

1 HB257
2 140107-3
3 By Representatives Ison, Barton, Fincher, Buskey, Kennedy and
4 Davis
5 RFD: Economic Development and Tourism
6 First Read: 09-FEB-12

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ENROLLED, An Act,

Relating to low-income communities; to establish state income, financial institution excise, and premium tax credits for investments in businesses in impoverished and low income communities.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall only apply to those areas within the State of Alabama which qualify as a "low income community" pursuant to Section 45D of the Internal Revenue Code.

Section 2. This act shall be known as the Alabama New Markets Development Act.

Section 3. As used in this act, the following terms shall have the following meanings:

(1) APPLICABLE PERCENTAGE. Zero percent for the first credit allowance date, 8.33 percent for the next six credit allowance dates, for the total of 50 percent.

(2) CREDIT ALLOWANCE DATE. With respect to any qualified equity investment, the date on which such investment is initially made and each of the six anniversary dates of that date thereafter.

(3) DEPARTMENT. The Alabama Development Office.

(4) LONG-TERM DEBT SECURITY. Any debt instrument issued by a qualified community development entity, at par

1 value or a premium, with an original maturity date of at least
2 seven years from the date of its issuance, with no
3 acceleration of repayment, amortization, or prepayment
4 features prior to its original maturity date. The qualified
5 community development entity that issues the debt instrument
6 may not make cash interest payments on the debt instrument
7 during the period beginning on the date of issuance and ending
8 on the final credit allowance date in an amount that exceeds
9 the cumulative operating income, as defined by regulations
10 adopted under Section 45D, Internal Revenue Code of 1986, as
11 amended, of the qualified community development entity for
12 that period prior to giving effect to the expense of such cash
13 interest payments. The foregoing shall in no way limit the
14 holder's ability to accelerate payments on the debt instrument
15 in situations where the issuer has defaulted on covenants
16 designed to ensure compliance with this act or Section 45D of
17 the Internal Revenue Code of 1986, as amended.

18 (5) PURCHASE PRICE. The amount paid to the issuer of
19 a qualified equity investment for that qualified equity
20 investment.

21 (6) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.
22 The same meaning given that term in Section 45D(d)(2) of the
23 Internal Revenue Code of 1986, as amended. A business shall be
24 considered a qualified active low-income community business
25 for the duration of the qualified community development

1 entity's investment in, or loan to, the business if the entity
2 reasonably expects, at the time the qualified community
3 development entity makes the investment or loan, that the
4 business may continue to satisfy the requirements for being a
5 qualified active low-income community business throughout the
6 entire period of the investment or loan.

7 (7) QUALIFIED COMMUNITY DEVELOPMENT ENTITY. The same
8 meaning given that term in Section 45D of the Internal Revenue
9 Code of 1986, as amended; provided, that the entity has
10 entered into, or is controlled by an entity that has entered
11 into, an allocation agreement with the Community Development
12 Financial Institutions Fund of the U.S. Treasury Department
13 with respect to credits authorized by Section 45D of the
14 Internal Revenue Code of 1986, as amended, which includes the
15 State of Alabama within the service area set forth in that
16 allocation agreement. The term shall include affiliated
17 entities and subordinate community development entities of any
18 such qualified community development entity.

19 (8) QUALIFIED EQUITY INVESTMENT. Any equity
20 investment in, or long-term debt security issued by, a
21 qualified community development entity that does all of the
22 following:

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

1 b. Has at least 85 percent of its cash purchase
2 price used by the issuer to make qualified low-income
3 community investments in qualified active low-income community
4 businesses located in the State of Alabama by the first
5 anniversary of the issuance of the qualified equity
6 investment.

7 c. Is designated by the issuer as a qualified equity
8 investment under this act and is certified by the department
9 as not exceeding the limitation contained in Section 6. This
10 term includes any qualified equity investment that does not
11 meet the provisions of paragraph a., if the investment was a
12 qualified equity investment in the hands of a prior holder.

13 (9) QUALIFIED LOW-INCOME COMMUNITY INVESTMENT. Any
14 capital or equity investment in, or loan to, any qualified
15 active low-income community business. With respect to any one
16 qualified active low-income community business, the maximum
17 amount of qualified low-income community investments made in
18 that business, on a collective basis with all of its
19 affiliates that may be counted towards the satisfaction of
20 subdivision (8), shall be ten million dollars (\$10,000,000)
21 whether issued by one or several qualified community
22 development entities.

23 (10) TAX CREDIT. A credit against the
24 state-distributed portion of the tax otherwise due under
25 Section 27-4A-3, 27-3-29, 40-16-4, 40-18-5, or 40-18-31 of the

1 Code of Alabama 1975. A taxpayer claiming a credit against
2 state premium tax liability earned through a qualified equity
3 investment is not required to pay any additional retaliatory
4 tax levied by law as a result of claiming that credit.

5 (11) TAXPAYER. Any individual or entity subject to
6 the tax imposed in Section 27-4A-3, 27-3-29, 40-16-4, 40-18-5,
7 or 40-18-31 of the Code of Alabama 1975.

8 Section 4. The purchaser of the qualified equity
9 investment, or subsequent holder of the qualified equity
10 investment, earns a vested right to a tax credit and shall be
11 entitled to utilize a portion of such tax credit during the
12 taxable year including that credit allowance date equal to the
13 applicable percentage for such credit allowance date
14 multiplied by the purchase price paid to the issuer of the
15 qualified equity investment. The amount of the tax credit
16 claimed shall not exceed the amount of the taxpayer's state
17 tax liability for the tax year for which the tax credit is
18 claimed. The basis of any qualified equity investment shall be
19 reduced by the amount of any credit determined under this
20 section with respect to such investment.

21 Section 5. Tax credits claimed under this act shall
22 not be saleable or transferable. Tax credits earned by a
23 partnership, limited liability company, S corporation, or
24 other "pass-through" entity may be allocated to the partners,
25 members, or shareholders of that entity for their direct use

1 in accordance with the provisions of any agreement among the
2 partners, members, or shareholders. Any amount of tax credit
3 that the taxpayer, or partner, member, or shareholder thereof,
4 is prohibited from claiming in a taxable year may be carried
5 forward to any of the taxpayer's subsequent taxable years.

6 Section 6. Once the department has certified a
7 cumulative amount of qualified equity investments that can
8 result in the utilization of twenty million dollars
9 (\$20,000,000) of tax credits in any tax year, the department
10 may not certify any more qualified equity investments under
11 Section 7. This limitation shall be based on the scheduled
12 utilization of tax credits without regard to the potential for
13 taxpayers to carry forward tax credits to later tax years.

14 Section 7. (a) A qualified community development
15 entity that seeks to have an equity investment or long-term
16 debt security designated as a qualified equity investment and
17 eligible for tax credits under this act shall apply to the
18 department. The qualified community development entity shall
19 submit an application on a form that the department provides
20 that includes all of the following:

21 (1) The name, address, tax identification number of
22 the entity, and evidence of the entity's certification as a
23 qualified community development entity.

1 (2) A copy of any allocation agreement executed by
2 the entity, or its controlling entity, and the Community
3 Development Financial Institutions Fund.

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

8 (4) A description of the proposed amount, structure,
9 and purchaser of the equity investment or long-term debt
10 security.

11 (5) The name and tax identification number of any
12 taxpayer eligible to utilize tax credits earned as a result of
13 the issuance of the qualified equity investment.

14 (6) Information regarding the proposed use of
15 proceeds from the issuance of the qualified equity investment.

16 (7) A nonrefundable application fee of five thousand
17 dollars (\$5,000). This fee shall be paid to the department and
18 shall be required of each application submitted.

19 (b) The department shall review the application and
20 shall independently verify that the above requirements in
21 subsection (a) have been met.

22 (c) Within 60 days after receipt of a completed
23 application containing the information necessary for the
24 department to certify a potential qualified equity investment,
25 including payment of the application fee, the department shall

1 grant or deny the application in full or in part. If the
2 department denies any part of the application, it shall inform
3 the qualified community development entity of the grounds for
4 the denial. If the qualified community development entity
5 provides any additional information required by the department
6 and otherwise completes its application within 15 days of the
7 notice of denial, the application shall be considered
8 completed as of the original date of submission. If the
9 qualified community development entity fails to provide the
10 information or complete its application within the 15-day
11 period, the application shall remain denied and shall be
12 resubmitted in full with a new submission date.

13 (d) If the application is deemed complete, the
14 department shall certify the proposed equity investment or
15 long-term debt security as a qualified equity investment that
16 is eligible for tax credits under this section, subject to the
17 limitations contained in Section 6. The department shall
18 provide written notice of the certification to the qualified
19 community development entity. The notice shall include the
20 names of those taxpayers who are eligible to utilize the
21 credits and their respective credit amounts. If the names of
22 the taxpayers who are eligible to utilize the credits change
23 due to a transfer of a qualified equity investment or a change
24 in an allocation pursuant to Section 5, the qualified

1 community development entity shall notify the department of
2 the change.

3 (e) The department shall establish a date on which
4 it shall first accept applications to certify qualified equity
5 investments which shall be no later than September 1, 2012.
6 The department shall certify applications in the order
7 applications are received by the department. Applications
8 received on the same day shall be deemed to have been received
9 simultaneously. For applications received on the same day and
10 deemed complete, the department shall certify, consistent with
11 remaining tax credit capacity, qualified equity investments in
12 proportionate percentages based upon the ratio of the amount
13 of qualified equity investment requested in an application to
14 the total amount of qualified equity investments requested in
15 all applications received on the same day.

16 (f) Once the department has certified qualified
17 equity investments that, on a cumulative basis, equal the
18 total allowable tax credits under Section 6, the department
19 may not certify any more qualified equity investments. If a
20 pending request cannot be fully certified, the department
21 shall certify the portion that may be certified unless the
22 qualified community development entity elects to withdraw its
23 request rather than receive partial credit.

24 (g) Within 90 days after receiving notice of
25 certification, the qualified community development entity

1 shall issue the qualified equity investment in the amount of
2 the certified amount. The qualified community development
3 entity shall provide the department with evidence of the
4 receipt or issuance of the qualified equity investment, or
5 both, within 30 business days after receipt or issuance, or
6 both. If the qualified community development entity does not
7 issue the qualified equity investment within 180 days
8 following receipt of the certification notice, the
9 certification shall lapse and the entity may not issue the
10 qualified equity investment without reapplying to the
11 department for certification. A certification that lapses
12 shall revert to the department and may be reissued only in
13 accordance with the application process outlined in this
14 section.

15 Section 8. (a) The Department of Revenue shall
16 recapture, from the taxpayer that claimed or is entitled to
17 claim the credit on a return, the tax credit allowed under
18 this act if, at any time during the seven-year period
19 beginning on the date of the original issue to the qualified
20 equity investment in a qualified community development entity,
21 one of the following occurs:

22 (1) Where any amount of the federal tax credit
23 available with respect to a qualified equity investment that
24 is eligible for a tax credit under this act is recaptured
25 under Section 45D of the Internal Revenue Code of 1986, as

1 amended, the Department of Revenue's recapture shall be
2 proportionate to the federal recapture with respect to that
3 qualified equity investment, and may then reallocate the
4 recaptured credits to other qualified taxpayers in the year of
5 recapture, without regard for the annual allocation limitation
6 found in Section 6.

7 (2) The Department of Revenue shall recapture any
8 allocated tax credit where the issuer fails to invest at least
9 85 percent of the purchase price of the qualified equity
10 investment in qualified low-income community investments in
11 the State of Alabama within 12 months of the issuance of the
12 qualified equity investment and fails to maintain such level
13 of investment in qualified low-income community investments in
14 Alabama until the last credit allowance date for the qualified
15 equity investment. An investment shall be considered held by
16 an issuer even if the investment has been sold or repaid;
17 provided that the issuer reinvests an amount equal to the
18 capital returned to or recovered by the issuer from the
19 original investment, exclusive of any profits realized, in
20 another qualified low-income community investment in this
21 state within 12 months of the receipt of that capital. An
22 issuer shall not be required to reinvest capital returned from
23 low-income community investments after the sixth anniversary
24 of the issuance of the qualified equity investment, the
25 proceeds of which were used to make the qualified low-income

1 community investment, and the qualified low-income community
2 investment shall be considered held by the issuer through the
3 seventh anniversary of the qualified equity investment's
4 issuance.

5 (3) Subject to the reinvestment provisions to avoid
6 recapture in subdivision (2), the issuer shall redeem or make
7 principal repayment with respect to a qualified equity
8 investment prior to the seventh anniversary of the issuance of
9 such qualified equity investment. The department's recapture
10 shall be proportionate to the amount of the redemption or
11 repayment with respect to such qualified equity investment.

12 (b) The Department of Revenue shall provide notice
13 in accordance with the procedures outlined in Section 40-2A-7
14 of the Code of Alabama 1975, to the qualified community
15 development entity of any proposed preliminary assessment of
16 recapture of tax credits pursuant to this act. The entity
17 shall have 90 days to cure any deficiency indicated in the
18 Department of Revenue's preliminary assessment and avoid
19 recapture. If the entity fails or is unable to cure the
20 deficiency within the 90-day period, the Department of Revenue
21 shall provide the entity and the taxpayer from whom the credit
22 is to be recaptured with a final assessment of recapture in
23 accordance with the procedures stated in Section 40-2A-7 of
24 the Code of Alabama 1975. Any tax credit for which a final
25 assessment has been issued may be recaptured by the Department

1 of Revenue from the taxpayer who claimed the tax credit on a
2 tax return in accordance with the Taxpayers' Bill of Rights
3 and the Uniform Revenue Procedures contained in Chapter 2A of
4 Title 40 of the Code of Alabama 1975.

5 Section 9. (a) On or before the 30th day prior to
6 the third and sixth anniversaries of the issuance of each
7 qualified equity investment, the issuer of such qualified
8 equity investment shall submit a report on a form that the
9 department provides that includes all of the following:

10 (1) The name, address, and tax identification number
11 of the issuer.

12 (2) The name, address, and tax identification number
13 of any qualified active low-income community businesses in
14 which the qualified community development has made qualified
15 low-income community investments.

16 (3) A certificate executed by an executive officer
17 of the issuer attesting to the number of qualified jobs and
18 corresponding payroll created at the qualified active
19 low-income community business, the average of the salaries of
20 such jobs, and the date each job was created and, if
21 applicable, terminated.

22 (4) A certificate executed by an executive officer
23 of the issuer attesting to all of the following:

1 a. The value of buildings and commercial real
2 estate, as recorded in the balance sheet of the qualified
3 active low-income community business.

4 b. State, county, and municipal sales, use, income,
5 and property taxes paid, as recorded in the financial
6 statement of the qualified active low-income community
7 business.

8 (5) Further information supporting the creation of
9 such jobs as the department shall request.

10 (b) The department shall review the report and
11 conduct other investigations as it deems necessary or
12 appropriate to determine if standards have been met on or
13 prior to the third and sixth anniversary of the issuance of
14 the qualified equity investment.

15 Section 10. (a) The department may conduct
16 examinations to verify that the tax credits under this act
17 have been received and applied according to the requirements
18 of this act and to verify that no event has occurred that
19 would result in a recapture of tax credits under Section 8.

20 (b) The department and the Department of Revenue
21 shall prescribe such rules as may be appropriate to carry out
22 their respective duties under this section and may issue
23 advisory letters to individual qualified community development
24 entities and their investors that are limited to the specific
25 facts outlined in an advisory letter request from a qualified

1 community development entity. The rulings cannot be relied
2 upon by any person or entity other than the qualified
3 community development entity that requested the letter and the
4 taxpayers that are entitled to any tax credits generated from
5 investments in the entity.

6 (c) In rendering advisory letters and making other
7 determinations under this act, to the extent applicable, the
8 department and the Department of Revenue shall look for
9 guidance to Section 45D of the Internal Revenue Code of 1986,
10 as amended, and the rules and regulations issued thereunder.

11 (d) If the qualified equity investment in the
12 qualified active low-income community business is used for the
13 development of real estate in the taxable year in which a tax
14 credit has been allocated to a taxpayer and the real estate is
15 placed in service, the qualified community development entity
16 shall deliver to the department an appraisal prepared by an
17 independent MAI designated and licensed real estate appraiser
18 that includes a valuation and description of the improvements.
19 The department shall provide a copy of the appraisal to the
20 taxing authority responsible for the assessment of ad valorem
21 taxes. Upon notification, the taxing authority responsible for
22 the assessment of ad valorem taxes shall complete a new
23 assessment for the real estate to be used in the assessment of
24 ad valorem taxes for the tax year in which the real estate was
25 placed in service.

1 Section 11. Notwithstanding the foregoing, no
2 landfill or dump, regardless of nature, toxic substance,
3 trash, waste, household, chemical, or otherwise, shall qualify
4 for any tax credit permitted by this act.

5 Section 12. This act shall become effective on the
6 first day of the third month following its passage and
7 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 06-MAR-12, as amended.

Greg Pappas
Clerk

Senate

08-MAY-12

Amended and Passed

House

09-MAY-12

Concurred in Sen-
ate Amendment