

SB0233S01 compared with SB0233

~~text~~ shows text that was in SB0233 but was deleted in SB0233S01.

text shows text that was not in SB0233 but was inserted into SB0233S01.

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Senator John L. Valentine proposes the following substitute bill:

UTAH SMALL BUSINESS JOBS ACT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: _____

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;

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- 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
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

~~{None}~~ This bill appropriates in fiscal year 2015:

▶ to the Governor's Office of Economic Development - Business Development, as an ongoing appropriation:

- from Dedicated Credits Revenue, \$70,000.

Other Special Clauses:

This bill takes effect on ~~{July 1}~~ September 2, 2014.

Utah Code Sections Affected:

AMENDS:

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

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

63I-1-263, as last amended by Laws of Utah 2013, Chapters 28, 62, 101, 167, 250, and 413

ENACTS:

59-9-107, Utah Code Annotated 1953

63M-1-3401, Utah Code Annotated 1953

63M-1-3402, Utah Code Annotated 1953

63M-1-3403, Utah Code Annotated 1953

63M-1-3404, Utah Code Annotated 1953

63M-1-3405, Utah Code Annotated 1953

63M-1-3406, Utah Code Annotated 1953

63M-1-3407, Utah Code Annotated 1953

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63M-1-3408, Utah Code Annotated 1953

63M-1-3409, Utah Code Annotated 1953

63M-1-3410, Utah Code Annotated 1953

63M-1-3411, Utah Code Annotated 1953

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

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

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

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

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

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

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

59-7-102. Exemptions.

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

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

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

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

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

(e) a farmers' cooperative; or

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

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

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

(2) Notwithstanding any other provision in this chapter or Chapter 8, Gross Receipts

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Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, a person not otherwise subject to the tax imposed by this chapter or Chapter 8 is not subject to a tax imposed by Section 59-7-104, 59-7-201, 59-7-701, or 59-8-104, because of:

- (a) that person's ownership of tangible personal property located at the premises of a printer's facility in this state with which the person has contracted for printing; or
- (b) the activities of the person's employees or agents who are:
 - (i) located solely at the premises of a printer's facility; and
 - (ii) performing services:
 - (A) related to:
 - (I) quality control;
 - (II) distribution; or
 - (III) printing services; and
 - (B) performed by the printer's facility in this state with which the person has contracted for printing.

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

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

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

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

(1) As used in this section:

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

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

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

(2) An entity may claim a nonrefundable tax credit against a tax liability under this chapter in accordance with this section if the entity is issued a tax credit certificate by the office under Subsection 63M-1-3403(11). **The office shall issue a tax credit certificate to an entity that is allocated tax credits under Subsection 63M-1-3403(11)(e).**

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

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tax credit certificate issued to the entity for the calendar year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) direct the Health System Reform Task Force to evaluate the issues listed in Subsection (13)(b)(ii), and by January 1, 2013, develop and recommend criteria for the Legislature to use to negotiate the terms of the Health Care Compact; and

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

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

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

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

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in 2014;

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the qualified equity investment that is the basis of the tax credit is certified under

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Section 63M-1-3403 on or before December 31, 2020.

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

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

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

Part 34. Utah Small Business Jobs Act

63M-1-3401. Title.

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

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

63M-1-3402. Definitions.

As used in this part:

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

(2) "Applicable percentage" means:

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

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

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

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

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

(a) the ~~{January 1 immediately following the }~~ date on which the qualified equity investment is initially made; and

(b) ~~{the January 1 immediately following }~~ each of the six anniversary dates of the date ~~{on which the qualified equity investment is initially made}~~ **described in Subsection (4)(a).**

(5) "Federal New Markets Tax Credit Program" means the program created under Section 45D, Internal Revenue Code.

(6) "Long-term debt security" means a debt instrument issued by a qualified community development entity:

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

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and

(b) with no repayment, amortization, or prepayment features before its original maturity date.

~~{ (7) "Pass-through entity" is as defined in Section 59-10-1402.~~

~~— (8) "Pass-through entity taxpayer" is as defined in Section 59-10-1402.~~

‡ (~~19~~7) "Purchase price" means the amount paid to the qualified community development entity that issues a qualified equity investment for the qualified equity investment that may not exceed the amount of qualified equity investment authority certified pursuant to Section 63M-1-3403.

(~~10~~8) (a) "Qualified active low-income community business" is as defined in Section 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses meeting the United States Small Business Administration size eligibility standards established in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is made.

(b) Notwithstanding Subsection (~~10~~8)(a), "qualified active low-income community business" does not include a business that derives or projects to derive 15% or more of its annual revenue from the rental or sale of real estate, unless the business is controlled by or under common control with another business if the second business:

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

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

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

(~~11~~9) (a) "Qualified community development entity" is as defined in Section 45D, Internal Revenue Code, if the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department with respect to credits authorized by Section 45D, Internal Revenue Code, that

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includes Utah within the service area set forth in the allocation agreement.

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

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

(~~12~~10) (a) "Qualified equity investment" means an equity investment in, or long-term debt security issued by, a qualified community development entity that:

(i) is acquired on or after ~~July 1~~September 2, 2014, at its original issuance solely in exchange for cash;

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

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

(b) Notwithstanding Subsection (~~12~~10)(a), "qualified equity investment" includes a qualified equity investment that does not meet the provisions of Subsection (~~12~~10)(a) if the investment was a qualified equity investment in the hands of a prior holder.

(~~13~~11) "Qualified low-income community investment" means a capital or equity investment in, or a loan to, a qualified active low-income community business, except, with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of the business's affiliates, with the proceeds of qualified equity investments certified under Section 63M-1-3403 shall be \$4,000,000, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized on the repaid or redeemed qualified low-income community investments.

(~~14~~12) "Tax credit certificate" is a certificate issued by the office under Subsection 63M-1-3403(11) to an entity eligible for a tax credit under Section 59-9-107 that:

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

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

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

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

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

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

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

(a) evidence of the applicant's certification as a qualified community development entity, including evidence of the service area of the applicant that includes this state;

(b) a copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;

(c) a certificate executed by an executive officer of the applicant attesting that ~~the~~ (i) the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund ~~;~~ and ~~(ii) the applicant is not subject to, or controlled by an entity subject to the requirements of 12 U.S.C. Sec. 2901 et seq.;~~

(d) a description of the proposed amount, structure, and purchaser of the qualified equity investment;

(e) examples of the types of qualified active low-income businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the Federal New Markets Tax Credit Program, except that when submitting an application an applicant is not required to identify qualified active low-income community businesses in which the applicant will invest;

(f) the amount of qualified equity investment authority the applicant agrees to designate as a federal qualified equity investment under Section 45D, Internal Revenue Code, including a copy of the screen shot from the Community Development Financial Institutions

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Fund's Allocation Tracking System of the applicant's remaining federal qualified equity investment authority;

~~— (g) a nonrefundable application fee of \$5,000 paid to the office for each application submitted;~~ and

~~(h)g~~ if applicable, the refundable performance deposit required by Subsection 63M-1-3406(1).

(2) (a) Within 30 days after receipt of a completed application containing the information set forth in Subsection (1), including ~~the payment of the application fee and~~, if applicable, the refundable performance deposit, the office shall grant or deny the application in full or in part.

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

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

(i) the application is denied;

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

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

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

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

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

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

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

~~(c) b~~ The office shall provide written notice of the certification to the qualified

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community development entity.

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

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

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

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

(6) (a) The office shall certify ~~100~~50,000,000 in qualified equity investments pursuant to this section. If a pending request cannot be fully certified due to this limit, the office shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

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

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

(7) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or a subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify the office of

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the transfer with the notice set forth in Subsection (8) and include with the notice the information required in the application with respect to the transferee.

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

(i) issue the qualified equity investment;

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

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

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

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

(i) receive the cash investment;

(ii) issue the qualified equity investment; and

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

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

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

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

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

(e) (i) The office shall:

(A) calculate an annual fee to be paid by each applicant certified pursuant to Subsection (6)(a), regardless of the number of transferees under Subsection (7), by dividing

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\$70,000 by the number of applications certified pursuant to Subsection (6)(a); and

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

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

(iii) An annual fee may not be required once a qualified community development entity together with all transferees under Subsection (7) have decertified all qualified equity investments in accordance with Subsection 63M-1-3407(2).

(iv) To maintain an aggregate annual fee of \$70,000 for all qualified community development entities, the office shall recalculate the annual fee as needed upon:

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

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

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

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

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

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

(i) pursuant to an allocation of tax credits;

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

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

(b) The office may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the form and content of the notice required under this Subsection (10).

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

(i) makes a qualified equity investment; and

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

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

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

(d) The **office shall calculate the** tax credit amount ~~is equal to an amount calculated by the office as follows, the office shall:~~

~~—— (i) multiply} **and the tax credit amount shall be equal to** the applicable percentage for the credit allowance date **multiplied** by the purchase price paid to the qualified community development entity for the qualified equity investment ~~}; and}.~~~~

~~(~~ii~~)~~e~~ ~~if the entity that makes a qualified equity investment is a pass-through entity, allocate the amount calculated under Subsection (11)(d)(i) to the pass-through entity taxpayers} **A tax credit allowed to a partnership, limited liability company, or S-corporation shall be allocated to the partners, members, or shareholders of the partnership, limited liability company, or S-corporation for the partners', members', or shareholders' direct use** in accordance with the ~~agreement among the pass-through entity taxpayers as provided in Subsection (11)(e).~~~~~~

~~—— (c) A tax credit claimed by a pass-through entity shall be allocated to a pass-through entity taxpayer in accordance with the} **provisions of any** agreement among the ~~pass-through~~~~

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entity taxpayers. An allocation under this Subsection (11)(e) is not considered a violation of Subsection (11)(f); partners, members, or shareholders.

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

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

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

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

Section 8. Section **63M-1-3404** is enacted to read:

63M-1-3404. Recapture.

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

(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

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

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

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

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

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

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

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

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63M-1-3405. Notice of noncompliance.

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

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

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

Performance Guarantee Account.

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

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

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

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

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

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

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

(ii) the qualified community development entity or any subsidiary qualified community

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development entity that issues a qualified equity investment certified under this part fails to make qualified low-income community investments in qualified active low-income community businesses in Utah equal to at least 85% of the purchase price of the qualified equity investment by the second credit allowance date of such qualified equity investment.

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

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

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

~~— (a) has had proposed qualified equity investments certified under Section 63M-1-3403; and~~

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

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

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

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

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

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

(ii) 50% of the purchase price of the qualified equity investments issued by the

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qualified community development entity.

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

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

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

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

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

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

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

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

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

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

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

63M-1-3408. Limitation on fees.

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

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

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

63M-1-3409. New capital requirement.

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

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

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

(2) For purposes of this section, a qualified community development entity may not be considered an affiliate of a qualified active low-income community business solely as a result

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of its qualified low-income community investment in the business.

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

63M-1-3410. Reporting.

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

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

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

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

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

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

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

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

63M-1-3411. Scope of part.

This part applies only to a return or report originally due on or after ~~July 1~~ September 2, 2014.

Section 16. **Appropriation.**

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

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To Governor's Office of Economic Development - Business Development

From Dedicated Credits Revenue

\$70,000

Schedule of Programs:

Corporate Recruitment and Business Services

\$70,000

Section 17. Effective date.

~~{This bill; (1) Except as provided in Subsection (2), this bill takes effect on September 2, 2014.~~

(2) Uncodified Section 16, Appropriation, takes effect on July 1, 2014.

†

Legislative Review Note

~~as of 2-21-14 9:47 AM~~

~~Office of Legislative Research and General Counsel}~~