

Representative Brad R. Wilson proposes the following substitute bill:

UTAH SMALL BUSINESS JOBS ACT

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: Brad R. Wilson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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



- 26 • imposing new capital requirements;
- 27 • requiring reporting;
- 28 • requiring revenue impact assessment; and
- 29 ▶ makes technical and conforming amendments.

30 Money Appropriated in this Bill:

31 This bill appropriates in fiscal year 2015:

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

35 Other Special Clauses:

36 This bill takes effect on September 2, 2014.

37 Utah Code Sections Affected:

38 AMENDS:

- 39 **31A-3-102**, as last amended by Laws of Utah 1994, Chapter 243
- 40 **59-7-102**, as last amended by Laws of Utah 2012, Chapter 369
- 41 **63I-1-263**, as last amended by Laws of Utah 2013, Chapters 28, 62, 101, 167, 250, and
- 42 413

43 ENACTS:

- 44 **59-9-107**, Utah Code Annotated 1953
- 45 **63M-1-3401**, Utah Code Annotated 1953
- 46 **63M-1-3402**, Utah Code Annotated 1953
- 47 **63M-1-3403**, Utah Code Annotated 1953
- 48 **63M-1-3404**, Utah Code Annotated 1953
- 49 **63M-1-3405**, Utah Code Annotated 1953
- 50 **63M-1-3406**, Utah Code Annotated 1953
- 51 **63M-1-3407**, Utah Code Annotated 1953
- 52 **63M-1-3408**, Utah Code Annotated 1953
- 53 **63M-1-3409**, Utah Code Annotated 1953
- 54 **63M-1-3410**, Utah Code Annotated 1953
- 55 **63M-1-3411**, Utah Code Annotated 1953
- 56 **63M-1-3412**, Utah Code Annotated 1953

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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 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

88 printer's facility in this state with which the person has contracted for printing; or

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

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

91 (ii) performing services:

92 (A) related to:

93 (I) quality control;

94 (II) distribution; or

95 (III) printing services; and

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

98 (3) Notwithstanding Subsection (1), an organization, company, authority, farmers'
99 cooperative, or public agency exempt from this chapter under Subsection (1) is subject to Part
100 8, Unrelated Business Income, to the extent provided in Part 8.

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

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

105 **59-9-107. Nonrefundable small business jobs credit.**

106 (1) As used in this section:

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

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

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

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

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

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

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

118 (b) the amount of the tax credit exceeds the entity's tax liability under this chapter for

119 that calendar year.

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

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

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

127 **63I-1-263. Repeal dates, Titles 63A to 63M.**

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

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

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

132 (4) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July
133 1, 2018.

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

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

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

138 (8) Subsection **63G-6a-1402**(7) authorizing certain transportation agencies to award a
139 contract for a design-build transportation project in certain circumstances, is repealed July 1,
140 2015.

141 (9) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
142 2020.

143 (10) The Resource Development Coordinating Committee, created in Section
144 **63J-4-501**, is repealed July 1, 2015.

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

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

148 (b) Subject to Subsection (12)(c), Sections **59-7-610** and **59-10-1007** regarding tax
149 credits for certain persons in recycling market development zones, are repealed for taxable

150 years beginning on or after January 1, 2021.

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

152 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
153 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

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

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

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

159 (ii) (A) for the purchase price of machinery or equipment described in Section
160 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31,
161 2020; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

205 (i) the person is entitled to a tax credit under Section 59-9-107 on or before December
206 31, 2020; and

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

209 ~~[(14)]~~ (15) The Crime Victim Reparations and Assistance Board, created in Section
210 63M-7-504, is repealed July 1, 2017.

211 ~~[(15)]~~ (16) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1,

212 2017.

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

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

215 **63M-1-3401. Title.**

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

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

218 **63M-1-3402. Definitions.**

219 As used in this part:

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

223 (2) "Applicable percentage" means:

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

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

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

227 (3) "Community Development Financial Institutions Fund" means the fund created in
228 12 U.S.C. Sec. 4703.

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

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

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

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

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

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

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

240 (7) "Purchase price" means the amount paid to the qualified community development
241 entity that issues a qualified equity investment for the qualified equity investment that may not
242 exceed the amount of qualified equity investment authority certified pursuant to Section

243 [63M-1-3403.](#)

244 (8) (a) "Qualified active low-income community business" is as defined in Section
245 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses
246 meeting the United States Small Business Administration size eligibility standards established
247 in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is
248 made.

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

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

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

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

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

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

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

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

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

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

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

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

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

294 (12) "Tax credit certificate" is a certificate issued by the office under Subsection
295 [63M-1-3403](#)(11) to an entity eligible for a tax credit under Section [59-9-107](#) that:

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

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

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

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

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

302 **63M-1-3403. Certification of qualified equity investments -- Issuance of tax credit**
303 **related certificates.**

304 (1) A qualified community development entity that seeks to have an equity investment

305 or long-term debt security certified as a qualified equity investment and as eligible for tax
306 credits under Section 59-9-107 shall apply to the office. The office shall begin accepting
307 applications on September 2, 2014. The qualified community development entity shall include
308 the following in the qualified community development entity's application:

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

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

313 (c) a certificate executed by an executive officer of the applicant attesting that:

314 (i) the applicant or its controlling entity has received more than one allocation of
315 qualified equity investment authority under the Federal New Markets Tax Credit Program; and

316 (ii) the allocation agreement submitted with the application remains in effect and has
317 not been revoked or cancelled by the Community Development Financial Institutions Fund;

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

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

325 (f) the amount of qualified equity investment authority the applicant agrees to
326 designate as a federal qualified equity investment under Section 45D, Internal Revenue Code,
327 including a copy of the screen shot from the Community Development Financial Institutions
328 Fund's Allocation Tracking System of the applicant's remaining federal qualified equity
329 investment authority;

330 (g) if applicable, the refundable performance deposit required by Subsection
331 63M-1-3406(1);

332 (h) a copy of a certificate of qualified equity investment authority under another state's
333 new markets tax credit program; and

334 (i) evidence that the applicant, its controlling entity, and subsidiary qualified
335 community development entities of the controlling entity have collectively made at least

336 \$40,000,000 in qualified low-income community investments under the Federal New Markets
337 Tax Credit Program with a maximum qualified low-income community investment size of
338 \$4,000,000 per qualified active low-income community business under the Federal New
339 Markets Tax Credit Program.

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

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

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

349 (i) the application is denied;

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

351 (iii) the office shall return any refundable performance deposit required by Subsection
352 63M-1-3406(1).

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

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

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

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

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

367 equity investments requested in an application to be designated as federal qualified equity
368 investments to the total amount of qualified equity investments to be designated as federal
369 qualified equity investments requested in all applications received on the same day.

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

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

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

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

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

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

392 (i) issue the qualified equity investment;

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

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

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

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

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

404 (i) receive the cash investment;

405 (ii) issue the qualified equity investment; and

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

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

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

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

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

416 (e) (i) The office shall:

417 (A) calculate an annual fee to be paid by each applicant certified pursuant to
418 Subsection (3)(a), regardless of the number of transferees under Subsection (7), by dividing
419 \$100,000 by the number of applications certified pursuant to Subsection (3)(a); and

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

421 (ii) The initial annual fee shall be due and payable to the office with the evidence of
422 receipt of cash investment set forth in Subsection (8)(b). After the initial annual fee, an annual
423 fee shall be due and payable to the office with each report submitted pursuant to Section
424 [63M-1-3410](#).

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

428 (iv) To maintain an aggregate annual fee of \$100,000 for all qualified community

429 development entities, the office shall recalculate the annual fee as needed upon:

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

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

432 (C) the decertification of qualified equity investments pursuant to Subsection

433 [63M-1-3407\(2\)](#).

434 (v) An annual fee collected under this Subsection (8)(e) shall be deposited into the

435 General Fund as a dedicated credit for use by the office to implement this part.

436 (9) A qualified community development entity that issues a debt instrument described

437 in Subsection [63M-1-3402\(6\)](#) may not make cash interest payments on the debt instrument

438 during the period beginning on the date of issuance and ending on the final credit allowance

439 date in an amount that exceeds the cumulative operating income, as defined by regulations

440 adopted under Section 45D, Internal Revenue Code, of the qualified community development

441 entity for that period before giving effect to the interest expense of the long-term debt security.

442 This Subsection (9) does not limit the holder of the debt instrument's ability to accelerate

443 payments on the debt instrument in situations when the qualified community development

444 entity has defaulted on covenants designed to ensure compliance with this part or Section 45D,

445 Internal Revenue Code.

446 (10) (a) A qualified community development entity that issues qualified equity

447 investments shall notify the office of the names of the entities that are eligible to use tax credits

448 under this section and Section [59-9-107](#):

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

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

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

452 (b) The office may by rule, made in accordance with Title 63G, Chapter 3, Utah

453 Administrative Rulemaking Act, provide for the form and content of the notice required under

454 this Subsection (10).

455 (11) (a) An entity may claim a tax credit under Section [59-9-107](#) against tax liability

456 under Title 59, Chapter 9, Taxation of Admitted Insurers, if the entity:

457 (i) makes a qualified equity investment; and

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

459 (b) For each calendar year, beginning with calendar year 2016, an entity is eligible for a

460 tax credit under this section and Section 59-9-107, the office shall issue to the entity a tax
461 credit certificate for use after January 1, 2017, and provide the State Tax Commission a copy of
462 the tax credit certificate.

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

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

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

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

475 (12) (a) An entity that claims a tax credit under Section 59-9-107 and this section shall
476 provide the office with a document that expressly directs and authorizes the State Tax
477 Commission to disclose the entity's tax returns and other information concerning the entity that
478 are required by the office and that would otherwise be subject to confidentiality under Section
479 59-1-403 or Section 6103, Internal Revenue Code, to the office.

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

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

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

487 **63M-1-3404. Recapture.**

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

490 (a) If any amount of a federal tax credit available with respect to a qualified equity

491 investment that is eligible for a tax credit under this part is recaptured under Section 45D,
492 Internal Revenue Code, the office may recapture the tax credit in an amount that is
493 proportionate to the federal recapture with respect to the qualified equity investment.

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

498 (c) (i) If the qualified community development entity fails to invest an amount equal to
499 85% of the purchase price of the qualified equity investment in qualified low-income
500 community investments in Utah within 12 months of the issuance of the qualified equity
501 investment and maintains at least 85% of the level of investment in qualified low-income
502 community investments in Utah until the last credit allowance date for the qualified equity
503 investment, the office may recapture the tax credit.

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

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

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

520 (d) If a qualified community development entity makes a distribution or debt payment
521 in violation of Subsection [63M-1-3407\(1\)](#), the office may recapture the tax credit.

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

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

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

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

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

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

533 **63M-1-3405. Notice of noncompliance.**

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

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

540 **63M-1-3406. Refundable performance deposit -- Small Business Jobs**
541 **Performance Guarantee Account.**

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

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

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

552 (iii) At the end of a fiscal year, any amount in the Small Business Jobs Performance

553 Guarantee Account that a qualified community development entity forfeits under this section is
554 to be transferred to the General Fund.

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

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

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

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

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

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

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

579 **63M-1-3407. 150% investment requirement -- Ceasing of certification.**

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

582 (b) Until such time as the qualified equity investments issued by a qualified community
583 development entity are no longer certified, the qualified community development entity may

584 not distribute to its equity holders or make cash payments on long-term debt securities that
585 have been certified as qualified equity investments in an amount that exceeds the sum of:

586 (i) the cumulative operating income, as defined by regulations adopted under Section
587 45D, Internal Revenue Code, earned by the qualified community development entity since
588 issuance of the qualified equity investment, before giving effect to any interest expense from
589 long-term debt securities certified as qualified equity investments; and

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

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

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

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

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

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

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

612 (4) A qualified community development entity shall file a request for ceasing
613 certification of a qualified equity investment in a form, provided by the office, that establishes
614 that the qualified community development entity has met the requirements of Subsection (2)

615 along with evidence supporting the request for ceasing certification. Subsection (2)(b) shall be
616 considered to be met if no recapture action has been commenced by the office as of the seventh
617 credit allowance date.

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

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

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

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

625 **63M-1-3408. Limitation on fees.**

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

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

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

637 **63M-1-3409. New capital requirement.**

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

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

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

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

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

655 **63M-1-3410. Reporting.**

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

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

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

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

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

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

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

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

675 **63M-1-3411. Revenue impact assessment.**

676 (1) Before making a qualified low-income community investment, a qualified

677 community development entity shall submit to the office a revenue impact assessment prepared
678 using a nationally recognized economic development model that demonstrates that the
679 qualified low-income community investment will have a revenue positive impact on the state
680 over 10 years against the 58% tax credit utilization over the same 10-year period.

681 (2) The office must notify the qualified community development entity within five
682 business days if the qualified low-income community investment does not have a revenue
683 positive impact on the state over 10 years against the 58% tax credit utilization over the same
684 10-year period using the revenue impact assessment submitted.

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

689 Section 16. Section **63M-1-3412** is enacted to read:

690 **63M-1-3412. Scope of part.**

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

692 Section 17. **Appropriation.**

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

698 To Governor's Office of Economic Development - Business Development
699 From Dedicated Credits Revenue \$100,000

700 Schedule of Programs:

701 Corporate Recruitment and Business Services \$100,000

702 Section 18. **Effective date.**

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

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