limit the holder of the debt instrument's ability to accelerate
467 payments on the debt instrument in situations when the qualified community development
468 entity has defaulted on covenants designed to ensure compliance with this part or Section 45D,
469 Internal Revenue Code.

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

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

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

475 (iii) due to a transfer of a qualified equity investment.

476 (b) The office may by rule, made in accordance with Title 63G, Chapter 3, Utah
477 Administrative Rulemaking Act, provide for the form and content of the notice required under

478 this Subsection (10).

479 (11) (a) An entity may claim a tax credit under Section 59-9-107 against tax liability
480 under Title 59, Chapter 9, Taxation of Admitted Insurers, if the entity:

481 (i) makes a qualified equity investment; and

482 (ii) obtains a tax credit certificate in accordance with Subsection (11)(b).

483 (b) For each calendar year, beginning with calendar year 2016, an entity is eligible for a
484 tax credit under this section and Section 59-9-107, the office shall issue to the entity a tax
485 credit certificate for use after January 1, 2017, and provide the State Tax Commission a copy of
486 the tax credit certificate.

487 (c) On each credit allowance date of the qualified equity investment, the entity that
488 made the qualified equity investment, or the subsequent holder of the qualified equity
489 investment, may claim a portion of the tax credit during the calendar year that includes the
490 credit allowance date.

491 (d) The office shall calculate the tax credit amount and the tax credit amount shall be
492 equal to the applicable percentage for the credit allowance date multiplied by the purchase
493 price paid to the qualified community development entity for the qualified equity investment.

494 (e) A tax credit allowed to a partnership, limited liability company, or S-corporation
495 shall be allocated to the partners, members, or shareholders of the partnership, limited liability
496 company, or S-corporation for the partners', members', or shareholders' direct use in accordance
497 with the provisions of any agreement among the partners, members, or shareholders.

498 (f) An entity may not sell a tax credit allowed under this section on the open market.

499 (12) (a) An entity that claims a tax credit under Section 59-9-107 and this section shall
500 provide the office with a document that expressly directs and authorizes the State Tax
501 Commission to disclose the entity's tax returns and other information concerning the entity that
502 are required by the office and that would otherwise be subject to confidentiality under Section
503 59-1-403 or Section 6103, Internal Revenue Code, to the office.

504 (b) The office shall submit the document described in Subsection (12)(a) to the State
505 Tax Commission.

506 (c) Upon receipt of the document described in Subsection (12)(a), the State Tax
507 Commission shall provide the office with the information requested by the office that the entity
508 authorized the State Tax Commission to provide to the office in the document described in
509 Subsection (12)(a).

510 Section 9. Section **63M-1-3404** is enacted to read:

511 **63M-1-3404. Recapture.**

512 (1) The office may recapture a tax credit from an entity that claimed the tax credit
513 allowed under Section 59-9-107 on a return, if any of the following occur:

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

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

522 (c) (i) If the qualified community development entity fails to invest an amount equal to
523 85% of the purchase price of the qualified equity investment in qualified low-income
524 community investments in Utah within 12 months of the issuance of the qualified equity
525 investment and maintains at least 85% of the level of investment in qualified low-income
526 community investments in Utah until the last credit allowance date for the qualified equity
527 investment, the office may recapture the tax credit.

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

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

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

544 (d) If a qualified community development entity makes a distribution or debt payment
545 in violation of Subsection 63M-1-3407(1), the office may recapture the tax credit.

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

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

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

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

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

556 Section 10. Section **63M-1-3405** is enacted to read:

557 **63M-1-3405. Notice of noncompliance.**

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

562 noncompliance.

563 Section 11. Section **63M-1-3406** is enacted to read:

564 **63M-1-3406. Refundable performance deposit -- Small Business Jobs**

565 **Performance Guarantee Account.**

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

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

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

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

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

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

584 (i) the qualified community development entity and its subsidiary qualified community
585 development entities fail to issue the total amount of qualified equity investments certified by
586 the office and receive cash in the total amount certified under Section 63M-1-3403; or

587 (ii) the qualified community development entity or any subsidiary qualified community
588 development entity that issues a qualified equity investment certified under this part fails to
589 make qualified low-income community investments in qualified active low-income community

590 businesses in Utah equal to at least 85% of the purchase price of the qualified equity
591 investment by the second credit allowance date of such qualified equity investment.

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

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

602 Section 12. Section 63M-1-3407 is enacted to read:

603 **63M-1-3407. 150% investment requirement -- Ceasing of certification.**

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

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

610 (i) the cumulative operating income, as defined by regulations adopted under Section
611 45D, Internal Revenue Code, earned by the qualified community development entity since
612 issuance of the qualified equity investment, before giving effect to any interest expense from
613 long-term debt securities certified as qualified equity investments; and

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

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

- 618 (a) it is beyond its seventh credit allowance date;
- 619 (b) the qualified community development entity issuing the qualified equity investment
620 has been in compliance with Section 63M-1-3404 through its seventh credit allowance date,
621 including any cures under Section 63M-1-3405;
- 622 (c) the qualified community development entity issuing such qualified equity
623 investment has used the cash purchase of such qualified equity investment, together with
624 capital returned, repaid, or redeemed or profits realized with qualified low-income community
625 investments, to invest in qualified active low-income community businesses such that the total
626 qualified low-income community investments made, cumulatively including reinvestments,
627 exceeds 150% of the qualified equity investment; and
- 628 (d) the qualified community development complies with Subsection (4).
- 629 (3) For purposes of making the calculation under Subsection (2)(c), qualified
630 low-income community investments to any one qualified active low-income community
631 business, on a collective basis with its affiliates, in excess of \$4,000,000 may not be included,
632 unless such investments are made with capital returned or repaid from qualified low-income
633 community investments made by the qualified community development entity in other
634 qualified active low-income community businesses or interest earned on or profits realized
635 from any qualified low-income community investments.
- 636 (4) A qualified community development entity shall file a request for ceasing
637 certification of a qualified equity investment in a form, provided by the office, that establishes
638 that the qualified community development entity has met the requirements of Subsection (2)
639 along with evidence supporting the request for ceasing certification. Subsection (2)(b) shall be
640 considered to be met if no recapture action has been commenced by the office as of the seventh
641 credit allowance date.
- 642 (5) (a) A request for ceasing certification may not be unreasonably denied and the
643 office shall respond to the request within 30 days of the office receiving the request.
- 644 (b) Upon grant of a request for ceasing certification, the qualified community
645 development entity is no longer subject to Section 63M-1-3410.

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

648 Section 13. Section **63M-1-3408** is enacted to read:

649 **63M-1-3408. Limitation on fees.**

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

655 (2) Subsection (1) does not prohibit the allocation or distribution of income earned by a
656 qualified community development entity or purchaser of a qualified equity investment to the
657 qualified community development entity's or purchaser's equity owners or the payment of
658 reasonable interest on amounts lent to a qualified community development entity or purchaser
659 of a qualified equity investment.

660 Section 14. Section **63M-1-3409** is enacted to read:

661 **63M-1-3409. New capital requirement.**

662 (1) A qualified active low-income community business that receives a qualified
663 low-income community investment from a qualified community development entity that issues
664 qualified equity investments under this part, or any affiliates of a qualified active low-income
665 community business, may not directly or indirectly:

666 (a) own or have the right to acquire an ownership interest in a qualified community
667 development entity or member or affiliate of a qualified community development entity,
668 including a holder of a qualified equity investment issued by the qualified community
669 development entity; or

670 (b) loan to or invest in a qualified community development entity or member or
671 affiliate of a qualified community development entity, including a holder of a qualified equity
672 investment issued by a qualified community development entity when the proceeds of the loan
673 or investment are directly or indirectly used to fund or refinance the purchase of a qualified

674 equity investment under this part.

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

678 Section 15. Section **63M-1-3410** is enacted to read:

679 **63M-1-3410. Reporting.**

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

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

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

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

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

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

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

698 Section 16. Section **63M-1-3411** is enacted to read:

699 **63M-1-3411. Revenue impact assessment.**

700 (1) Before making a qualified low-income community investment, a qualified
701 community development entity shall submit to the office a revenue impact assessment prepared

702 using a nationally recognized economic development model that demonstrates that the
703 qualified low-income community investment will have a revenue positive impact on the state
704 over 10 years against the 58% tax credit utilization over the same 10-year period.

705 (2) The office must notify the qualified community development entity within five
706 business days if the qualified low-income community investment does not have a revenue
707 positive impact on the state over 10 years against the 58% tax credit utilization over the same
708 10-year period using the revenue impact assessment submitted.

709 (3) If the office determines that the revenue impact assessment does not reflect a
710 revenue positive qualified low-income community investment, the office may waive the
711 requirement under this section if the office determines that the proposed qualified low-income
712 community investment will further economic development.

713 Section 17. Section **63M-1-3412** is enacted to read:

714 **63M-1-3412. Scope of part.**

715 This part applies only to a return or report originally due on or after September 2, 2014.

716 Section 18. **Appropriation.**

717 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
718 the fiscal year beginning July 1, 2014, and ending June 30, 2015, the following sums of money
719 are appropriated from resources not otherwise appropriated, or reduced from amounts
720 previously appropriated, out of the funds or accounts indicated. These sums of money are in
721 addition to any amounts previously appropriated for fiscal year 2015.

722 To Governor's Office of Economic Development - Business Development

723 From Dedicated Credits Revenue \$100,000

724 Schedule of Programs:

725 Corporate Recruitment and Business Services \$100,000

726 Section 19. **Effective date.**

727 (1) Except as provided in Subsection (2), this bill takes effect on September 2, 2014.

728 (2) Uncodified Section 18, Appropriation, takes effect on July 1, 2014.