

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1149
PROPOSED COMMITTEE SUBSTITUTE H1149-PCS80382-RO-35

Short Title: New Markets Job Act.

(Public)

Sponsors:

Referred to:

May 29, 2012

A BILL TO BE ENTITLED

AN ACT TO ENACT NEW MARKETS JOB GROWTH INVESTMENT 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 Job Growth Investment 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 Job Growth Investment 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, seven percent (7%) for the third credit allowance date, and eight percent (8%) for the next four credit allowance dates.
- (2) Credit allowance date. – With respect to any qualified equity investment, the date on which an 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, Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the interest expense of such long-term debt security. 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



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- 1 compliance with this section or section 45D of the Internal Revenue Code of
2 1986, as amended.
- 3 (5) Low income community. – Defined in section 45D of the Internal Revenue
4 Code of 1986, as amended, and also including all Tier 1 counties.
- 5 (6) Purchase price. – The amount paid to the issuer of a qualified equity
6 investment for such qualified equity investment.
- 7 (7) Qualified active low-income community business. – Defined in section 45D
8 of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. §
9 1.45D-1, but limited to those businesses meeting the SBA size eligibility
10 standards established in 13 C.F.R. § 121.101-201 at the time the qualified
11 area low income investment is made. A business shall be considered a
12 qualified active low-income community business for the duration of the
13 qualified community development entity's investment in, or loan to, the
14 business if the entity reasonably expects, at the time it makes the investment
15 or loan, that the business will continue to satisfy the requirements for being a
16 qualified active low-income community business throughout the entire
17 period of the investment or loan. The term excludes any business that
18 derives or projects to derive fifteen percent (15%) or more of its annual
19 revenue from the rental or sale of real estate. This exclusion does not apply
20 to a business that is controlled by, or under common control with, another
21 business if the second business (i) does not derive or project to derive fifteen
22 percent (15%) or more of its annual revenue from the rental or sale of real
23 estate and (ii) is the primary tenant of the real estate leased from the first
24 business.
- 25 (8) Qualified community development entity. – The meaning given such term in
26 section 45D of the Internal Revenue Code of 1986, as amended; provided
27 that such entity has entered into an allocation agreement with the
28 Community Development Financial Institutions Fund of the U.S. Treasury
29 Department with respect to credits authorized by section 45D of the Internal
30 Revenue Code of 1986, as amended, which includes the State of North
31 Carolina within the service area set forth in such allocation agreement. The
32 term shall include affiliated community development entities of any such
33 qualified community development entity.
- 34 (9) Qualified equity investment. – Any equity investment in, or long-term debt
35 security issued by, a qualified community development entity that meets
36 each of the following requirements:
- 37 a. Is acquired after the effective date of this act at its original issuance
38 solely in exchange for cash.
- 39 b. Has at least eighty-five percent (85%) of its cash purchase price used
40 by the issuer to make qualified low-income community investments
41 in qualified active low-income community businesses located in this
42 State by the first anniversary of the initial credit allowance date.
- 43 c. Is designated by the issuer as a qualified equity investment under this
44 subdivision and is certified by the Department as not exceeding the
45 limitation contained in subdivision (5) of this section. This term shall
46 include any qualified equity investment that does not meet the
47 provisions of sub-subdivision a. of this subdivision if such
48 investment was a qualified equity investment in the hands of a prior
49 holder.
- 50 (10) Qualified low-income community investment. – Any capital or equity
51 investment in, or loan to, any qualified active low-income community

1 business. With respect to any one qualified active low-income community
2 business, the maximum amount of qualified low-income community
3 investments made in such business, on a collective basis with all of its
4 affiliates that shall be counted toward the satisfaction of the requirements of
5 G.S. 105-129.101(9) and G.S. 105-129.102(e)(3), shall be ten million dollars
6 (\$10,000,000) whether issued to one or several qualified community
7 development entities.

8 (11) Secretary. – The Secretary of Commerce.

9 (12) Tax credit. – A credit against the franchise tax levied in Article 3 of this
10 Chapter, the income taxes levied in Article 4 of this Chapter, or the gross
11 premiums tax or the retaliatory premium tax levied in Article 8B of this
12 Chapter. A taxpayer claiming a credit against State premium tax liability
13 earned under this section shall not be required to pay additional retaliatory
14 premium tax. The taxpayer must elect the tax against which the credit will be
15 claimed when filing the return on which the first installment of the credit is
16 claimed. This election is binding. Any carryforwards of the credit must be
17 claimed against the same tax.

18 **§ 105-129.102. Credit for qualified equity investment.**

19 (a) Credit Established. – A person that makes a qualified equity investment earns a
20 vested right to a tax credit. On each credit allowance date of the qualified equity investment,
21 the taxpayer or subsequent holder of the qualified equity investment may utilize a portion of the
22 tax credit during the taxable year, including the credit allowance date. The tax credit amount is
23 equal to the applicable percentage for the credit allowance date multiplied by the purchase price
24 paid to the issuer of the qualified equity investment. The amount of the tax credit claimed by a
25 taxpayer shall not exceed the amount of such taxpayer's State tax liability for the tax year for
26 which the tax credit is claimed. Any amount of tax credit that the taxpayer is prohibited from
27 claiming in a taxable year as a result of this section may be carried forward for use in any of the
28 next five subsequent taxable years.

29 (b) Transferability. – Tax credits earned under this section may not be sold or
30 transferred on the open market. Tax credits earned by a partnership, limited liability company,
31 S Corporation, or other "pass-through" entity may be allocated to the partners, members, or
32 shareholders of such entity for their direct use in accordance with the provisions of any
33 agreement among such partners, members, or shareholders. Such allocation shall be not
34 considered a sale for purposes of this section.

35 (c) Annual Cap on Credits. – The Department shall limit the monetary amount of
36 qualified equity investments permitted under this section to a level necessary to limit tax credit
37 utilization at no more than forty million dollars (\$40,000,000) of tax credits in any fiscal year.
38 Such limitation on qualified equity investments shall be based on the anticipated utilization of
39 credits without regard to the potential for taxpayers to carry forward tax credits to later tax
40 years.

41 (d) Certification of Qualified Equity Investments. – A qualified community
42 development entity that seeks to have an equity investment or long-term debt security
43 designated as a qualified equity investment and eligible for tax credits under this section shall
44 apply to the Department. The Department shall set a date on which it will first accept such
45 applications, which shall be no later than January 31, 2013. The qualified community
46 development entity must submit an application on a form that the Department provides that
47 includes each of the following:

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

- 1 (2) A copy of the allocation agreement executed by the entity, or its controlling
2 entity, and the Community Development Financial Institutions Fund.
- 3 (3) A certificate executed by an executive officer of the entity attesting that the
4 allocation agreement remains in effect and has not been revoked or cancelled
5 by the Community Development Financial Institutions Fund.
- 6 (4) A description of the proposed amount, structure, and purchaser of the equity
7 investment or long-term debt security.
- 8 (5) Identifying information for any taxpayer eligible to utilize tax credits earned
9 as a result of the issuance of the qualified equity investment.
- 10 (6) Information regarding the proposed use of proceeds from the issuance of the
11 qualified equity investment, if known. Applicants are not required to identify
12 qualified active low-income community businesses in which they will invest
13 when submitting an application.
- 14 (7) A nonrefundable application fee of five thousand dollars (\$5,000). This fee
15 shall be paid to the Department and shall be required of each application
16 submitted.

17 Within 30 days after receipt of a completed application containing the information
18 necessary for the Department to certify a potential qualified equity investment, including the
19 payment of the application fee, the Department shall grant or deny the application in full or in
20 part. If the Department denies any part of the application, it shall inform the qualified
21 community development entity of the grounds for the denial. If the qualified community
22 development entity provides any additional information required by the Department or
23 otherwise completes its application within 15 days of the notice of denial, the application shall
24 be considered completed as of the original date of submission. If the qualified community
25 development entity fails to provide the information or complete its application within the
26 15-day period, the application is denied and must be resubmitted in full with a new submission
27 date.

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

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

45 The Department shall certify qualified equity investments in the order applications are
46 received by the Department. Applications received on the same day shall be deemed to have
47 been received simultaneously. For applications received on the same day and deemed complete,
48 the Department shall certify, consistent with remaining tax credit capacity, qualified equity
49 investments in proportionate percentages based upon the ratio of the amount of qualified equity
50 investment requested in an application to the total amount of qualified equity investments
51 requested in all applications received on the same day.

1 Once the Department has certified quality equity investments that, on a cumulative basis,
2 are eligible for the maximum limitations contained in subsection (c) of this section, the
3 Department may not certify any more qualified equity investments. If a pending request cannot
4 be fully certified, the Department shall certify the portion that may be certified unless the
5 qualified community development entity elects to withdraw its request rather than receive
6 partial credit.

7 Within 30 days after receiving notice of certification, the qualified community development
8 entity shall issue the qualified equity investment and receive cash in the amount of the certified
9 amount. The qualified community development entity must provide the Department with
10 evidence of the receipt of the cash investment within 10 business days after receipt. If the
11 qualified community development entity does not receive the cash investment and issue the
12 qualified equity investment within 30 days following receipt of the certification notice, the
13 certification shall lapse and the entity may not issue the qualified equity investment without
14 reapplying to the Department for certification. A certification that lapses reverts back to the
15 Department and may be reissued only in accordance with the application process outline in this
16 subsection.

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

19 (1) Any amount of the federal tax credit available with respect to a qualified
20 equity investment that is eligible for a tax credit under this section is
21 recaptured under section 45D of the Internal Revenue Code of 1986, as
22 amended. In such case, the Department's recapture shall be proportionate to
23 the federal recapture with respect to such qualified equity investment.

24 (2) The issuer redeems or makes principal repayment with respect to a qualified
25 equity investment prior to the seventh anniversary of the issuance of such
26 qualified equity investment. In such case, the Department's recapture shall be
27 proportionate to the amount of the redemption or repayment with respect to
28 such qualified equity investment.

29 (3) The issuer fails to invest at least eighty-five percent (85%) of the purchase
30 price of the qualified equity investment in qualified low-income investments
31 in the State within 12 months of the issuance of the qualified equity
32 investment and maintain such level of investment in qualified low-income
33 community investments in the State until the last credit allowance date for
34 the qualified equity investment. For purposes of this section, an investment
35 shall be considered held by an issuer even if the investment has been sold or
36 repaid if the issuer reinvests an amount equal to the capital returned to or
37 recovered by the issuer from the original investment, exclusive of any profits
38 realized, in another qualified low-income community investment within 12
39 months of the receipt of such capital. An issuer shall not be required to
40 reinvest capital returned from qualified low-income community investments
41 after the sixth anniversary of the issuance of the qualified equity investment,
42 the proceeds of which were used to make the qualified low-income equity
43 investment, and the qualified low-income community investment shall be
44 considered held by the issuer through the seventh anniversary of the
45 qualified equity investment issuance.

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

49 (f) Letter Rulings. – The Secretary shall issue letter rulings regarding the tax credit
50 program authorized under this section, subject to the terms and conditions set forth in this
51 subsection. For the purposes of this section, the term "letter ruling" means a written

1 interpretation of law to a specific set of facts provided by the applicant requesting a letter
2 ruling.

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

9 (1) The applicant requests the director to determine whether a statute is
10 constitutional or a regulation is lawful.

11 (2) The request involves a hypothetical situation or alternative plans.

12 (3) The facts or issues presented in the request are unclear, overbroad,
13 insufficient, or otherwise inappropriate as a basis upon which to issue a letter
14 ruling.

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

18 Letter rulings shall bind the Secretary and the Secretary's agents and their successors as set
19 forth in properly published regulations. The letter ruling shall apply only to the applicant.

20 In rendering letter rulings and making other determinations under this section, to the extent
21 applicable, the Department and the Department of Revenue shall look for guidance to section
22 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued
23 thereunder.

24 (g) Applications for qualified equity investments shall not be accepted by the
25 Department on or after January 1, 2015. Nothing in this subsection precludes a taxpayer who
26 makes a qualified equity investment prior to the expiration of authority of the Department to
27 receive applications from claiming tax credits relating to that qualified equity investment for
28 each applicable credit allowance date, including carried-forward credits."

29 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
30 2013, and applies to qualified equity investments made on or after that date.