

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H.B. 1149
May 24, 2012
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH80349-MC-245 (04/18)

Short Title: New Markets Job Act.

(Public)

Sponsors: Representatives Murry and McComas (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT NEW MARKETS JOB GROWTH INVESTMENT INITIATIVE.
3 The General Assembly of North Carolina enacts:

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

6 "Article 3L.

7 "North Carolina New Markets Job Growth Investment Initiative.

8 "§ 105-129.100. Short title.

9 The provisions of this section shall be known as and may be cited as the "North Carolina
10 New Markets Job Growth Investment Initiative."

11 "§ 105-129.101. Definitions.

12 The following definitions apply in this Article:

- 13 (1) Applicable percentage. – Zero percent (0%) for the first two credit allowance
14 dates, seven percent (7%) for the third credit allowance date, and eight
15 percent (8%) for the next four credit allowance dates.
- 16 (2) Credit allowance date. – With respect to any qualified equity investment, the
17 date on which an investment is initially made and each of the six anniversary
18 dates thereafter.
- 19 (3) Department. – The Department of Commerce.
- 20 (4) Long-term debt security. – Any debt instrument issued by a qualified
21 community development entity, at par value or a premium, with an original
22 maturity date of at least seven years from the date of its issuance, with no
23 acceleration of repayment, amortization, or prepayment features prior to its
24 original maturity date. The qualified community development entity that
25 issues the debt instrument may not make cash interest payments on the debt
26 instrument during the period beginning on the date of issuance and ending
27 on the final credit allowance date in an amount that exceeds the cumulative
28 operating income, as defined by regulations adopted under section 45D,
29 Internal Revenue Code of 1986, as amended, of the qualified community
30 development entity for that period prior to giving effect to the expense of
31 such cash interest payments. The foregoing shall in no way limit the holder's
32 ability to accelerate payments on the debt instrument in situations where the
33 issuer has defaulted on covenants designed to ensure compliance with this
34 section or section 45D of the Internal Revenue Code of 1986, as amended.



- 1 (5) Purchase price. – The amount paid to the issuer of a qualified equity
2 investment for such qualified equity investment.
- 3 (6) Qualified active low-income community business. – Defined in section 45D
4 of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. §
5 1.45D-1. A business shall be considered a qualified active low-income
6 community business for the duration of the qualified community
7 development entity's investment in, or loan to, the business if the entity
8 reasonably expects, at the time it makes the investment or loan, that the
9 business will continue to satisfy the requirements for being a qualified active
10 low-income community business throughout the entire period of the
11 investment or loan. The term excludes any business that derives or projects
12 to derive fifteen percent (15%) or more of its annual revenue from the rental
13 or sale of real estate. This exclusion does not apply to a business that is
14 controlled by, or under common control with, another business if the second
15 business (i) does not derive or project to derive fifteen percent (15%) or
16 more of its annual revenue from the rental or sale of real estate and (ii) is the
17 primary tenant of the real estate leased from the first business.
- 18 (7) Qualified community development entity. – The meaning given such term in
19 section 45D of the Internal Revenue Code of 1986, as amended; provided
20 that such entity has entered into an allocation agreement with the
21 Community Development Financial Institutions Fund of the U.S. Treasury
22 Department with respect to credits authorized by section 45D of the Internal
23 Revenue Code of 1986, as amended, which includes the State of North
24 Carolina within the service area set forth in such allocation agreement. The
25 term shall include affiliated community development entities of any such
26 qualified community development entity.
- 27 (8) Qualified equity investment. – Any equity investment in, or long-term debt
28 security issued by, a qualified community development entity that meets
29 each of the following requirements:
- 30 a. Is acquired after the effective date of this act at its original issuance
31 solely in exchange for cash.
- 32 b. Has at least eighty-five percent (85%) of its cash purchase price used
33 by the issuer to make qualified low-income community investments
34 in qualified active low-income community businesses located in this
35 State by the first anniversary of the initial credit allowance date.
- 36 c. Is designated by the issuer as a qualified equity investment under this
37 subdivision and is certified by the Department as not exceeding the
38 limitation contained in subdivision (5) of this section. This term shall
39 include any qualified equity investment that does not meet the
40 provisions of sub-subdivision a. of this subdivision if such
41 investment was a qualified equity investment in the hands of a prior
42 holder.
- 43 (9) Qualified low-income community investment. – Any capital or equity
44 investment in, or loan to, any qualified active low-income community
45 business. With respect to any one qualified active low-income community
46 business, the maximum amount of qualified low-income community
47 investments made in such business, on a collective basis with all of its
48 affiliates, shall be ten million dollars (\$10,000,000) whether issued to one or
49 several qualified community development entities.
- 50 (10) Secretary. – The Secretary of Commerce.

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

10 **"§ 105-129.102. Credit for qualified equity investment.**

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

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

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

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

- 37 (1) Evidence of the entity's certification as a qualified community development
38 entity, including evidence of the service area of the entity that includes this
39 State.
- 40 (2) A copy of the allocation agreement executed by the entity, or its controlling
41 entity, and the Community Development Financial Institutions Fund.
- 42 (3) A certificate executed by an executive officer of the entity attesting that the
43 allocation agreement remains in effect and has not been revoked or cancelled
44 by the Community Development Financial Institutions Fund.
- 45 (4) A description of the proposed amount, structure, and purchaser of the equity
46 investment or long-term debt security.
- 47 (5) Identifying information for any taxpayer eligible to utilize tax credits earned
48 as a result of the issuance of the qualified equity investment.
- 49 (6) Information regarding the proposed use of proceeds from the issuance of the
50 qualified equity investment, if known. Applicants are not required to identify

1 qualified active low-income community businesses in which they will invest
2 when submitting an application.

3 (7) A nonrefundable application fee of five thousand dollars (\$5,000). This fee
4 shall be paid to the Department and shall be required of each application
5 submitted.

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

17 If the application is deemed complete, the Department shall certify the proposed equity
18 investment or long-term debt security as a qualified equity investment that is eligible for tax
19 credits under this section, subject to the limitations contained in subdivision (5) of this
20 subsection. The Department shall provide written notice of the certification to the qualified
21 community development entity. The notice shall include the names of those taxpayers who are
22 eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers
23 who are eligible to utilize the credits change due to a transfer of a qualified equity investment
24 or a change in an allocation pursuant to this subsection, the qualified community development
25 entity shall notify the Department of such change.

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

34 The Department shall certify qualified equity investments in the order applications are
35 received by the Department. Applications received on the same day shall be deemed to have
36 been received simultaneously. For applications received on the same day and deemed complete,
37 the Department shall certify, consistent with remaining tax credit capacity, qualified equity
38 investments in proportionate percentages based upon the ration of the amount of qualified
39 equity investment requested in an application to the total amount of qualified equity
40 investments requested in all applications received on the same day.

41 Once the Department has certified quality equity investments that, on a cumulative basis,
42 are eligible for the maximum limitations contained in this subsection, the Department may not
43 certify any more qualified equity investments. If a pending request cannot be fully certified, the
44 Department shall certify the portion that may be certified unless the qualified community
45 development entity elects to withdraw its request rather than receive partial credit.

46 Within 30 days after receiving notice of certification, the qualified community development
47 entity shall issue the qualified equity investment and receive cash in the amount of the certified
48 amount. The qualified community development entity must provide the Department with
49 evidence of the receipt of the cash investment within 10 business days after receipt. If the
50 qualified community development entity does not receive the cash investment and issue the
51 qualified equity investment within 30 days following receipt of the certification notice, the

1 certification shall lapse and the entity may not issue the qualified equity investment without
2 reapplying to the Department for certification. A certification that lapses reverts back to the
3 Department and may be reissued only in accordance with the application process outline in this
4 subsection.

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

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

12 (2) The issuer redeems or makes principal repayment with respect to a qualified
13 equity investment prior to the seventh anniversary of the issuance of such
14 qualified equity investment. In such case, the Department's recapture shall be
15 proportionate to the amount of the redemption or repayment with respect to
16 such qualified equity investment.

17 (3) The issuer fails to invest at least eighty-five percent (85%) of the purchase
18 price of the qualified equity investment in qualified low-income investments
19 in the State within 12 months of the issuance of the qualified equity
20 investment and maintain such level of investment in qualified low-income
21 community investments in the State until the last credit allowance date for
22 the qualified equity investment. For purposes of this section, an investment
23 shall be considered held by an issuer even if the investment has been sold or
24 repaid if the issuer reinvests an amount equal to the capital returned to or
25 recovered by the issuer from the original investment, exclusive of any profits
26 realized, in another qualified low-income community investment within 12
27 months of the receipt of such capital. An issuer shall not be required to
28 reinvest capital returned from qualified low-income community investments
29 after the sixth anniversary of the issuance of the qualified equity investment,
30 the proceeds of which were used to make the qualified low-income equity
31 investment, and the qualified low-income community investment shall be
32 considered held by the issuer through the seventh anniversary of the
33 qualified equity investment issuance.

34 Enforcement of the recapture under this subsection shall occur until the qualified
35 community development entity shall have been given notice of noncompliance and afforded six
36 months from the date of such notice to cure the noncompliance.

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

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

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

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

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

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

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

9 In rendering letter rulings and making other determinations under this section, to the extent
10 applicable, the Department and the Department of Revenue shall look for guidance to section
11 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued
12 thereunder."

13 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
14 2013, and applies to qualified equity investments made on or after that date.