

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH10018-MC-23 (01/06)

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

Sponsors: Representatives B. Brown and Bryan (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT AND TO
3 ENACT THE NEW MARKETS JOBS ACT OF 2015.

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 ACT**

20 **SECTION 1.** 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 2.** 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 3.** 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 4.(a)** 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. Any rule adopted
50 more than 12 months after the effective date of this act shall comply with the requirement of
51 Article 2A of Chapter 150B of the General Statutes.

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

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

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

26 a. Is acquired after the effective date of this act at its original issuance
27 solely in exchange for cash.

28 b. Has at least eighty-five percent (85%) of its cash purchase price used
29 by the qualified community development entity to make qualified
30 low-income community investments in qualified active low-income
31 community businesses located in this State by the first anniversary of
32 the initial reduction allowance date.

33 c. Is designated by the qualified community development entity as a
34 qualified equity investment under this subdivision and is certified by
35 the Department as not exceeding the limitation contained in
36 G.S. 105-129.102(d)(5). This term shall include any qualified equity
37 investment that does not meet the provisions of sub-subdivision a. of
38 this subdivision if such investment was a qualified equity investment
39 in the hands of a prior holder.

40 (10) Qualified low-income community investment. – Any capital or equity
41 investment in or loan to any qualified active low-income community
42 business. With respect to any one qualified active low-income community
43 business, the maximum amount of qualified low-income community
44 investments made in such business, on a collective basis with all of the
45 businesses' affiliates, with the proceeds of qualified equity investments
46 certified under G.S. 105-129.102(d) that shall count toward satisfaction of
47 the requirements of sub-subdivision b. of G.S. 105-129.101(9) and
48 sub-subdivision c. of G.S. 105-129.102(e)(1) shall be seven million dollars
49 (\$7,000,000), exclusive of qualified low-income community investments
50 made with repaid or redeemed qualified low-income community investments
51 or interest or profits realized thereon.

- 1 (11) Reduction allowance date. – With respect to any qualified equity investment,
2 the date on which the investment is initially made and each of the six
3 anniversary dates thereafter.
- 4 (12) Rural census tracts. – Any census tract in which a qualified active
5 low-income community business is located that also is located in a county
6 designated as Tier 1 or Tier 2 by the North Carolina Department of
7 Commerce as of or after 2015.
- 8 (13) Secretary. – The Secretary of Commerce.
- 9 (14) State premium tax liability. – Any liability incurred by any entity under the
10 gross premiums tax or the retaliatory premium tax levied in Article 8B of
11 this Chapter, or, if the tax liability under the gross premiums tax or the
12 retaliatory premium tax levied in Article 8B of this Chapter is eliminated or
13 reduced, the term shall also mean any tax liability imposed on an insurance
14 company or other person that had premium tax liability under the laws of
15 this State.

16 **"§ 105-129.102. Reduction for qualified equity investment.**

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

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

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

- 42 (1) Evidence of the entity's certification as a qualified community development
43 entity, including evidence of the service area of the entity that includes this
44 State.
- 45 (2) A copy of an allocation agreement executed by the entity or its controlling
46 entity and the Community Development Financial Institutions Fund.
- 47 (3) A certificate executed by an executive officer of the entity attesting that the
48 allocation agreement remains in effect and has not been revoked or cancelled
49 by the Community Development Financial Institutions Fund.
- 50 (4) A description of the proposed amount, structure, and purchaser of the
51 qualified equity investment.

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

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

- 1 c. The qualified community development entity fails to (i) invest at
2 least eighty-five percent (85%) of the purchase price of the qualified
3 equity investment in qualified low-income investments in the State
4 within 12 months of the issuance of the qualified equity investment
5 and (ii) maintain such level of investment in qualified low-income
6 community investments in the State until the last reduction allowance
7 date for the qualified equity investment. For qualified equity
8 investments made under the Rural Reserve, all qualified low-income
9 community investments required to meet the requirements of this
10 subsection must be made in qualified active low-income community
11 businesses located in rural census tracts within this State.
- 12 d. Any distribution or debt payment in violation of
13 G.S. 105-129.107(a).
- 14 e. Failure to comply with G.S. 105-129.108, 105-129.109, or
15 105-129.110.

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

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

39 **§ 105-129.103. Notice of noncompliance.**

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

43 **§ 105-129.104. Refundable performance deposit.**

44 (a) For each application submitted, a qualified community development entity that
45 seeks to have an equity investment or long-term debt security designated as a qualified equity
46 investment and eligible for a reduction under this Article shall make a performance deposit in
47 the amount of the greater of one-quarter of one percent (1/4 of 1%) of the amount of the equity
48 investment or long-term debt security requested to be designated as a qualified equity
49 investment or five hundred thousand dollars (\$500,000) to the Department for deposit in the
50 New Markets performance guarantee account, which is hereby established. The entity shall
51 forfeit the amount deposited if (i) the qualified community development entity together with

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

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

19 **"§ 105-129.105. Letter rulings.**

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

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

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

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

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

48 **"§ 105-129.106. Retaliatory tax.**

49 An entity claiming a reduction under this Article is not required to pay any additional
50 retaliatory tax levied under G.S. 105-228.8 as a result of claiming the reduction. It is the intent

1 of the General Assembly that an entity claiming a reduction under this Article is not required to
2 pay any additional tax that may arise as a result of claiming that reduction.

3 **"§ 105-129.107. Decertification.**

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

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

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

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

44 **"§ 105-129.108. Limitation on fees.**

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

"§ 105-129.109. Rural Investment Reserve.

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

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

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

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

"§ 105-129.110. New capital requirement.

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

"§ 105-129.111. Reporting.

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

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

(b) After the initial report under subsection (a) of this section, a qualified community development entity shall submit an annual report to the Department on or before April 1 of the calendar year during the compliance period. An annual report is not due before the first

1 anniversary of the initial reduction allowance date. The annual report shall include the
2 following:

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

9 **SECTION 5.(b)** This section applies to qualified equity investments made on or
10 after July 1, 2015.

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