

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 680
Committee Substitute Favorable 5/9/13
Committee Substitute #2 Favorable 6/19/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H680-PCS30786-TMxf-61

Short Title: Start-Ups Act/New Markets Tax Credit Act.

(Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT AND TO ENACT THE NEW MARKETS JOBS ACT OF 2014.

Whereas, start-up companies play a critical role in creating new jobs and sources of revenue; and

Whereas, crowd funding, or raising money through small contributions from a large number of investors, allows smaller enterprises in North Carolina to have access to the capital they need to initiate new business ventures; and

Whereas, by promoting crowd funding, the General Assembly can give new businesses access to additional financing tools, can assist in democratizing start-up capital, and can facilitate investment by North Carolina residents in North Carolina start-ups; and

Whereas, by facilitating investment with appropriate restrictions to protect the interests of North Carolina investors, the General Assembly can promote the formation and growth of smaller North Carolina enterprises, along with additional job formation, and can permit businesses to raise capital using crowd funding unencumbered by excessive government regulation; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. JUMP-START OUR BUSINESS START-UPS ACT.

SECTION 1. G.S. 78A-17 is amended by adding a new subdivision to read:

"(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in accordance with G.S. 78A-17.1."

SECTION 2. Article 3 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"§ 78A-17.1. Invest NC exemption.

(a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security is a business entity formed under the laws of the State and registered with the Secretary of State.

(2) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.



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- 1 (3) The sum of all cash and other consideration to be received for all sales of the
2 security in reliance upon this exemption does not exceed the cap provided in
3 this subdivision.
- 4 a. One million dollars (\$1,000,000), less the aggregate amount received
5 for all sales of securities by the issuer within the 12 months before
6 the first offer or sale made in reliance upon this exemption, if the
7 issuer has not undergone and made available to each prospective
8 investor and the Administrator the documentation resulting from a
9 financial audit with respect to its most recently completed fiscal year
10 and meeting generally accepted accounting principles.
- 11 b. Two million dollars (\$2,000,000), less the aggregate amount received
12 for all sales of securities by the issuer within the 12 months before
13 the first offer or sale made in reliance upon this exemption, if the
14 issuer has undergone and made available to each prospective investor
15 and the Administrator the documentation resulting from a financial
16 audit with respect to its most recently completed fiscal year and
17 meeting generally accepted accounting principles.
- 18 (4) The issuer has not accepted more than two thousand dollars (\$2,000) from
19 any single purchaser unless the purchaser is an accredited investor as defined
20 by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.
- 21 (5) Not less than 10 days prior to the commencement of an offering of securities
22 in reliance on this exemption or the use of any publicly available Web site in
23 connection with any such offering, the issuer shall file a notice with the
24 Administrator, in writing or in electronic form as specified by the
25 Administrator, containing the following:
- 26 a. A notice of claim of exemption from registration, specifying that the
27 issuer will be conducting an offering in reliance upon this exemption,
28 accompanied by the filing fee as specified in this section.
- 29 b. A copy of the disclosure statement to be provided to prospective
30 investors in connection with the offering, containing the following:
- 31 1. A description of the company, its type of entity, the address
32 and telephone number of its principal office, its history, its
33 business plan, and the intended use of the offering proceeds,
34 including any amounts to be paid, as compensation or
35 otherwise, to any owner, executive officer, director,
36 managing member, or other person occupying a similar status
37 or performing similar functions on behalf of the issuer.
- 38 2. The identity of all persons owning more than ten percent
39 (10%) of the ownership interests of any class of securities of
40 the company.
- 41 3. The identity of the executive officers, directors, managing
42 members, and other persons occupying a similar status or
43 performing similar functions in the name of and on behalf of
44 the issuer, including their titles and their prior experience.
- 45 4. The terms and conditions of the securities being offered and
46 of any outstanding securities of the company, the minimum
47 and maximum amount of securities being offered, if any, and
48 either the percentage ownership of the company represented
49 by the offered securities or the valuation of the company
50 implied by the price of the offered securities.

- 1 5. The identity of any person who has been or will be retained
2 by the issuer to assist the issuer in conducting the offering
3 and sale of the securities, including any Web sites, but
4 excluding persons acting solely as accountants or attorneys
5 and employees whose primary job responsibilities involve the
6 operating business of the issuer rather than assisting the issuer
7 in raising capital, and for each person identified in response
8 to this paragraph, a description of the consideration being
9 paid to such person for such assistance.
- 10 6. A description of any litigation or legal proceedings involving
11 the company or its management.
- 12 7. The names and addresses, including URL, of any Web sites
13 that will be used in connection with the offering.
- 14 c. An escrow agreement with a bank or other depository institution
15 located within this State in which the investor funds will be
16 deposited, providing that all offering proceeds will be released to the
17 issuer only when the aggregate capital raised from all investors is
18 equal to or greater than the minimum target offering amount
19 specified in the business plan as necessary to implement the business
20 plan and that all investors may cancel their commitments to invest if
21 that target offering amount is not raised by the time stated in the
22 disclosure document.
- 23 (6) The issuer is not, either before or as a result of the offering, an investment
24 company, as defined in section 3 of the Investment Company Act of 1940,
25 15 U.S.C. § 8a-3, or an entity that would be an investment company but for
26 the exclusions provided in section 3(c) of the act, or subject to the reporting
27 requirements of section 13 or 15(d) of the Securities Exchange Act of 1934,
28 15 U.S.C. § 78m and 78o(d).
- 29 (7) The issuer shall inform all prospective purchasers under this section that the
30 securities have not been registered under federal or State securities law and
31 that the securities are subject to limitations on resale. The issuer shall display
32 the following legend conspicuously on the cover page of the disclosure
33 document:
- 34 "IN MAKING AN INVESTMENT DECISION, INVESTORS
35 MUST RELY ON THEIR OWN EXAMINATION OF THE
36 ISSUER AND THE TERMS OF THE OFFERING, INCLUDING
37 THE MERITS AND RISKS INVOLVED. THESE SECURITIES
38 HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR
39 STATE SECURITIES COMMISSION OR REGULATORY
40 AUTHORITY. FURTHERMORE, THE FOREGOING
41 AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR
42 DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY
43 REPRESENTATION TO THE CONTRARY IS A CRIMINAL
44 OFFENSE. THESE SECURITIES ARE SUBJECT TO
45 RESTRICTIONS ON TRANSFERABILITY AND RESALE AND
46 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS
47 PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R.
48 § 230.147(E) AS PROMULGATED UNDER THE SECURITIES
49 ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE
50 SECURITIES LAWS, PURSUANT TO REGISTRATION OR
51 EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE

- 1 THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL
2 RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD
3 OF TIME."
- 4 (8) The issuer shall require each purchaser to certify in writing "I understand
5 and acknowledge that:
- 6 a. I am investing in a high-risk, speculative business venture. I may lose
7 all of my investment, and I can afford the loss of my investment.
- 8 b. This offering has not been reviewed or approved by any state or
9 federal securities commission or other regulatory authority and that
10 no such person or authority has confirmed the accuracy or
11 determined the adequacy of any disclosure made to me relating to
12 this offering.
- 13 c. The securities I am acquiring in this offering are illiquid, that there is
14 no ready market for the sale of such securities, that it may be difficult
15 or impossible for me to sell or otherwise dispose of this investment,
16 and that, accordingly, I may be required to hold this investment
17 indefinitely.
- 18 d. I may be subject to tax on my share of the taxable income and losses
19 of the company, whether or not I have sold or otherwise disposed of
20 my investment or received any dividends or other distributions from
21 the company.
- 22 (9) If the offer and sale of securities is made through an Internet Web site, the
23 following requirements apply:
- 24 a. Prior to the offer of an investment opportunity to residents of this
25 State through a Web site, the issuer shall provide to the Web site and
26 to the Administrator evidence that the issuer is organized under
27 North Carolina law and that it is authorized to do business within the
28 State.
- 29 b. The issuer shall obtain from each purchaser of a security under this
30 section evidence that the purchaser is a resident of North Carolina
31 and, if applicable, an accredited investor.
- 32 c. The Web site operator shall register with the Administrator by filing
33 a statement that it is a business entity that is organized under North
34 Carolina law and that it is authorized to do business within the State
35 and that it is being utilized to offer and sell securities pursuant to this
36 exemption. As part of the registration, the Web site shall notify the
37 Administrator of its and the issuer's identity, location, and contact
38 information.
- 39 d. The issuer and the Web site must keep and maintain records of the
40 offers and sales of securities effected through the Web site and must
41 provide ready access to the records to the Administrator, upon
42 request. The Administrator may access, inspect, and review any Web
43 site and its records.
- 44 (10) All payments for purchase of securities must be directed to and held by the
45 bank or depository institution subject to the provisions of sub-subdivision
46 (a)(5)c. of this section. The bank or depository institution shall notify the
47 Administrator of the receipt of payments for securities and the identity and
48 residence of the investors. The information shall be confidential and
49 considered trade secrets within the scope of G.S. 132-1.2 while in the
50 possession of the Administrator.

1 (11) No offers or sales of a security shall be made through an Internet Web site
2 unless the Web site is registered with the Administrator pursuant to
3 sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to
4 the registration provisions of G.S. 78A-36 provided that all of the following
5 apply:

- 6 a. It does not offer investment advice or recommendations.
7 b. It does not solicit purchases, sales, or offers to buy the securities
8 offered or displayed on the Web site.
9 c. It does not compensate employees, agents, or other persons for the
10 solicitation or based on the sale of securities displayed or referenced
11 on the Web site.
12 d. It is not compensated based on the amount of securities sold, and it
13 does not hold, manage, possess, or otherwise handle investor funds
14 or securities.
15 e. It does not engage in such other activities as the Administrator, by
16 rule, determines appropriate.

17 (12) An executive officer, director, managing member, or person occupying a
18 similar status or performing similar functions in the name of and on behalf
19 of the issuer shall be exempt from the registration provisions of
20 G.S. 78A-36, provided that the person does not receive, directly or
21 indirectly, any commission or remuneration for offering and selling
22 securities of the issuer pursuant to this exemption.

23 (13) The issuer must provide a copy of the disclosure document provided to the
24 Administrator pursuant to sub-subdivision (a)(5)b. of this section to each
25 prospective investor at the time the offer of securities is made to the
26 prospective investor. In addition to the information described in
27 sub-subdivision (a)(5)b. of this section, the disclosure document provided to
28 the Administrator and to prospective investors should include additional
29 information material to the offering, including, where appropriate, a
30 discussion of significant factors that make the offering speculative or risky.
31 This discussion must be concise and organized logically and should not
32 present risks that could apply to any issuer or any offering.

33 (b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall
34 be cumulatively adjusted every fifth year by the Administrator to reflect the change in the
35 Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics,
36 setting each dollar limitation to the nearest fifty thousand dollars (\$50,000).

37 (c) Report. – An issuer of a security, the offer and sale of which is exempt under this
38 section, shall provide a quarterly report to the issuer's investors until no securities issued under
39 this section are outstanding. The report required by this subsection shall be free of charge. An
40 issuer may satisfy the reporting requirement of this subsection by making the information
41 available on an Internet Web site address if the information is made available within 45 days of
42 the end of each fiscal quarter and remains available until the succeeding quarterly report is
43 issued. An issuer shall file each such quarterly report with the Administrator and must provide
44 a written copy of the report to any investor upon request. The report must contain each of the
45 following:

- 46 (1) Compensation received by each director and executive officer, including
47 cash compensation earned since the previous report and on an annual basis
48 and any bonuses, stock options, other rights to receive securities of the issuer
49 or any affiliate of the issuer, or other compensation received.
50 (2) An analysis by management of the issuer of the business operations and
51 financial condition of the issuer.

1 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section
2 shall not be used in conjunction with any other exemption under this Chapter, except offers and
3 sales to controlling persons shall not count toward the limitation in subdivision (3) of
4 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or
5 individual occupying similar status or performing similar functions with respect to the issuer or
6 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes
7 of securities of the issuer.

8 (e) Disqualification. – The exemption allowed by this section shall not apply if an
9 issuer or person affiliated with the issuer or offering is subject to any disqualification contained
10 in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the
11 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply
12 if (i) upon a showing of good cause and without prejudice to any other action by the
13 Administrator, the Administrator determines that it is not necessary under the circumstances
14 that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into
15 whether any disqualification existed under this subsection but did not know, and in the exercise
16 of reasonable care could not have known, that a disqualification existed under this subsection.
17 The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer
18 and the other offering participants.

19 (f) Rules. – The Administrator may adopt rules to implement the provisions of this
20 section and to protect investors who purchase securities under this section.

21 (g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred
22 fifty dollars (\$150.00) for filing an exemption notice required by subsection (a) of this section.
23 The fees paid to the Administrator pursuant to this subsection shall be used to pay the costs
24 incurred in administering and enforcing this Chapter. The revenue derived from the fee shall be
25 credited to a nonreverting agency revenue account."

26 **SECTION 3.** G.S. 78A-49(d) reads as rewritten:

27 "(d) The Administrator may by rule or order require the filing of any prospectus,
28 pamphlet, circular, form letter, advertisement, or other sales literature or advertising
29 communication addressed or intended for distribution to prospective investors, unless the
30 security or transaction is exempted by ~~G.S. 78A-16 or 78A-17 (except 78A-17(9), (17), and~~
31 ~~(19))~~G.S. 78A-16 and G.S. 78A-17 (except G.S. 78A-17(9), (17), (19), and (20)) and such
32 exemption has not been denied or revoked under G.S. 78A-18 or the security is a security
33 covered under federal law or the transaction is with respect to a security covered under federal
34 law."

35 **SECTION 4.(a)** Notwithstanding any provision of Article 2A of Chapter 150B of
36 the General Statutes, within 12 months of the effective date of this act, the Secretary of State
37 shall adopt rules to implement the provisions of this act in accordance with the following
38 procedure:

- 39 (1) At least 15 business days prior to adopting a rule, submit the rule and a
40 notice of public hearing to the Codifier of Rules. The Codifier of Rules shall
41 publish the proposed rule and the notice of public hearing on the Internet
42 within five business days.
- 43 (2) At least 15 business days prior to adopting a rule, notify persons on the
44 mailing list maintained pursuant to G.S. 150B-21.2(d) and any other
45 interested parties of the Secretary's intent to adopt a rule and of the public
46 hearing.
- 47 (3) Accept written comments on the proposed rule for at least 15 business days
48 prior to adoption of the rule.
- 49 (4) Hold at least one public hearing on the proposed rule no less than five days
50 after the rule and notice have been published.

1 A rule adopted in accordance with this section becomes effective on the first day of
2 the month following the month the Secretary adopts the rule and submits the rule to the
3 Codifier of Rules for entry into the North Carolina Administrative Code. Any rule adopted
4 more than 12 months after the effective date of this act shall comply with the requirement of
5 Article 2A of Chapter 150B of the General Statutes.

6 **SECTION 4.(b)** This section is effective when it becomes law and expires 12
7 months after the effective date of this act.

8
9 **PART II. NEW MARKETS JOBS ACT OF 2014.**

10 **SECTION 5.(a)** Chapter 105 of the General Statutes is amended by adding a new
11 Article to read:

12 "Article 3L.

13 "North Carolina New Markets Jobs Act of 2014.

14 **"§ 105-129.100. Short title.**

15 The provisions of this Article shall be known and may be cited as the "North Carolina New
16 Markets Jobs Act of 2014."

17 **"§ 105-129.101. Definitions.**

18 The following definitions apply in this Article:

- 19 (1) Affiliate. – An entity that directly, or indirectly through one or more
20 intermediaries, controls, is controlled by, or is under common control with,
21 the entity specified.
- 22 (2) Applicable percentage. – Zero percent (0%) for the first two reduction
23 allowance dates, twelve percent (12%) for the next three reduction
24 allowance dates, and eleven percent (11%) for the following two reduction
25 allowance dates.
- 26 (3) Below the line reduction of tax or "reduction." – A subtraction from the total
27 amount of State premium tax liability made after all additions and
28 deductions have been made to the gross premium amount and after the
29 appropriate rates of tax have been applied; for the purposes of constitutional,
30 statutory, and common law interpretation and enforcement, the reduction
31 shall be afforded the same property and contractual protections as a credit.
- 32 (4) Department. – The Department of Commerce.
- 33 (5) Long-term debt security. – Any debt instrument issued by a qualified
34 community development entity, at par value or a premium, with an original
35 maturity date of at least seven years from the date of its issuance, with no
36 acceleration of repayment, amortization, or prepayment features prior to its
37 original maturity date. The qualified community development entity that
38 issues the debt instrument may not make cash interest payments on the debt
39 instrument during the period beginning on the date of issuance and ending
40 on the final reduction allowance date in an amount that exceeds the
41 cumulative operating income, as defined by regulations adopted under
42 section 45D of the Internal Revenue Code of 1986, as amended, of the
43 qualified community development entity for that period prior to giving effect
44 to the interest expense of such long-term debt security. The foregoing shall
45 in no way limit the holder's ability to accelerate payments on the debt
46 instrument in situations where the qualified community development entity
47 has defaulted on covenants designed to ensure compliance with this section
48 or section 45D of the Internal Revenue Code of 1986, as amended.
- 49 (6) Purchase price. – The amount paid to the qualified community development
50 entity upon the issuance of a qualified equity investment.

- 1 (7) Qualified active low-income community business. – The meaning given
2 such term in section 45D of the Internal Revenue Code of 1986, as amended,
3 and 26 C.F.R. § 1.45D-1 but limited to those businesses meeting the SBA
4 size eligibility standards established in 13 C.F.R. § 121.101-201 at the time
5 the qualified low-income community investment is made. A business shall
6 be considered a qualified active low-income community business for the
7 duration of the qualified community development entity's investment in or
8 loan to the business if the entity reasonably expects, at the time it makes the
9 investment or loan, that the business will continue to satisfy the requirements
10 for being a qualified active low-income community business, other than the
11 SBA size standards, throughout the entire period of the investment or loan.
12 The term excludes any business that derives or projects to derive fifteen
13 percent (15%) or more of its annual revenue from the rental or sale of real
14 estate. This exclusion does not apply to a business that is controlled by or
15 under common control with another business if the second business (i) does
16 not derive or project to derive fifteen percent (15%) or more of its annual
17 revenue from the rental or sale of real estate and (ii) is the primary tenant of
18 the real estate leased from the first business.
- 19 (8) Qualified community development entity. – The meaning given such term in
20 section 45D of the Internal Revenue Code of 1986, as amended; provided
21 that such entity has entered into, for the current year or any prior year, an
22 allocation agreement with the Community Development Financial
23 Institutions Fund of the U.S. Treasury Department with respect to credits
24 authorized by section 45D of the Internal Revenue Code of 1986, as
25 amended, which includes the State of North Carolina within the service area
26 set forth in the allocation agreement. The term shall include qualified
27 community development entities that are controlled by or are under common
28 control with the qualified community development entity.
- 29 (9) Qualified equity investment. – Any equity investment in or long-term debt
30 security issued by a qualified community development entity that meets each
31 of the following requirements:
- 32 a. Is acquired after the effective date of this act at its original issuance
33 solely in exchange for cash.
- 34 b. Has at least eighty-five percent (85%) of its cash purchase price used
35 by the qualified community development entity to make qualified
36 low-income community investments in qualified active low-income
37 community businesses located in this State by the first anniversary of
38 the initial reduction allowance date.
- 39 c. Is designated by the qualified community development entity as a
40 qualified equity investment under this subdivision and is certified by
41 the Department as not exceeding the limitation contained in
42 G.S. 105-129.102(d)(5). This term shall include any qualified equity
43 investment that does not meet the provisions of sub-subdivision a. of
44 this subdivision if such investment was a qualified equity investment
45 in the hands of a prior holder.
- 46 (10) Qualified low-income community investment. – Any capital or equity
47 investment in or loan to any qualified active low-income community
48 business. With respect to any one qualified active low-income community
49 business, the maximum amount of qualified low-income community
50 investments made in such business, on a collective basis with all of the
51 businesses' affiliates, with the proceeds of qualified equity investments

1 certified under G.S. 105-129.102(d) that shall count toward satisfaction of
2 the requirements of sub-subdivision b. of G.S. 105-129.101(9) and
3 sub-subdivision c. of G.S. 105-129.102(e)(1) shall be seven million dollars
4 (\$7,000,000), exclusive of qualified low-income community investments
5 made with repaid or redeemed qualified low-income community investments
6 or interest or profits realized thereon.

7 (11) Reduction allowance date. – With respect to any qualified equity investment,
8 the date on which the investment is initially made and each of the six
9 anniversary dates thereafter.

10 (12) Rural census tracts. – Any census tract in which a qualified active
11 low-income community business is located that also is located in a county
12 designated as Tier 1 or Tier 2 by the North Carolina Department of
13 Commerce as of or after 2014.

14 (13) Secretary. – The Secretary of Commerce.

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

22 **"§ 105-129.102. Reduction for qualified equity investment.**

23 (a) Reduction Established. – An entity that makes a qualified equity investment earns a
24 vested contractual right to a below-the-line reduction of tax applicable to the entity's State
25 premium tax liability on future premium tax reports filed under Article 8B of Chapter 105 of
26 the General Statutes. On or after each reduction allowance date of the qualified equity
27 investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a
28 portion of the tax reduction during the taxable year, including the reduction allowance date.
29 The tax reduction amount is equal to the applicable percentage for the reduction allowance date
30 multiplied by the purchase price paid to the qualified community development entity. The
31 amount of the tax reduction claimed in that taxable year by a taxpayer shall not exceed the
32 amount of such taxpayer's State tax liability for the tax year for which the tax reduction is
33 claimed. Any amount of tax reduction that the taxpayer is prohibited from claiming in a taxable
34 year as a result of this section may be carried forward for use in any subsequent taxable year.

35 (b) Transferability. – A tax reduction claimed pursuant to this Article is not refundable
36 or saleable on the open market. Tax reductions earned by or allocated to a partnership, limited
37 liability company, or S Corporation may be allocated to the partners, members, or shareholders
38 of such entity for their use in accordance with the provisions of any agreement among such
39 partners, members, or shareholders. These allocations are not considered a sale for purposes of
40 this section. The department shall issue a certificate to each entity allocated a tax reduction
41 under this Article.

42 (c) Certification of Qualified Equity Investments. – A qualified community
43 development entity that seeks to have an equity investment or long-term debt security
44 designated as a qualified equity investment and eligible for tax reductions under this section
45 shall apply to the Department, which shall begin accepting applications on January 2, 2015.
46 The qualified community development entity must submit an application on a form that the
47 Department provides that 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 an 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
7 qualified equity investment.
- 8 (5) If known, identifying information for any taxpayer eligible to utilize tax
9 reductions earned as a result of the issuance of the qualified equity
10 investment.
- 11 (6) Examples of the types of qualified active low-income businesses in which
12 the applicant, its controlling entity, or affiliates of its controlling entity have
13 invested under the Federal New Markets Tax Credit Program. Applications
14 are not required to identify qualified active low-income community
15 businesses in which they will invest when submitting an application.
- 16 (7) A nonrefundable application fee of five thousand dollars (\$5,000).
- 17 (8) The refundable performance deposit required by G.S. 105-129.104.
- 18 (9) Whether the application is for the Rural Reserve under G.S. 105-129.109.
- 19 (d) (1) Within 30 days after receipt of a completed application containing the
20 information set forth in subsection (c) of this section, including the payment
21 of the application fee and the performance deposit, the Department shall
22 grant or deny the application in full or in part. If the Department denies any
23 part of the application, it shall inform the qualified community development
24 entity of the grounds for the denial. If the qualified community development
25 entity provides any additional information required by the Department or
26 otherwise completes its application within 15 days of the notice of denial,
27 the application shall be considered completed as of the original date of
28 submission. If the qualified community development entity fails to provide
29 the information or complete its application within the 15-day period, the
30 application is denied and must be resubmitted in full with a new submission
31 date.
- 32 (2) If the application is deemed complete, the Department shall certify the
33 proposed equity investment or long-term debt security as a qualified equity
34 investment that is eligible for a reduction under this section, subject to the
35 limitations contained in subdivision (5) of this subsection; provided that the
36 Department shall not certify qualified equity investments for any applicant,
37 on a combined basis with all of its affiliates, in excess of sixty million
38 dollars (\$60,000,000) unless such applicant has (i) already had qualified
39 equity investments certified under this section, (ii) satisfied the requirements
40 of subdivision (6) of this subsection with respect to such qualified equity
41 investments, and (iii) filed a new application after satisfying the
42 requirements of (i) and (ii) of this subdivision. The Department shall provide
43 written notice of the certification to the qualified community development
44 entity. The notice shall include the names of those taxpayers who are eligible
45 to utilize the reductions and their respective reduction amounts. If the names
46 of the taxpayers who are eligible to utilize the reductions change due to a
47 transfer of a qualified equity investment or a change in an allocation
48 pursuant to subsection (b) of this section, the qualified community
49 development entity shall notify the Department of such change.
- 50 (3) Once the Department has certified a qualified equity investment, the
51 qualified community development entity may suballocate all or any portion

1 of the amount of the certified qualified equity investment to one or more
2 qualified community development entities with the same controlling entity
3 as the applicant qualified community development entity, provided that the
4 applicant qualified community development entity files a notice of such
5 suballocation with the Department and the recipient of the suballocation
6 meets all the requirements of a qualified community development entity
7 under this section. The notice of suballocation shall include the information
8 required in the application for all suballocates.

9 (4) The Department shall certify qualified equity investments in the order
10 applications are received by the Department. Applications received on the
11 same day shall be deemed to have been received simultaneously. For
12 applications received on the same day and deemed complete, the Department
13 shall certify, consistent with remaining tax reduction capacity, qualified
14 equity investments in proportionate percentages based upon the ratio of the
15 amount of qualified equity investment requested in an application to the total
16 amount of qualified equity investments requested in all applications received
17 on the same day.

18 (5) The Department shall certify two hundred eight million three hundred
19 thirty-three thousand three hundred thirty-three dollars (\$208,333,333) in
20 qualified equity investment authority pursuant to two allocations, one for the
21 Rural Reserve and one for the Statewide Reserve, each as described in
22 G.S. 105-129.109(a). If a pending request cannot be fully certified due to
23 this limit, the Department shall certify the portion that may be certified
24 unless the qualified community development entity elects to withdraw its
25 request rather than receive partial certification.

26 (6) Within 45 days after receiving notice of certification, the qualified
27 community development entity or any transferee under this section shall
28 issue the qualified equity investment and receive cash in the amount of the
29 certified amount. The qualified community development entity or transferee
30 must provide the Department with evidence of the receipt of the cash
31 investment within 50 days of the applicant receiving notice of certification.
32 If the qualified community development entity or transferee does not receive
33 the cash investment and issue the qualified equity investment within 45 days
34 following receipt of the certification notice, the certification shall lapse and
35 the entity may not issue the qualified equity investment without reapplying
36 to the Department for certification. A certification that lapses reverts back to
37 the Department and shall be reissued pro rata to other applicants whose
38 qualified equity investment allocations were reduced under this section and
39 thereafter in accordance with the application process.

40 (e) Disallowance. –

41 (1) The Department may determine that reductions previously claimed or to be
42 claimed by a taxpayer under this Article should be disallowed. Notice that a
43 reduction shall be disallowed shall be transmitted in writing to the taxpayer
44 and the Department of Revenue. Disallowance may be determined if any of
45 the following occurs:

46 a. Any amount of the federal tax credit available with respect to a
47 qualified equity investment that is eligible for a tax reduction under
48 this section is recaptured under section 45D of the Internal Revenue
49 Code of 1986, as amended. In such case, the Department's
50 disallowance shall be proportionate to the federal recapture with
51 respect to such qualified equity investment.

- 1 **b.** The qualified community development entity redeems or makes
2 principal repayment with respect to a qualified equity investment
3 prior to the seventh anniversary of the issuance of such qualified
4 equity investment. In such case, the Department's disallowance shall
5 be proportionate to the amount of the redemption or repayment with
6 respect to such qualified equity investment.
- 7 **c.** The qualified community development entity fails to (i) invest at
8 least eighty-five percent (85%) of the purchase price of the qualified
9 equity investment in qualified low-income investments in the State
10 within 12 months of the issuance of the qualified equity investment
11 and (ii) maintain such level of investment in qualified low-income
12 community investments in the State until the last reduction allowance
13 date for the qualified equity investment. For qualified equity
14 investments made under the Rural Reserve, all qualified low-income
15 community investments required to meet the requirements of this
16 subsection must be made in qualified active low-income community
17 businesses located in rural census tracts within this State.
- 18 **d.** Any distribution or debt payment in violation of
19 G.S. 105-129.107(a).
- 20 **e.** Failure to comply with G.S. 105-129.108, 105-129.109, or
21 105-129.110.

22 **(2)** For purposes of this section, an investment shall be considered held by a
23 qualified community development entity even if the investment has been
24 sold or repaid if the qualified community development entity reinvests an
25 amount equal to the capital returned to or recovered by the qualified
26 community development entity from the original investment, exclusive of
27 any profits realized, in another qualified low-income community investment
28 within 12 months of the receipt of such capital. Periodic amounts received as
29 repayment of principal on a loan that is a qualified low-income community
30 investment shall be treated as continuously invested in a qualified
31 low-income community investment if the amounts are reinvested in one or
32 more qualified low-income community investments by the end of the
33 following calendar year. A qualified community development entity shall
34 not be required to reinvest capital returned from qualified low-income
35 community investments after the sixth anniversary of the issuance of the
36 qualified equity investment, and the qualified low-income community
37 investment shall be considered held by the qualified community
38 development entity through the seventh anniversary of the issuance of the
39 qualified equity investment.

40 **(3)** A recaptured reduction and the related qualified equity investment authority
41 under the Rural Reserve or the Statewide Reserve, as applicable, reverts
42 back to the Department and shall be reissued pro rata to other applicants
43 whose qualified equity investment allocations were reduced under this
44 section and thereafter in accordance with the application process.

45 **"§ 105-129.103. Notice of noncompliance.**

46 Enforcement of the disallowance under this Article 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 **"§ 105-129.104. Refundable performance deposit.**

50 (a) For each application submitted, a qualified community development entity that
51 seeks to have an equity investment or long-term debt security designated as a qualified equity

1 investment and eligible for a reduction under this Article shall make a performance deposit in
2 the amount of the greater of one-quarter of one percent (.25%) of the amount of the equity
3 investment or long-term debt security requested to be designated as a qualified equity
4 investment or five hundred thousand dollars (\$500,000) to the Department for deposit in the
5 New Markets performance guarantee account, which is hereby established. The entity shall
6 forfeit the amount deposited if (i) the qualified community development entity together with
7 any qualified community development entities to which it has suballocated qualified equity
8 investment authority pursuant to G.S. 105-129.102(d), if any, fail to issue the total amount of
9 qualified equity investments certified by the Department and receive cash in the total amount
10 certified under G.S. 105-129.102 within 45 days after receiving notice of certification, or (ii)
11 the qualified community development entity or any qualified community development entity
12 that issues suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d)
13 certified under this Article fails to invest at least eighty-five percent (85%) of the purchase
14 price of any qualified equity investment issued in qualified low-income community
15 investments within 12 months of the issuance of the qualified equity investment; provided that
16 forfeiture for the failure under clauses (i) and (ii) of this subsection is not subject to the cure
17 period established in G.S. 105-129.103.

18 (b) The performance deposit required under this section shall be paid to the Department
19 and held in the New Markets performance guarantee account without any portion being repaid
20 until such time as compliance with clause (ii) of subsection (a) of this section has been
21 established. The qualified community development entity may request a refund of the
22 performance deposit from the Department no sooner than 30 days after having met the
23 requirements of clause (ii) of subsection (a) of this section. The State Treasurer shall have 30
24 days to comply with the request or give notice of noncompliance.

25 **"§ 105-129.105. Letter rulings.**

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

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

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

38 (2) The request involves a hypothetical situation or alternative plan.

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

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

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

50 (d) In rendering letter rulings and making other determinations under this Article, to the
51 extent applicable, the Department and the Department of Revenue shall look for guidance to

1 section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations
2 issued thereunder.

3 **"§ 105-129.106. Retaliatory tax.**

4 An entity claiming a reduction under this Article is not required to pay any additional
5 retaliatory tax levied under G.S. 105-228.8 as a result of claiming the reduction. It is the intent
6 of the General Assembly that an entity claiming a reduction under this Article is not required to
7 pay any additional tax that may arise as a result of claiming that reduction.

8 **"§ 105-129.107. Decertification.**

9 (a) Once certified under this Article, a qualified equity investment may not be
10 decertified unless all of the requirements of this section have been met. Until all qualified
11 equity investments issued by a qualified community development entity or any transferee
12 qualified community development entity under G.S. 105-129.102(d) are decertified under this
13 section, the qualified community development entity or any transferee qualified community
14 development entity under G.S. 105-129.102(d) shall not be entitled to distribute to its equity
15 holders or make cash payments on long-term debt securities that have been designated as
16 qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating
17 income, as defined by regulations adopted under section 45D of the Internal Revenue Code of
18 1986, as amended, earned by the qualified community development entity since issuance of the
19 qualified equity investment, prior to giving effect to any interest expense of long-term debt
20 securities designated as qualified equity investments and (ii) fifty percent (50%) of the
21 purchase price of the qualified equity investments issued by the qualified community
22 development entity.

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

- 24 (1) The qualified equity investment is beyond its seventh reduction allowance
25 date.
- 26 (2) The qualified equity investment was in compliance with the requirements of
27 this Article through its seventh reduction allowance date, including any
28 cures.
- 29 (3) The qualified equity investment has its proceeds invested in qualified active
30 low-income community investments such that the total qualified active
31 low-income community investments made, cumulatively including
32 reinvestments, exceeds one hundred fifty percent (150%) of its qualified
33 equity investment. For purposes of making this calculation, qualified
34 low-income community investments to any one qualified active low-income
35 community business, on a collective basis with affiliates, in excess of seven
36 million dollars (\$7,000,000) are not included unless the investments are
37 made with capital returned or repaid from qualified low-income community
38 investments made by the qualified community development entity in other
39 qualified active low-income community businesses or interest earned on or
40 profits realized from any qualified low-income community investments.

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

49 **"§ 105-129.108. Limitation on fees.**

50 No qualified community development entity shall be entitled to pay any affiliate of such
51 qualified community development entity any fees in connection with any activity under this

1 Article prior to decertification under G.S. 105-129.107 of all qualified equity investments
2 issued by the qualified community development entity. The foregoing shall not prohibit a
3 qualified community development entity from allocating or distributing income earned by it to
4 the affiliates or paying reasonable interest on amounts lent to the qualified community
5 development entity by such affiliates.

6 **"§ 105-129.109. Rural Investment Reserve.**

7 (a) Of the maximum total two hundred eight million three hundred thirty-three
8 thousand three hundred thirty-three dollars (\$208,333,333) of qualified equity investments
9 eligible for certification by the Department under G.S. 105-129.102, one hundred fifty-six
10 million two hundred fifty thousand dollars (\$156,250,000) of the total shall be reserved for
11 applications submitted for a portion of the New Markets Jobs Act of 2014 hereby designated
12 the "Rural Reserve." The fifty-two million eighty-three thousand three hundred thirty-three
13 dollars (\$52,083,333) not in the Rural Reserve shall be designated the "Statewide Reserve."

14 (b) A qualified community development entity may apply for both the Rural Reserve
15 and the Statewide Reserve, provided it does so in separate applications.

16 (c) All qualified low-income community investments made under the Rural Reserve of
17 qualified equity investment authority shall only be made in qualified active low-income
18 community businesses located in rural census tracts in the State, including those necessary to
19 meet the standards for decertification contained in G.S. 105-129.107.

20 (d) Qualified low-income community investments made under the Statewide Reserve of
21 qualified equity investment authority shall not be geographically restricted so long as the
22 qualified active low-income community business is located in the State.

23 **"§ 105-129.110. New capital requirement.**

24 No qualified active low-income community business that receives a qualified low-income
25 community investment from a qualified community development entity that issues qualified
26 equity investments under this Article, or any affiliates of such a qualified active low-income
27 community business, may directly or indirectly (i) own or have the right to acquire an
28 ownership interest in a qualified community development entity or member or affiliate of a
29 qualified community development entity, including, but not limited to, a holder of a qualified
30 equity investment issued by the qualified community development entity, or (ii) loan to or
31 invest in a qualified community development entity or member or affiliate of a qualified
32 community development entity, including, but not limited to, a holder of a qualified equity
33 investment issued by a qualified community development entity, where the proceeds of such
34 loan or investment are directly or indirectly used to fund or refinance the purchase of a
35 qualified equity investment hereunder. For purposes of this section, a qualified community
36 development entity shall not be considered an affiliate of a qualified active low-income
37 community business solely as a result of its qualified low-income community investment in
38 such business.

39 **"§ 105-129.111. Reporting.**

40 (a) A qualified community development entity that issues qualified equity investments
41 shall submit a report to the Department within the first five business days after the first
42 anniversary of the initial reduction allowance that provides documentation as to the investment
43 of eighty-five percent (85%) of the purchase price in qualified low-income community
44 investments in qualified active low-income community businesses located in the State. The
45 report shall include the following:

46 (1) A bank statement of the qualified community development entity evidencing
47 each qualified low-income community investment.

48 (2) Evidence that the business was a qualified active low-income community
49 business at the time of the qualified low-income community investment.

1 (3) Evidence that the qualified active low-income community business was
2 located in a rural census tract at the time of the qualified low-income
3 community investment, if applicable under the Rural Reserve.

4 (b) After the initial report under subsection (a) of this section, a qualified community
5 development shall submit an annual report to the Department on or before April 1 of the
6 calendar year during the compliance period. An annual report is not due before the first
7 anniversary of the initial reduction allowance date. The annual report shall include the
8 following:

9 (1) The number of employment positions created and retained as a result of
10 qualified low-income community investments.

11 (2) The average annual salary of positions described in subsection (b)(1).

12 (3) Certification from the qualified community development entity that the
13 grounds for disallowance under G.S. 105-129.102(e) have not occurred."

14 **SECTION 5.(b)** This section applies to qualified equity investments made on or
15 after January 2, 2015.

16 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes
17 law. Sections 1, 2, 3, and 4 expire on July 1, 2017.