

By: Senator(s) Harkins

To: Finance

SENATE BILL NO. 2830

1 AN ACT TO AMEND SECTION 57-105-1, MISSISSIPPI CODE OF 1972,
2 TO EXTEND, FROM JULY 1, 2021, TO JULY 1, 2022, THE MISSISSIPPI
3 DEVELOPMENT AUTHORITY'S ABILITY TO ALLOCATE THE NEW MARKETS TAX
4 CREDIT; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** Section 57-105-1, Mississippi Code of 1972, is
7 amended as follows:

8 57-105-1. (1) As used in this section:

9 (a) "Adjusted purchase price" means the investment in
10 the qualified community development entity for the qualified
11 equity investment, substantially all of the proceeds of which are
12 used to make qualified low-income community investments in
13 Mississippi.

14 For the purposes of calculating the amount of qualified
15 low-income community investments held by a qualified community
16 development entity, an investment will be considered held by a
17 qualified community development entity even if the investment has
18 been sold or repaid; provided that the qualified community
19 development entity reinvests an amount equal to the capital



20 returned to or recovered by the qualified community development
21 entity from the original investment, exclusive of any profits
22 realized, in another qualified low-income community investment in
23 Mississippi, including any federal Indian reservation located
24 within the geographical boundary of Mississippi within twelve (12)
25 months of the receipt of such capital. A qualified community
26 development entity will not be required to reinvest capital
27 returned from the qualified low-income community investments after
28 the sixth anniversary of the issuance of the qualified equity
29 investment, the proceeds of which were used to make the qualified
30 low-income community investment, and the qualified low-income
31 community investment will be considered held by the qualified
32 community development entity through the seventh anniversary of
33 the qualified equity investment's issuance.

34 (b) "Applicable percentage" means:

35 (i) For any equity investment issued prior to July
36 1, 2008, four percent (4%) for each of the second through seventh
37 credit allowance dates for purposes of the taxes imposed by
38 Section 27-7-5 and one and one-third percent (1-1/3%) for each of
39 the second through seventh credit allowance dates for purposes of
40 the taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123.

41 (ii) For any equity investment issued from and
42 after July 1, 2008, eight percent (8%) for each of the first
43 through third credit allowance dates for purposes of the taxes



44 imposed by Section 27-7-5 or the taxes imposed by Sections
45 27-15-103, 27-15-109 and 27-15-123.

46 (c) "Credit allowance date" means, with respect to any
47 qualified equity investment:

48 (i) The later of:

49 1. The date upon which the qualified equity
50 investment is initially made; or

51 2. The date upon which the Mississippi
52 Development Authority issues a certificate under subsection (4) of
53 this section; and

54 (ii) 1. For equity investments issued prior to
55 July 1, 2008, each of the subsequent six (6) anniversary dates of
56 the date upon which the investment is initially made; or

57 2. For equity investments issued from and
58 after July 1, 2008, each of the subsequent two (2) anniversary
59 dates of the date determined as provided for in subparagraph (i)
60 of this paragraph.

61 (d) "Qualified community development entity" shall have
62 the meaning ascribed to such term in Section 45D of the Internal
63 Revenue Code of 1986, as amended, if the entity has entered into
64 an Allocation Agreement with the Community Development Financial
65 Institutions Fund of the United States Department of the Treasury
66 with respect to credits authorized by Section 45D of the Internal
67 Revenue Code of 1986, as amended.



68 (e) "Qualified active low-income community business"
69 shall have the meaning ascribed to such term in Section 45D of the
70 Internal Revenue Code of 1986, as amended.

71 (f) "Qualified equity investment" shall have the
72 meaning ascribed to such term in Section 45D of the Internal
73 Revenue Code of 1986, as amended. The investment does not have to
74 be designated as a qualified equity investment by the Community
75 Development Financial Institutions Fund of the United States
76 Treasury to be considered a qualified equity investment under this
77 section but otherwise must meet the definition under the Internal
78 Revenue Code. In addition to meeting the definition in Section
79 45D of the Internal Revenue Code such investment must also:

80 (i) Have been acquired after January 1, 2007, at
81 its original issuance solely in exchange for cash; and

82 (ii) Have been allocated by the Mississippi
83 Development Authority.

84 For the purposes of this section, such investment shall be
85 deemed a qualified equity investment on the later of the date such
86 qualified equity investment is made or the date on which the
87 Mississippi Development Authority issues a certificate under
88 subsection (4) of this section allocating credits based on such
89 investment.

90 (g) "Qualified low-income community investment" shall
91 have the meaning ascribed to such term in Section 45D of the
92 Internal Revenue Code of 1986, as amended; provided, however, that



93 the maximum amount of qualified low-income community investments
94 issued for a single qualified active low-income community
95 business, on an aggregate basis with all of its affiliates, that
96 may be included for purposes of allocating any credits under this
97 section shall not exceed Ten Million Dollars (\$10,000,000.00), in
98 the aggregate, whether issued by one (1) or several qualified
99 community development entities.

100 (2) A taxpayer that holds a qualified equity investment on
101 the credit allowance date shall be entitled to a credit applicable
102 against the taxes imposed by Sections 27-7-5, 27-15-103, 27-15-109
103 and 27-15-123 during the taxable year that includes the credit
104 allowance date. The amount of the credit shall be equal to the
105 applicable percentage of the adjusted purchase price paid to the
106 qualified community development entity for the qualified equity
107 investment. The amount of the credit that may be utilized in any
108 one (1) tax year shall be limited to an amount not greater than
109 the total tax liability of the taxpayer for the taxes imposed by
110 the above-referenced sections. The credit shall not be refundable
111 or transferable. Any unused portion of the credit may be carried
112 forward for seven (7) taxable years beyond the credit allowance
113 date on which the credit was earned. The maximum aggregate amount
114 of qualified equity investments that may be allocated by the
115 Mississippi Development Authority may not exceed an amount that
116 would result in taxpayers claiming in any one (1) state fiscal
117 year credits in excess of Fifteen Million Dollars



118 (\$15,000,000.00), exclusive of credits that might be carried
119 forward from previous taxable years; however, a maximum of
120 one-third (1/3) of this amount may be allocated as credits for
121 taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123. Any
122 taxpayer claiming a credit under this section against the taxes
123 imposed by Sections 27-7-5, 27-15-103, 27-15-109 and 27-15-123
124 shall not be required to pay any additional tax under Section
125 27-15-123 as a result of claiming such credit. The Mississippi
126 Development Authority shall allocate credits within this limit as
127 provided for in subsection (4) of this section.

128 (3) Tax credits authorized by this section that are earned
129 by a partnership, limited liability company, S corporation or
130 other similar pass-through entity, shall be allocated among all
131 partners, members or shareholders, respectively, either in
132 proportion to their ownership interest in such entity or as the
133 partners, members or shareholders mutually agree as provided in an
134 executed document. Such allocation shall be made each taxable
135 year of such pass-through entity which contains a credit allowance
136 date.

137 (4) The qualified community development entity shall apply
138 for credits with the Mississippi Development Authority on forms
139 prescribed by the Mississippi Development Authority. The
140 qualified community development entity must pay an application fee
141 of One Thousand Dollars (\$1,000.00) to the Mississippi Development
142 Authority at the time the application is submitted. In the



143 application the qualified community development entity shall
144 certify to the Mississippi Development Authority the dollar amount
145 of the qualified equity investments made or to be made in this
146 state, including in any federal Indian reservation located within
147 the state's geographical boundary, during the first twelve-month
148 period following the initial credit allowance date. The
149 Mississippi Development Authority shall allocate credits based on
150 the dollar amount of qualified equity investments as certified in
151 the application. Once the Mississippi Development Authority has
152 allocated credits to a qualified community development entity, if
153 the corresponding qualified equity investment has not been issued
154 as of the date of such allocation, then the corresponding
155 qualified equity investment must be issued not later than one
156 hundred twenty (120) days from the date of such allocation. If
157 the qualified equity investment is not issued within such time
158 period, the allocation shall be cancelled and returned to the
159 Mississippi Development Authority for reallocation. Upon final
160 documentation of the qualified low-income community investments,
161 if the actual dollar amount of the investments is lower than the
162 amount estimated, the Mississippi Development Authority shall
163 adjust the tax credit allowed under this section. The Department
164 of Revenue may recapture all of the credit allowed under this
165 section if:

166 (a) Any amount of federal tax credits available with
167 respect to a qualified equity investment that is eligible for a



168 tax credit under this section is recaptured under Section 45D of
169 the Internal Revenue Code of 1986, as amended; or

170 (b) The qualified community development entity redeems
171 or makes any principal repayment with respect to a qualified
172 equity investment prior to the seventh anniversary of the issuance
173 of the qualified equity investment; or

174 (c) The qualified community development entity fails to
175 maintain at least eighty-five percent (85%) of the proceeds of the
176 qualified equity investment in qualified low-income community
177 investments in Mississippi at any time prior to the seventh
178 anniversary of the issuance of the qualified equity investment.

179 Any credits that are subject to recapture under this
180 subsection shall be recaptured from the taxpayer that actually
181 claimed the credit.

182 The Mississippi Development Authority shall not allocate any
183 credits under this section after July 1, * * * 2022.

184 (5) Each qualified community development entity that
185 receives qualified equity investments to make qualified low-income
186 community investments in Mississippi must annually report to the
187 Mississippi Development Authority the North American Industry
188 Classification System Code, the county, the dollars invested, the
189 number of jobs assisted and the number of jobs assisted with wages
190 over one hundred percent (100%) of the federal poverty level for a
191 family of four (4) of each qualified low-income community
192 investment.



193 (6) The Mississippi Development Authority shall file an
194 annual report on all qualified low-income community investments
195 with the Governor, the Clerk of the House of Representatives, the
196 Secretary of the Senate and the Secretary of State describing the
197 North American Industry Classification System Code, the county,
198 the dollars invested, the number of jobs assisted and the number
199 of jobs assisted with wages over one hundred percent (100%) of the
200 federal poverty level for a family of four (4) of each qualified
201 low-income community investment. The annual report will be posted
202 on the Mississippi Development Authority's internet website.

203 (7) (a) The purpose of this subsection is to authorize the
204 creation and establishment of public benefit corporations for
205 financing arrangements regarding public property and facilities.

206 (b) As used in this subsection:

207 (i) "New Markets Tax Credit transaction" means any
208 financing transaction which utilizes either this section or
209 Section 45D of the Internal Revenue Code of 1986, as amended.

210 (ii) "Public benefit corporation" means a
211 nonprofit corporation formed or designated by a public entity to
212 carry out the purposes of this subsection.

213 (iii) "Public entity or public entities" includes
214 utility districts, regional solid waste authorities, regional
215 utility authorities, community hospitals, regional airport
216 authorities, municipal airport authorities, community and junior
217 colleges, educational building corporations established by or on



218 behalf of the state institutions of higher learning, school
219 districts, planning and development districts, county economic
220 development districts, urban renewal agencies, any other regional
221 or local economic development authority, agency or governmental
222 entity, and any other regional or local industrial development
223 authority, agency or governmental entity.

224 (iv) "Public property or facilities" means any
225 property or facilities owned or leased by a public entity or
226 public benefit corporation.

227 (c) Notwithstanding any other provision of law to the
228 contrary, public entities are authorized pursuant to this
229 subsection to create one or more public benefit corporations or
230 designate an existing corporation as a public benefit corporation
231 for the purpose of entering into financing agreements and engaging
232 in New Markets Tax Credit transactions, which shall include,
233 without limitation, arrangements to plan, acquire, renovate,
234 construct, lease, sublease, manage, operate and/or improve new or
235 existing public property or facilities located within the
236 boundaries or service area of the public entity. Any financing
237 arrangement authorized under this subsection shall further any
238 purpose of the public entity and may include a term of up to fifty
239 (50) years.

240 (d) Notwithstanding any other provision of law to the
241 contrary and in order to facilitate the acquisition, renovation,
242 construction, leasing, subleasing, management, operating and/or



243 improvement of new or existing public property or facilities to
244 further any purpose of a public entity, public entities are
245 authorized to enter into financing arrangements in order to
246 transfer public property or facilities to and/or from public
247 benefit corporations, including, without limitation, sales,
248 sale-leasebacks, leases and lease-leasebacks, provided such
249 transfer is related to any New Markets Tax Credit transaction
250 furthering any purpose of the public entity. Any such transfer
251 under this paragraph (d) and the public property or facilities
252 transferred in connection therewith shall be exempted from any
253 limitation or requirements with respect to leasing, acquiring,
254 and/or constructing public property or facilities.

255 (e) With respect to a New Markets Tax Credit
256 transaction, public entities and public benefit corporations are
257 authorized to enter into financing arrangements with any
258 governmental, nonprofit or for-profit entity in order to leverage
259 funds not otherwise available to public entities for the
260 acquisition, construction and/or renovation of properties
261 transferred to such public benefit corporations. The use of any
262 funds loaned by or contributed by a public benefit corporation or
263 borrowed by or otherwise made available to a public benefit
264 corporation in such financing arrangement shall be dedicated
265 solely to (i) the development of new properties or facilities
266 and/or the renovation of existing properties or facilities or
267 operation of properties or facilities, and/or (ii) the payment of



268 costs and expenditures related to any such financing arrangements,
269 including, but not limited to, funding any reserves required in
270 connection therewith, the repayment of any indebtedness incurred
271 in connection therewith, and the payment of fees and expenses
272 incurred in connection with the closing, administration,
273 accounting and/or compliance with respect to the New Markets Tax
274 Credit transaction.

275 (f) A public benefit corporation created pursuant to
276 this subsection shall not be a political subdivision of the state
277 but shall be a nonprofit corporation organized and governed under
278 the provisions of the laws of this state and shall be a special
279 purpose corporation established to facilitate New Markets Tax
280 Credit transactions consistent with the requirements of this
281 section.

282 (g) Neither this subsection nor anything herein
283 contained is or shall be construed as a restriction or limitation
284 upon any powers which the public entity or public benefit
285 corporation might otherwise have under any laws of this state, and
286 this subsection is cumulative to any such powers. This subsection
287 does and shall be construed to provide a complete additional and
288 alternative method for the doing of the things authorized thereby
289 and shall be regarded as supplemental and additional to powers
290 conferred by other laws.

291 (8) The Mississippi Development Authority shall promulgate
292 rules and regulations to implement the provisions of this section.



293 **SECTION 2.** This act shall take effect and be in force from
294 and after July 1, 2021.

