

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

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SENATE DRS75246-MC-129 (03/14)

Short Title: New Markets Jobs Act. (Public)

Sponsors: Senator Gunn (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO ENACT NEW MARKETS JOBS INITIATIVE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 3L.

"North Carolina New Markets Jobs Initiative.

"§ 105-129.100. Short title.

The provisions of this section shall be known as and may be cited as the "North Carolina New Markets Jobs Initiative."

"§ 105-129.101. Definitions.

The following definitions apply in this Article:

- (1) Applicable percentage. – Zero percent (0%) for the first two credit allowance dates, twelve percent (12%) for the next three credit allowance dates, and eleven percent (11%) for the following two credit allowance dates.
- (2) Credit allowance date. – With respect to any qualified equity investment, the date on which the investment is initially made and each of the six anniversary dates thereafter.
- (3) Department. – The Department of Commerce.
- (4) Long-term debt security. – Any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations adopted under section 45D of the Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the expense of such cash interest payments. The foregoing shall in no way limit the holder's ability to accelerate payments on the debt instrument in situations where the issuer has defaulted on covenants designed to ensure compliance with this section or section 45D of the Internal Revenue Code of 1986, as amended.
- (5) Purchase price. – The amount paid to the issuer of a qualified equity investment for such qualified equity investment.



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- (6) Qualified active low-income community business. – Defined in section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. § 1.45D-1. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in or loan to the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by or under common control with another business if the second business (i) does not derive or project to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate and (ii) is the primary tenant of the real estate leased from the first business.
- (7) Qualified community development entity. – The meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. § 1.45D-1 but limited to those businesses meeting the SBA size eligibility standards established in 13 C.F.R. § 121.101-201 at the time the qualified low-income community investment is made. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in or loan to the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the SBA size standards, throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by or under common control with another business if the second business (i) does not derive or project to derive fifteen percent (15%) or more of its annual revenue from the rental or sale of real estate and (ii) is the primary tenant of the real estate leased from the first business.
- (8) Qualified community development entity. – The meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into, for the current year or any prior year, an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Treasury Department with respect to credits authorized by section 45D of the Internal Revenue Code of 1986, as amended, which includes the State of North Carolina within the service area set forth in the allocation agreement. The term shall include subsidiary community development entities of any qualified community development entity.
- (9) Qualified equity investment. – Any equity investment in or long-term debt security issued by a qualified community development entity that meets each of the following requirements:
- a. Is acquired after the effective date of this act at its original issuance solely in exchange for cash.
 - b. Has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments

in qualified active low-income community businesses located in this State by the first anniversary of the initial credit allowance date.

c. Is designated by the issuer as a qualified equity investment under this subdivision and is certified by the Department as not exceeding the limitation contained in subdivision (5) of this section. This term shall include any qualified equity investment that does not meet the provisions of sub-subdivision a. of this subdivision if such investment was a qualified equity investment in the hands of a prior holder.

(10) Qualified low-income community investment. – Any capital or equity investment in or loan to any qualified active low-income community business.

(11) Secretary. – The Secretary of Commerce.

(12) State premium tax liability. – Any liability incurred by any entity under the gross premiums tax or the retaliatory premium tax levied in Article 8B of this Chapter, or, if the tax liability under the gross premiums tax or the retaliatory premium tax levied in Article 8B of this Chapter is eliminated or reduced, the term shall also mean any tax liability imposed on an insurance company or other person that had premium tax liability under the laws of this State.

"§ 105-129.102. Credit for qualified equity investment.

(a) Credit Established. – A person that makes a qualified equity investment earns a vested right to a tax credit against the person's State premium tax liability on a premium tax report filed under this Article. On each credit allowance date of the qualified equity investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a portion of the tax credit during the taxable year including the credit allowance date. The tax credit amount is equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment. The amount of the tax credit claimed by a taxpayer shall not exceed the amount of such taxpayer's State tax liability for the tax year for which the tax credit is claimed. Any amount of tax credit that the taxpayer is prohibited from claiming in a taxable year as a result of this section may be carried forward for use in any subsequent taxable year.

(b) Transferability. – Tax credits earned by a partnership, limited liability company, S-corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders. Such allocation shall be not considered a sale for purposes of this section.

(c) Certification of qualified equity investments. – A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this section shall apply to the Department. The qualified community development entity must submit an application on a form that the Department provides that includes each of the following:

(1) Evidence of the entity's certification as a qualified community development entity, including evidence of the service area of the entity that includes this State.

(2) A copy of the allocation agreement executed by the entity or its controlling entity and the Community Development Financial Institutions Fund.

(3) A certificate executed by an executive officer of the entity (i) attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund and

(ii) stating the cumulative amount of allocations awarded to the entity by the Community Development Financial Institutions Fund.

(4) A description of the proposed amount, structure, and purchaser of the qualified equity investment.

(5) Identifying information for any known taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment.

(6) Examples of the types of qualified active low-income businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the Federal New Markets Tax Credit Program. Applications are not required to identify qualified active low-income community businesses in which they will invest when submitting an application.

(7) A nonrefundable application fee of five thousand dollars (\$5,000).

(8) The refundable performance fee required by G.S. 105-129.104.

(d) A qualified community development entity, on an aggregate basis with all of its subsidiary qualified community development entities, may not apply to have equity investment or long-term debt instruments designated as qualified equity investments under this section in excess of the total amount of allocations awarded to the application and its subsidiary qualified community development entities by the Community Development Financial Institutions Fund under section 45D of the Internal Revenue Code.

Within 30 days after receipt of a completed application containing the information necessary for the Department to certify a potential qualified equity investment, including the payment of the application fee, the Department shall grant or deny the application in full or in part. If the Department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application is denied and must be resubmitted in full with a new submission date.

If the application is deemed complete, the Department shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this section, subject to the limitations contained in this subsection. The Department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to this section, the qualified community development entity shall notify the Department of such change.

Once the Department has certified a qualified equity investment, the qualified community development entity may suballocate all or any portion of the amount of the certified equity investment to one or more qualified community development entities with the same controlling entity as the applicant qualified community development entity, provided that the applicant qualified community development entity files a notice of such suballocation with the Department and the recipient of the suballocation meets all the requirements of a qualified community development entity under this section. The notice of suballocation shall include the information required in the application for all suballocates.

The Department shall certify qualified equity investments in the order applications are received by the Department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Department shall certify, consistent with remaining tax credit capacity, qualified equity

investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

The Department shall certify five hundred million dollars (\$500,000,000) in qualified equity investment. If a pending request cannot be fully certified due to this limit, the Department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

Within 30 days after receiving notice of certification, the qualified community development entity or any transferee under this section shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee must provide the Department with evidence of the receipt of the cash investment within 10 business days after receipt. If the qualified community development entity or transferee does not receive the cash investment and issue the qualified equity investment within 30 days following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Department for certification. A certification that lapses reverts back to the Department and may be reissued pro rata to other applicants whose qualified equity investment allocations were reduced under this section and thereafter in accordance with the application process.

(e) Recapture. – The Department shall recapture from the taxpayer that claimed the credit on a return the tax credit allowed under this section if any of the following occurs:

- (1) Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under section 45D of the Internal Revenue Code of 1986, as amended. In such case, the Department's recapture shall be proportionate to the federal recapture with respect to such qualified equity investment.
- (2) The issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment. In such case, the Department's recapture shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment.
- (3) The issuer fails to invest at least eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income investments in the State within 12 months of the issuance of the qualified equity investment and maintain such level of investment in qualified low-income community investments in the State until the last credit allowance date for the qualified equity investment. For purposes of this section, an investment shall be considered held by an issuer even if the investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of such capital. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the earlier of (i) the sixth anniversary of the issuance of the qualified equity investment or (ii) the date by which a qualified community development entity has made qualified low-income community investment with the proceeds of the qualified equity investment on a cumulative basis equal to at least one hundred fifty percent (150%) of the proceeds, and the qualified low-income community investment shall be considered held by the issuer through the seventh anniversary of the qualified equity investment's issuance.

(4) At any time prior to the final credit allowance date of a qualified equity investment, the proceeds were used to make qualified low-income equity investments in any one qualified active low-income community businesses, including affiliated qualified active low-income community businesses, exclusive of reinvestments of capital returned or repaid with respect to earlier investments in the qualified active low-income community business and its affiliates, in excess of twenty-five percent (25%) of the cash proceeds.

"§ 105-129.103. Notice of noncompliance.

Enforcement of the recapture under this Article shall not occur until the qualified community development entity shall have been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

"§ 105-129.104. Refundable performance fee.

(a) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this Article shall pay a fee in the amount of one-half of one percent (.5%) of the amount of the equity investment or long-term debt security requested to be designated as a qualified equity investment to the Department for deposit in the New Markets performance guarantee account, which is hereby established. The entity shall forfeit the fee if (i) the qualified community development entity and its subsidiary qualified community development entities, if any, fail to issue the total amount of qualified equity investments certified by the Administrator and receive cash in the total amount certified under G.S. 105-129.102 or (ii) the qualified community development entity or any subsidiary qualified community development entity that issues a qualified equity investment certified under this Article fails to meet the investment requirement under this Article; provided that forfeiture for this failure is subject to the cure period established in G.S. 105-129.103.

(b) The fee required under this section shall be paid to the Department and held in the New Markets performance guarantee account until such time as compliance with the provisions of this section have been established. The qualified community development entity may request a refund of the fee from the Department no sooner than 30 days after having met all the requirements of this section. The State Treasurer shall have 30 days to comply with the request or give notice of noncompliance.

"§ 105-129.105. Letter rulings.

(a) The Secretary shall issue letter rulings regarding the tax credit program authorized under this Article, subject to the terms and conditions set forth in this section. For the purposes of this Article, the term "letter ruling" means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

(b) The Secretary shall respond to a request for a letter ruling within 60 days of receipt of such request. The applicant may provide a draft letter ruling for the Secretary's consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the issuance of the letter ruling. The Secretary may refuse to issue a letter ruling for good cause but must list the specific reasons for refusing to issue the letter ruling. Good cause includes any of the following:

- (1) The applicant requests the director to determine whether a statute is constitutional or a regulation is lawful.
- (2) The request involves a hypothetical situation or alternative plans.
- (3) The facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling.

(4) The issue is currently being considered in a rule-making procedure, contested case, or other agency or judicial proceeding that may definitely resolve the issue.

(c) Letter rulings shall bind the Secretary and the Secretary's agents and their successors until such time as the entity or its shareholders, members, or partners, as applicable, claim all of the credits on a North Carolina tax return or report, subject to the terms and conditions set forth in properly published regulations. The letter ruling shall apply only to the applicant.

(d) In rendering letter rulings and making other determinations under this Article, to the extent applicable, the Department and the Department of Revenue shall look for guidance to section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder.

"§ 105-129.106. Retaliatory tax.

An entity claiming a credit under this Article is not required to pay any additional retaliatory tax levied under this Chapter as a result of claiming the credit. It is the intent of the General Assembly that an entity claiming a credit under this Article is not required to pay any additional tax that may arise as a result of claiming that credit.

"§ 105-129.107. Decertification.

(a) Once certified under this Article, a qualified equity investment may not be decertified unless all of the requirements of this section have been met. Until all qualified equity investments issued by a qualified community development entity are decertified under this section, the qualified community development entity shall not be entitled to distribute to its equity holders or make cash payments on long-term debt securities that have been designated as qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating income, as defined by regulations adopted under section 45D of the Internal Revenue Code of 1986, as amended, earned by the qualified community development entity since issuance of the qualified equity investment, prior to giving effect to any expense from the payment of interest on long-term debt securities designated as qualified equity investments and (ii) fifty percent (50%) of the purchase price of the qualified equity investments issued by the qualified community development entity.

(b) To be decertified, all of the following conditions must be met:

(1) The qualified equity investment is beyond its seventh credit allowance date.

(2) The qualified equity investment was in compliance with the requirements of this Article through its seventh credit allowance date, including any cures.

(3) The qualified equity investment has its proceeds invested in qualified active low-income community investments such that the total qualified active low-income community investments made, cumulatively including reinvestments, exceeds one hundred fifty percent (150%) of its qualified equity investment.

(c) A community development entity that seeks to have a qualified equity investment decertified under this section shall send notice to the Department of its request for decertification along with evidence supporting the request. The provisions of subdivision (2) of subsection (b) of this section are met if no recapture action has been commenced by the Department as of the seventh credit allowance date. A request under this section shall not be unreasonably denied and shall be responded to within 30 days of receiving the request. If the request is denied for any reason, the burden of proof shall be on the Department in any administrative or legal proceeding that follows.

"§ 105-129.111. Limitation on fees.

No qualified community development entity shall be entitled to pay any affiliate of such qualified community development entity any fees in connection with any activity under this Article prior to decertification under G.S. 105-129.107 of all qualified equity investment issued by the qualified community development entity. The foregoing shall not prohibit a qualified

1 community development entity from allocating or distributing income earned by it to the
2 affiliates or paying reasonable interest on amounts lent to the qualified community
3 development entity by such affiliates."

4 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
5 2013, and applies to qualified equity investments made on or after November 1, 2013.