

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

FILED SENATE  
Feb 4, 2015  
S.B. 35  
PRINCIPAL CLERK

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SENATE DRS15034-MC-43 (01/06)

Short Title: Jumpstart Business Startups/New Market Credit. (Public)

Sponsors: Senators Gunn and Hise (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT AND THE  
3 NEW MARKETS TAX CREDIT.

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

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

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

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

18  
19 **PART I. JUMP-START OUR BUSINESS START-UPS**

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

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

23 **SECTION 1.(b)** Article 3 of Chapter 78A of the General Statutes is amended by  
24 adding a new section to read:

25 "**§ 78A-17.1. Invest NC exemption.**

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

- 29 (1) The issuer of the security is a business entity formed under the laws of the  
30 State and registered with the Secretary of State.  
31 (2) The transaction meets the requirements of the federal exemption for  
32 intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15  
33 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.  
34 (3) The sum of all cash and other consideration to be received for all sales of the  
35 security in reliance upon this exemption does not exceed the cap provided in  
36 this subdivision.



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

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

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

1 the registration provisions of G.S. 78A-36 provided that all of the following  
2 apply:

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

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

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

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

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

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

48 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section  
49 shall not be used in conjunction with any other exemption under this Chapter, except offers and  
50 sales to controlling persons shall not count toward the limitation in subdivision (3) of  
51 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or

1 individual occupying similar status or performing similar functions with respect to the issuer or  
2 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes  
3 of securities of the issuer.

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

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

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

22 **SECTION 1.(c)** G.S. 78A-49(d) reads as rewritten:

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

31 **SECTION 1.(d)** Notwithstanding any provision of Article 2A of Chapter 150B of  
32 the General Statutes, within 12 months of the effective date of this act, the Secretary of State  
33 shall adopt rules to implement the provisions of this act in accordance with the following  
34 procedure:

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

47 A rule adopted in accordance with this section becomes effective on the first day of  
48 the month following the month the Secretary adopts the rule and submits the rule to the  
49 Codifier of Rules for entry into the North Carolina Administrative Code.



1 be considered a qualified active low-income community business for the  
2 duration of the qualified community development entity's investment in or  
3 loan to the business if the entity reasonably expects, at the time it makes the  
4 investment or loan, that the business will continue to satisfy the requirements  
5 for being a qualified active low-income community business, other than the  
6 SBA size standards, throughout the entire period of the investment or loan.  
7 The term excludes any business that derives or projects to derive fifteen  
8 percent (15%) or more of its annual revenue from the rental or sale of real  
9 estate. This exclusion does not apply to a business that is controlled by or  
10 under common control with another business if the second business (i) does  
11 not derive or project to derive fifteen percent (15%) or more of its annual  
12 revenue from the rental or sale of real estate and (ii) is the primary tenant of  
13 the real estate leased from the first business.

14 (8) Qualified community development entity. – The meaning given such term in  
15 section 45D of the Internal Revenue Code of 1986, as amended; provided  
16 that such entity has entered into, for the current year or any prior year, an  
17 allocation agreement with the Community Development Financial  
18 Institutions Fund of the U.S. Treasury Department with respect to credits  
19 authorized by section 45D of the Internal Revenue Code of 1986, as  
20 amended, which includes the State of North Carolina within the service area  
21 set forth in the allocation agreement. The term shall include qualified  
22 community development entities that are controlled by or are under common  
23 control with the qualified community development entity.

24 (9) Qualified equity investment. – Any equity investment in or long-term debt  
25 security issued by a qualified community development entity that meets each  
26 of the following requirements:

- 27 a. Is acquired after the effective date of this act at its original issuance  
28 solely in exchange for cash.  
29 b. Has at least eighty-five percent (85%) of its cash purchase price used  
30 by the qualified community development entity to make qualified  
31 low-income community investments in qualified active low-income  
32 community businesses located in this State by the first anniversary of  
33 the initial reduction allowance date.  
34 c. Is designated by the qualified community development entity as a  
35 qualified equity investment under this subdivision and is certified by  
36 the Department as not exceeding the limitation contained in  
37 G.S. 105-129.102(d)(5). This term shall include any qualified equity  
38 investment that does not meet the provisions of sub-subdivision a. of  
39 this subdivision if such investment was a qualified equity investment  
40 in the hands of a prior holder.

41 (10) Qualified low-income community investment. – Any capital or equity  
42 investment in or loan to any qualified active low-income community  
43 business. With respect to any one qualified active low-income community  
44 business, the maximum amount of qualified low-income community  
45 investments made in such business, on a collective basis with all of the  
46 businesses' affiliates, with the proceeds of qualified equity investments  
47 certified under G.S. 105-129.102(d) that shall count toward satisfaction of  
48 the requirements of sub-subdivision b. of subdivision (9) of this section and  
49 sub-subdivision c. of G.S. 105-129.102(e)(1) shall be seven million dollars  
50 (\$7,000,000), exclusive of qualified low-income community investments



1 made with repaid or redeemed qualified low-income community investments  
2 or interest or profits realized thereon.

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

6 (12) Rural census tracts. – Any census tract in which a qualified active  
7 low-income community business is located that also is located in a county  
8 designated as Tier 1 or Tier 2 by the North Carolina Department of  
9 Commerce as of or after 2015.

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

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

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

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

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

38 (c) Certification of Qualified Equity Investments. – A qualified community  
39 development entity that seeks to have an equity investment or long-term debt security  
40 designated as a qualified equity investment and eligible for tax reductions under this section  
41 shall apply to the Department, which shall begin accepting applications on July 1, 2015. The  
42 qualified community development entity must submit an application on a form that the  
43 Department provides that includes each of the following:

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

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

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

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

- 1 meets all the requirements of a qualified community development entity  
2 under this section. The notice of suballocation shall include the information  
3 required in the application for all suballocates.
- 4 (4) The Department shall certify qualified equity investments in the order  
5 applications are received by the Department. Applications received on the  
6 same day shall be deemed to have been received simultaneously. For  
7 applications received on the same day and deemed complete, the Department  
8 shall certify, consistent with remaining tax reduction capacity, qualified  
9 equity investments in proportionate percentages based upon the ratio of the  
10 amount of qualified equity investment requested in an application to the total  
11 amount of qualified equity investments requested in all applications received  
12 on the same day.
- 13 (5) The Department shall certify two hundred eight million three hundred  
14 thirty-three thousand three hundred thirty-three dollars (\$208,333,333) in  
15 qualified equity investment authority pursuant to two allocations, one for the  
16 Rural Reserve and one for the Statewide Reserve, each as described in  
17 G.S. 105-129.109(a). If a pending request cannot be fully certified due to  
18 this limit, the Department shall certify the portion that may be certified  
19 unless the qualified community development entity elects to withdraw its  
20 request rather than receive partial certification.
- 21 (6) Within 45 days after receiving notice of certification, the qualified  
22 community development entity or any transferee under this section shall  
23 issue the qualified equity investment and receive cash in the amount of the  
24 certified amount. The qualified community development entity or transferee  
25 must provide the Department with evidence of the receipt of the cash  
26 investment within 50 days of the applicant receiving notice of certification.  
27 If the qualified community development entity or transferee does not receive  
28 the cash investment and issue the qualified equity investment within 45 days  
29 following receipt of the certification notice, the certification shall lapse and  
30 the entity may not issue the qualified equity investment without reapplying  
31 to the Department for certification. A certification that lapses reverts back to  
32 the Department and shall be reissued pro rata to other applicants whose  
33 qualified equity investment allocations were reduced under this section and  
34 thereafter in accordance with the application process.
- 35 (e) Disallowance. –
- 36 (1) The Department may determine that reductions previously claimed or to be  
37 claimed by a taxpayer under this Article should be disallowed. Notice that a  
38 reduction shall be disallowed shall be transmitted in writing to the taxpayer  
39 and the Department of Revenue. Disallowance may be determined if any of  
40 the following occurs:
- 41 a. Any amount of the federal tax credit available with respect to a  
42 qualified equity investment that is eligible for a tax reduction under  
43 this section is recaptured under section 45D of the Internal Revenue  
44 Code of 1986, as amended. In such case, the Department's  
45 disallowance shall be proportionate to the federal recapture with  
46 respect to such qualified equity investment.
- 47 b. The qualified community development entity redeems or makes  
48 principal repayment with respect to a qualified equity investment  
49 prior to the seventh anniversary of the issuance of such qualified  
50 equity investment. In such case, the Department's disallowance shall

1 be proportionate to the amount of the redemption or repayment with  
2 respect to such qualified equity investment.

3 c. The qualified community development entity fails to (i) invest at  
4 least eighty-five percent (85%) of the purchase price of the qualified  
5 equity investment in qualified low-income investments in the State  
6 within 12 months of the issuance of the qualified equity investment  
7 and (ii) maintain such level of investment in qualified low-income  
8 community investments in the State until the last reduction allowance  
9 date for the qualified equity investment. For qualified equity  
10 investments made under the Rural Reserve, all qualified low-income  
11 community investments required to meet the requirements of this  
12 subsection must be made in qualified active low-income community  
13 businesses located in rural census tracts within this State.

14 d. Any distribution or debt payment in violation of  
15 G.S. 105-129.107(a).

16 e. Failure to comply with G.S. 105-129.108, 105-129.109, or  
17 105-129.110.

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

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

41 **"§ 105-129.103. Notice of noncompliance.**

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

45 **"§ 105-129.104. Refundable performance deposit.**

46 (a) For each application submitted, a qualified community development entity that  
47 seeks to have an equity investment or long-term debt security designated as a qualified equity  
48 investment and eligible for a reduction under this Article shall make a performance deposit in  
49 the amount of the greater of one-quarter of one percent (1/4 of 1%) of the amount of the equity  
50 investment or long-term debt security requested to be designated as a qualified equity  
51 investment or five hundred thousand dollars (\$500,000) to the Department for deposit in the

1 New Markets performance guarantee account, which is hereby established. The entity shall  
2 forfeit the amount deposited if (i) the qualified community development entity together with  
3 any qualified community development entities to which it has suballocated qualified equity  
4 investment authority pursuant to G.S. 105-129.102(d), if any, fail to issue the total amount of  
5 qualified equity investments certified by the Department and receive cash in the total amount  
6 certified under G.S. 105-129.102 within 45 days after receiving notice of certification, or (ii)  
7 the qualified community development entity or any qualified community development entity  
8 that issues suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d)  
9 certified under this Article fails to invest at least eighty-five percent (85%) of the purchase  
10 price of any qualified equity investment issued in qualified low-income community  
11 investments within 12 months of the issuance of the qualified equity investment; provided that  
12 forfeiture for the failure under clauses (i) and (ii) of this subsection is not subject to the cure  
13 period established in G.S. 105-129.103.

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

21 **"§ 105-129.105. Letter rulings.**

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

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

- 32 (1) The applicant requests the director to determine whether a statute is  
33 constitutional or a regulation is lawful.
- 34 (2) The request involves a hypothetical situation or alternative plan.
- 35 (3) The facts or issues presented in the request are unclear, overbroad,  
36 insufficient, or otherwise inappropriate as a basis upon which to issue a letter  
37 ruling.
- 38 (4) The issue is currently being considered in a rule-making procedure,  
39 contested case, or other agency or judicial proceeding that may definitely  
40 resolve the issue.

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

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

50 **"§ 105-129.106. Retaliatory tax.**

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

5 **"§ 105-129.107. Decertification.**

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

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

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

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

46 **"§ 105-129.108. Limitation on fees.**

47 No qualified community development entity shall be entitled to pay any affiliate of such  
48 qualified community development entity any fees in connection with any activity under this  
49 Article prior to decertification under G.S. 105-129.107 of all qualified equity investments  
50 issued by the qualified community development entity. The foregoing shall not prohibit a  
51 qualified community development entity from allocating or distributing income earned by it to

1 the affiliates or paying reasonable interest on amounts lent to the qualified community  
2 development entity by such affiliates.

3 **"§ 105-129.109. Rural Investment Reserve.**

4 (a) Of the maximum total two hundred eight million three hundred thirty-three  
5 thousand three hundred thirty-three dollars (\$208,333,333) of qualified equity investments  
6 eligible for certification by the Department under G.S. 105-129.102, one hundred fifty-six  
7 million two hundred fifty thousand dollars (\$156,250,000) of the total shall be reserved for  
8 applications submitted for a portion of the New Markets Jobs Act of 2015 hereby designated  
9 the "Rural Reserve." The fifty-two million eighty-three thousand three hundred thirty-three  
10 dollars (\$52,083,333) not in the Rural Reserve shall be designated the "Statewide Reserve."

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

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

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

20 **"§ 105-129.110. New capital requirement.**

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

36 **"§ 105-129.111. Reporting.**

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

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

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

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

50 (b) After the initial report under subsection (a) of this section, a qualified community  
51 development entity shall submit an annual report to the Department on or before April 1 of the

1 calendar year during the compliance period. An annual report is not due before the first  
2 anniversary of the initial reduction allowance date. The annual report shall include the  
3 following:

- 4       (1) The number of employment positions created and retained as a result of  
5       qualified low-income community investments.  
6       (2) The average annual salary of positions described in subdivision (1) of this  
7       subsection.  
8       (3) Certification from the qualified community development entity that the  
9       grounds for disallowance under G.S. 105-129.102(e) have not occurred."

10  
11 **PART III. EFFECTIVE DATES**

12       **SECTION 3.** Subsection (d) of Section 1 of this act is effective when the act  
13 becomes law and expires 12 months after that date. Subsection (e) of Section 1 of this act  
14 becomes effective 12 months after the effective date of this act and expires on July 1, 2017.  
15 The remainder of Part I of this act is effective when the act becomes law and expires on July 1,  
16 2017. Part II of this act becomes effective July 1, 2015, and applies to qualified equity  
17 investments made on or after that date.