

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: 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; and
- 27 • requiring reporting; and
- 28 ▶ makes technical and conforming amendments.

29 **Money Appropriated in this Bill:**

30 This bill appropriates in fiscal year 2015:

- 31 ▶ to the Governor's Office of Economic Development - Business Development, as an
- 32 ongoing appropriation:
- 33 • from Dedicated Credits Revenue, \$70,000.

34 **Other Special Clauses:**

35 This bill takes effect on September 2, 2014.

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **31A-3-102**, as last amended by Laws of Utah 1994, Chapter 243
- 39 **59-7-102**, as last amended by Laws of Utah 2012, Chapter 369
- 40 **63I-1-263**, as last amended by Laws of Utah 2013, Chapters 28, 62, 101, 167, 250, and
- 41 413

42 ENACTS:

- 43 **59-9-107**, Utah Code Annotated 1953
- 44 **63M-1-3401**, Utah Code Annotated 1953
- 45 **63M-1-3402**, Utah Code Annotated 1953
- 46 **63M-1-3403**, Utah Code Annotated 1953
- 47 **63M-1-3404**, Utah Code Annotated 1953
- 48 **63M-1-3405**, Utah Code Annotated 1953
- 49 **63M-1-3406**, Utah Code Annotated 1953
- 50 **63M-1-3407**, Utah Code Annotated 1953
- 51 **63M-1-3408**, Utah Code Annotated 1953
- 52 **63M-1-3409**, Utah Code Annotated 1953
- 53 **63M-1-3410**, Utah Code Annotated 1953
- 54 **63M-1-3411**, Utah Code Annotated 1953

55

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

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

58 **31A-3-102. Exclusive fees and taxes.**

59 (1) The taxes and fees under this chapter, the premium taxes under Sections 59-9-101
60 through 59-9-104, the fees under Section 31A-31-108, and the examination costs under Section
61 31A-2-205 are in place of all other license fees or assessments that might otherwise be levied
62 by the state or any other taxing body within the state.

63 (2) An insurer that [~~pays~~] is subject to premium taxes under Sections 59-9-101 through
64 59-9-104 is not subject to corporate franchise taxes.

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

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

68 **59-7-102. Exemptions.**

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

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

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

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

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

76 (e) a farmers' cooperative; or

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

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

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

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

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

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

88 (i) located solely at the premises of a printer's facility; and
89 (ii) performing services:
90 (A) related to:
91 (I) quality control;
92 (II) distribution; or
93 (III) printing services; and
94 (B) performed by the printer's facility in this state with which the person has contracted
95 for printing.

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

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

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

103 **59-9-107. Nonrefundable small business jobs credit.**

104 (1) As used in this section:

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

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

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

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

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

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

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

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

118 (5) An entity required to pay a retaliatory tax levied under this chapter for a reason

119 other than claiming the tax credit may claim the tax credit after the retaliatory tax amount is
120 calculated, and the tax credit may be used to offset retaliatory tax liability.

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

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

125 **63I-1-263. Repeal dates, Titles 63A to 63M.**

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

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

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

130 (4) Title 63C, Chapter 4a, Constitutional and Federalism Defense Act, is repealed July
131 1, 2018.

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

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

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

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

139 (9) Title 63H, Chapter 4, Heber Valley Historic Railroad Authority, is repealed July 1,
140 2020.

141 (10) The Resource Development Coordinating Committee, created in Section
142 **63J-4-501**, is repealed July 1, 2015.

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

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

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

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

150 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
151 59-10-1007, if the machinery or equipment is purchased on or after January 1, 2021; or

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

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

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

157 (ii) (A) for the purchase price of machinery or equipment described in Section
158 59-7-610 or 59-10-1007, the machinery or equipment is purchased on or before December 31,
159 2020; or

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

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

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

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

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

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

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

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

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

179 (D) whether the compact's calculation of current year inflation adjustment factor,
180 without consideration of the regional medical inflation rate in the current year, is adequate to

181 protect the state from increased costs associated with administering a state based Medicaid and
182 a state based Medicare program;

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

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

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

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

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

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

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

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

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

203 (i) the person is entitled to a tax credit under Section 59-9-107 on or before December
204 31, 2020; and

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

207 ~~[(14)]~~ (15) The Crime Victim Reparations and Assistance Board, created in Section
208 63M-7-504, is repealed July 1, 2017.

209 ~~[(15)]~~ (16) Title 63M, Chapter 11, Utah Commission on Aging, is repealed July 1,
210 2017.

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

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

213 **63M-1-3401. Title.**

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

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

216 **63M-1-3402. Definitions.**

217 As used in this part:

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

221 (2) "Applicable percentage" means:

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

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

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

225 (3) "Community Development Financial Institutions Fund" means the fund created in
226 12 U.S.C. Sec. 4703.

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

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

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

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

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

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

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

238 (7) "Purchase price" means the amount paid to the qualified community development
239 entity that issues a qualified equity investment for the qualified equity investment that may not
240 exceed the amount of qualified equity investment authority certified pursuant to Section
241 63M-1-3403.

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

243 45D, Internal Revenue Code, and 26 C.F.R. Sec. 1.45D-1, but is limited to those businesses
244 meeting the United States Small Business Administration size eligibility standards established
245 in 13 C.F.R. Sec. 121.101-201 at the time the qualified low-income community investment is
246 made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

302 (1) A qualified community development entity that seeks to have an equity investment
303 or long-term debt security certified as a qualified equity investment and as eligible for tax
304 credits under Section [59-9-107](#) shall apply to the office. The office shall begin accepting

305 applications on September 2, 2014. The qualified community development entity shall include
306 the following in the qualified community development entity's application:

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

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

311 (c) a certificate executed by an executive officer of the applicant attesting that the
312 allocation agreement remains in effect and has not been revoked or cancelled by the
313 Community Development Financial Institutions Fund;

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

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

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

326 (g) if applicable, the refundable performance deposit required by Subsection
327 [63M-1-3406\(1\)](#).

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

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

335 (c) If the applicant fails to provide the information or complete its application within

336 the 15-day period:

337 (i) the application is denied;

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

339 (iii) the office shall return any refundable performance deposit required by Subsection

340 63M-1-3406(1).

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

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

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

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

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

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

364 (6) (a) The office shall certify \$50,000,000 in qualified equity investments pursuant to
365 this section. If a pending request cannot be fully certified due to this limit, the office shall
366 certify the portion that may be certified unless the qualified community development entity

367 elects to withdraw its request rather than receive partial certification.

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

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

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

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

380 (i) issue the qualified equity investment;

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

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

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

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

392 (i) receive the cash investment;

393 (ii) issue the qualified equity investment; and

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

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

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

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

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

404 (e) (i) The office shall:

405 (A) calculate an annual fee to be paid by each applicant certified pursuant to
 406 Subsection ~~Ŝ~~ → ~~[(6)] (3) ← Ŝ (a), regardless of the number of transferees under Subsection (7), by~~
 406a dividing

407 \$70,000 by the number of applications certified pursuant to Subsection ~~Ŝ~~ → ~~[(6)] (3) ← Ŝ (a); and~~

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

409 (ii) The initial annual fee shall be due and payable to the office with the evidence of
 410 receipt of cash investment set forth in Subsection (8)(b). After the initial annual fee, an annual
 411 fee shall be due and payable to the office with each report submitted pursuant to Section
 412 [63M-1-3410](#).

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

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

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

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

420 (C) the decertification of qualified equity investments pursuant to Subsection
 421 [63M-1-3407\(2\)](#).

422 (v) An annual fee collected under this Subsection (8)(e) shall be deposited in ~~Ŝ~~ → to ← Ŝ the
 423 General Fund as a dedicated credit for use by the office to implement this ~~Ŝ~~ → ~~[chapter] part ← Ŝ~~ .

424 (9) A qualified community development entity that issues a debt instrument described
 425 in Subsection [63M-1-3402\(6\)](#) may not make cash interest payments on the debt instrument
 426 during the period beginning on the date of issuance and ending on the final credit allowance
 427 date in an amount that exceeds the cumulative operating income, as defined by regulations
 428 adopted under Section 45D, Internal Revenue Code, of the qualified community development

429 entity for that period before giving effect to the interest expense of the long-term debt security.
430 This Subsection (9) does not limit the holder of the debt instrument's ability to accelerate
431 payments on the debt instrument in situations when the qualified community development
432 entity has defaulted on covenants designed to ensure compliance with this part or Section 45D,
433 Internal Revenue Code.

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

- 437 (i) pursuant to an allocation of tax credits;
438 (ii) pursuant to a change in allocation of tax credits; or
439 (iii) due to a transfer of a qualified equity investment.

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

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

- 445 (i) makes a qualified equity investment; and
446 (ii) obtains a tax credit certificate in accordance with Subsection (11)(b).

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

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

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

458 (e) A tax credit allowed to a partnership, limited liability company, or S-corporation
459 shall be allocated to the partners, members, or shareholders of the partnership, limited liability

460 company, or S-corporation for the partners', members', or shareholders' direct use in accordance
461 with the provisions of any agreement among the partners, members, or shareholders.

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

463 (12) (a) An entity that claims a tax credit under Section 59-9-107 and this section shall
464 provide the office with a document that expressly directs and authorizes the State Tax
465 Commission to disclose the entity's tax returns and other information concerning the entity that
466 are required by the office and that would otherwise be subject to confidentiality under Section
467 59-1-403 or Section 6103, Internal Revenue Code, to the office.

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

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

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

475 **63M-1-3404. Recapture.**

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

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

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

486 (c) (i) If the qualified community development entity fails to invest an amount equal to
487 85% of the purchase price of the qualified equity investment in qualified low-income
488 community investments in Utah within 12 months of the issuance of the qualified equity
489 investment and maintains at least 85% of the level of investment in qualified low-income
490 community investments in Utah until the last credit allowance date for the qualified equity

491 investment, the office may recapture the tax credit.

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

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

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

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

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

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

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

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

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

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

521 **63M-1-3405. Notice of noncompliance.**

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

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

528 **63M-1-3406. Refundable performance deposit -- Small Business Jobs**
529 **Performance Guarantee Account.**

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

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

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

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

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

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

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

551 (ii) the qualified community development entity or any subsidiary qualified community
552 development entity that issues a qualified equity investment certified under this part fails to

553 make qualified low-income community investments in qualified active low-income community
554 businesses in Utah equal to at least 85% of the purchase price of the qualified equity
555 investment by the second credit allowance date of such qualified equity investment.

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

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

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

567 **63M-1-3407. 150% investment requirement -- Ceasing of certification.**

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

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

574 (i) the cumulative operating income, as defined by regulations adopted under Section
575 45D, Internal Revenue Code, earned by the qualified community development entity since
576 issuance of the qualified equity investment, before giving effect to any interest expense from
577 long-term debt securities certified as qualified equity investments; and

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

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

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

583 (b) the qualified community development entity issuing the qualified equity investment

584 has been in compliance with Section 63M-1-3404 through its seventh credit allowance date,
585 including any cures under Section 63M-1-3405;

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

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

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

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

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

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

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

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

613 **63M-1-3408. Limitation on fees.**

614 (1) A qualified community development entity or purchaser of a qualified equity

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

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

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

625 **63M-1-3409. New capital requirement.**

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

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

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

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

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

643 **63M-1-3410. Reporting.**

644 (1) A qualified community development entity that issues qualified equity investments
645 shall submit a report to the office within the first five business days after the first anniversary

646 of the initial credit allowance date that provides documentation as to the investment of 85% of
647 the purchase price in qualified low-income community investments in qualified active
648 low-income community businesses located in Utah. The report shall include:

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

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

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

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

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

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

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

663 **63M-1-3411. Scope of part.**

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

665 Section 16. **Appropriation.**

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

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

672 From Dedicated Credits Revenue \$70,000

673 Schedule of Programs:

674 Corporate Recruitment and Business Services \$70,000

675 Section 17. **Effective date.**

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

677

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