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HOUSE BILL 176

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO TAXATION; PROVIDING CORPORATE INCOME TAX OR PREMIUM
TAX CREDITS FOR TAXPAYERS WHO PROVIDE CAPITAL TO QUALIFIED
COMMUNITY DEVELOPMENT ENTITIES THAT INVEST IN LOANS AND OTHER
FINANCING FOR BUSINESSES IN CERTAIN LOW-INCOME AREAS; PROVIDING
FOR TAX CREDIT CERTIFICATES TO BE TIERED OVER SEVEN YEARS WITH
FIVE YEARS OF ALLOWABLE CARRYOVER; PROVIDING THAT TAXPAYER
ELIGIBILITY BE DETERMINED AND TAX CREDIT CERTIFICATES BE ISSUED
BY THE ECONOMIC DEVELOPMENT DEPARTMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Statewide Economic
Development Finance Act is enacted to read:

"[NEW MATERIAL] ADMINISTRATION OF STATE NEW MARKETS TAX
CREDITS BY THE ECONOMIC DEVELOPMENT DEPARTMENT.--

A. The department shall receive applications for

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1 and determine the eligibility of qualified community
2 development entities and certify qualified equity investments.
3 The department may certify qualified equity investments and
4 issue certificates of eligibility subject to the following
5 limitations:

6 (1) the maximum amount of qualified equity
7 investments that may be certified and upon which the
8 thirty-nine-percent state new markets corporate income tax
9 credits and thirty-nine-percent state new markets premium tax
10 credits may be calculated shall be two hundred million dollars
11 (\$200,000,000);

12 (2) the maximum amount of state new markets
13 corporate income tax credits and state new markets premium tax
14 credits that may be issued in certificates of eligibility shall
15 be seventy-eight million dollars (\$78,000,000);

16 (3) the department shall issue certificates of
17 eligibility amounting to no more than sixteen million dollars
18 (\$16,000,000) of aggregate state new markets corporate income
19 tax credits and state new markets premium tax credits for any
20 one calendar year; and

21 (4) the maximum amount of a qualified
22 low-income community investment in any one qualified active
23 low-income community business, on a collective basis with all
24 of the affiliates of that qualified active low-income community
25 business, that may be counted toward the certification of a

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1 qualified equity investment, whether issued to one or several
2 qualified community development entities, shall be ten million
3 dollars (\$10,000,000).

4 B. The department shall review certifications on an
5 annual basis. The department shall notify the taxation and
6 revenue department or the insurance division of the public
7 regulation commission when a qualified equity investment loses
8 its certification by providing a final notice of
9 decertification to the taxation and revenue department, the
10 insurance division of the public regulation commission, the
11 qualified community development entity and known purchasers
12 within two weeks of decertifying the qualified equity
13 investment.

14 C. The department shall coordinate at least monthly
15 with the taxation and revenue department and the insurance
16 division of the public regulation commission to maintain a
17 record of the cumulative amount of certified qualified equity
18 investments and the aggregate amount of state new markets
19 corporate income tax credits and state new markets premium tax
20 credits that have been issued. To provide guidance to
21 qualified community development entities regarding the amount
22 of credit capacity remaining, the department shall post monthly
23 on the department's web site the aggregate amount of qualified
24 equity investments that may be certified for the remainder of
25 the calendar year.

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1 D. Prior to October 1, 2012, the department shall
2 establish by rule the procedures, forms and minimum criteria
3 for a qualified community development entity to apply for
4 certification of a qualified equity investment and a
5 determination of eligibility for a state new markets tax
6 credit. Prior to October 1, 2012, the department also shall
7 establish by rule the procedures for implementation and
8 administration of the state new markets tax credits and the
9 immediate and long-term goals to be attained through the
10 issuance of tax credits. The rules and forms shall be
11 presented to the revenue stabilization and tax policy committee
12 and other appropriate legislative committees for comments and
13 approval during the 2012 legislative interim.

14 E. The department shall provide an application form
15 on which a qualified community development entity shall
16 indicate:

17 (1) the name, address and tax identification
18 number of the qualified community development entity and
19 evidence of the entity's federal certification as a qualified
20 community development entity;

21 (2) a description of the proposed purchase
22 price and structure, amount and purchaser of the equity
23 investment or long-term debt security;

24 (3) an acknowledgment and waiver allowing
25 information from the application and a purchaser's tax returns,

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1 reports and filings to be used for the department's report to
2 the legislature about the effectiveness of the new markets tax
3 credits;

4 (4) the name and tax identification number of
5 the purchaser of the qualified equity investment that the
6 qualified community development entity expects to be eligible
7 to claim the new markets tax credit allowed as a result of the
8 issuance of the qualified equity investment;

9 (5) information about the types of qualified
10 active low-income community businesses in which a qualified
11 community development entity will invest the proceeds of a
12 qualified equity investment, including a detailed description
13 of:

14 (a) the types of businesses to receive
15 the qualified low-income community investments;

16 (b) the location of the businesses to
17 receive the qualified low-income community investments;

18 (c) the number of new jobs to be created
19 or retained; and

20 (d) the physical infrastructure that may
21 be created or preserved; and

22 (6) any other information required by the
23 department in its rules.

24 F. The application submission shall include:

25 (1) a copy of the allocation agreement

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1 executed by the qualified community development entity, or in
2 the case of a subordinate qualified community development
3 entity, the entity that controls or is under common control
4 with the subordinate qualified community development entity,
5 and the federal community development financial institutions
6 fund;

7 (2) a certificate executed by an executive
8 officer of the qualified community development entity, or in
9 the case of a subordinate qualified community development
10 entity, the entity that controls or is under common control
11 with the subordinate qualified community development entity,
12 attesting that the allocation agreement remains in effect and
13 has not been revoked or canceled by the community development
14 financial institutions fund; and

15 (3) an application fee of five thousand
16 dollars (\$5,000) that shall be nonrefundable, payable to the
17 department.

18 G. The department shall approve applications that
19 comply with this section and its rules in the order that
20 completed applications are received. Applications received on
21 the same day shall be deemed to have been received
22 simultaneously. For applications received on the same day and
23 deemed complete, the department shall certify, consistent with
24 remaining tax credit capacity, qualified equity investments in
25 proportionate percentages based on the ratio of the amount of

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1 qualified equity investment requested in an application to the
2 total amount of qualified equity investments requested in all
3 applications received on the same day. If a pending request
4 cannot be certified fully because the annual cap has been met,
5 the department shall certify the portion that may be certified
6 unless the qualified community development entity elects to
7 withdraw its request rather than receive partial credit.

8 Withdrawn applications may not be resubmitted. Any new or
9 resubmitted application shall be submitted with the full five-
10 thousand-dollar (\$5,000) application fee for the qualified
11 community development entity to be considered for a tax credit.

12 H. Within sixty days of the receipt of an
13 application that the department determines to be complete, the
14 department shall grant the application in whole or deny the
15 application in whole or in part. Subject to the limitations in
16 this section, the department's rules and the new markets tax
17 credits provisions in the Corporate Income and Franchise Tax
18 Act and the New Mexico Insurance Code, the department shall
19 certify the proposed equity investment or long-term debt
20 security as a qualified equity investment. If the department
21 denies any part of the application, it shall inform the
22 qualified community development entity of the grounds for the
23 denial. The qualified community development entity shall have
24 fifteen days after the notice of denial to provide any
25 additional information required by the department to its

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1 application. If the qualified community development entity
2 provides the additional information requested within the
3 fifteen-day period, the application shall be deemed to have
4 been complete as of its original date of filing. If the
5 qualified community development entity fails to complete its
6 application within the fifteen-day period, the application
7 shall remain denied and must be resubmitted. Any resubmitted
8 application shall be submitted in full with a new submission
9 date, subject to the aggregate cap on the amount of qualified
10 equity investments that the department may certify as of the
11 new submission date.

12 I. The department shall provide written notice of
13 the certification to the qualified community development
14 entity. The notice shall include the names of the purchasers
15 listed on the application that are eligible to use the new
16 markets tax credit and their respective tax credit amounts. If
17 the name of a purchaser that is eligible to use a tax credit
18 changes due to a transfer of a qualified equity investment or a
19 change in the allocation provisions of a qualified community
20 development entity's partnership or operating agreement, the
21 qualified community development entity shall notify the
22 department of the change.

23 J. Within ten days after receiving notice of
24 certification, a qualified community development entity shall
25 issue the qualified equity investment and shall receive cash in

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1 the amount of the certified purchase price. The qualified
2 community development entity shall provide the department with
3 evidence of the receipt of the cash investment within ten
4 business days after receipt.

5 K. If the qualified community development entity
6 does not receive the cash investment and issue the qualified
7 equity investment within ten days following receipt of the
8 certification notice, the certification shall lapse, the
9 application shall be permanently rejected and the application
10 fee shall be forfeited. A certification that lapses reverts to
11 the department and may be reissued to other applicants.

12 L. A purchaser of a qualified equity investment
13 that has been certified by the department under this section
14 shall earn at the time of investment a vested state corporate
15 income tax credit or state premium tax credit equal to
16 thirty-nine percent of the purchase price of the qualified
17 equity investment. Within thirty days of receiving evidence of
18 a qualified community development entity's receipt of cash in
19 the amount of the purchase price of the qualified equity
20 investment, the department shall issue to the qualified
21 community development entity certificates of eligibility as
22 follows:

23 (1) for the calendar years that contain the
24 first and second credit allowance dates of the qualified equity
25 investment, no certificate shall be issued;

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1 (2) for the calendar year that contains the
2 third credit allowance date of the qualified equity investment,
3 a certificate stating a state new markets tax credit in an
4 amount equal to seven percent of the purchase price of the
5 qualified equity investment shall be issued;

6 (3) for the calendar year that contains the
7 fourth credit allowance date of the qualified equity
8 investment, a certificate stating a state new markets tax
9 credit in an amount equal to eight percent of the purchase
10 price of the qualified equity investment shall be issued;

11 (4) for the calendar year that contains the
12 fifth credit allowance date of the qualified equity investment,
13 a certificate stating a state new markets tax credit in an
14 amount equal to eight percent of the purchase price of the
15 qualified equity investment shall be issued;

16 (5) for the calendar year that contains the
17 sixth credit allowance date of the qualified equity investment,
18 a certificate stating a state new markets tax credit in an
19 amount equal to eight percent of the purchase price of the
20 qualified equity investment shall be issued; and

21 (6) for the calendar year that contains the
22 seventh credit allowance date of the qualified equity
23 investment, a certificate stating a state new markets tax
24 credit in an amount equal to eight percent of the purchase
25 price of the qualified equity investment shall be issued.

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1 M. The state new markets corporate income tax
2 credits, state new markets premium tax credits and certificates
3 of eligibility may not be transferred or sold except
4 in connection with the sale of the qualified equity investment
5 with respect to which it was earned.

6 N. A qualified community development entity whose
7 application is approved under this section shall pay to the
8 department an annual evaluation fee of five thousand dollars
9 (\$5,000) on each of the second through seventh anniversary
10 dates of the initial credit allowance.

11 O. The department may decertify a qualified equity
12 investment, recapture used state new markets tax credits and
13 cause the forfeiture of unused state new markets tax credits
14 and cancellation of certificates when:

15 (1) any amount of federal tax credit available
16 with respect to qualified equity investments that are eligible
17 for a tax credit under the Statewide Economic Development Act
18 is recaptured under Section 45D of the Internal Revenue Code.
19 The final notice of decertification shall include the amount of
20 recapture of used tax credits, which under this paragraph shall
21 be proportionate to the federal recapture with respect to the
22 qualified equity investment, and state that unused tax credits
23 are forfeited and certificates are canceled;

24 (2) the qualified community development entity
25 redeems or makes a principal repayment with respect to

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1 qualified equity investments that generated the tax credit
2 prior to the final credit allowance date of the qualified
3 equity investment. The final notice of decertification shall
4 include the amount of recapture of used tax credits, which
5 under this paragraph shall be proportionate to the amount of
6 the redemption or repayment with respect to the qualified
7 equity investment, and state that unused tax credits are
8 forfeited and certificates are canceled;

9 (3) the qualified community development entity
10 fails to invest at least eighty-five percent of the cash
11 purchase price of the qualified equity investment in qualified
12 active low-income community businesses located in the state
13 within twelve months of the issuance of the qualified equity
14 investment and maintain the same level of investment in
15 qualified low-income community investments located in the state
16 until the last credit allowance date for the qualified equity
17 investment. For purposes of calculating the amount of
18 qualified low-income community investments held by a qualified
19 community development entity, an investment shall be considered
20 held by the entity even if the investment has been sold or
21 repaid, provided that the qualified community development
22 entity reinvests an amount equal to the capital returned to or
23 recovered by the entity from the original investment, exclusive
24 of any profits realized, in another qualified low-income
25 community investment located in the state within twelve months

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1 of the receipt of the capital, in accordance with the federal
2 regulations promulgated pursuant to Section 45D of the Internal
3 Revenue Code. Any capital returned or repaid to a qualified
4 community development entity with respect to qualified
5 low-income community investments during the twelve months
6 immediately preceding its final credit allowance date are not
7 required to be reinvested and shall be deemed to be
8 continuously invested through the final credit allowance date.
9 The final notice of decertification shall include the amount of
10 recapture of used tax credits, which under this paragraph shall
11 be proportionate to the total amount of all tax credits
12 originally earned by the purchasers of the qualified equity
13 investment being decertified, and state that unused tax credits
14 are forfeited and certificates are canceled; or

15 (4) the qualified community development entity
16 or purchaser of the qualified equity investment fails to pay
17 the annual evaluation fee to the department. The final notice
18 of decertification shall include the amount of recapture of
19 unused tax credits, which under this paragraph shall be
20 calculated by the department under its rules, and state that
21 unused tax credits are forfeited and certificates are canceled.

22 P. The department shall provide an initial notice
23 of decertification to the qualified community development
24 entity within two weeks of decertifying the qualified equity
25 investment. The qualified community development entity shall

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1 have ninety days to cure any deficiency indicated in the
2 department's initial notice of decertification. If the
3 qualified community development entity fails to cure the
4 deficiency within the ninety-day period, the department shall
5 decertify the qualified equity investment and provide a final
6 notice of decertification to the qualified community
7 development entity, any known purchaser of the qualified equity
8 investment that was eligible to claim the credit for the
9 qualified equity investment, the taxation and revenue
10 department and the insurance division of the public regulation
11 commission within two weeks of decertifying the qualified
12 equity investment. Any recapture of state new markets tax
13 credits under this section shall be the liability of the
14 purchaser that claimed the state new markets tax credits on the
15 purchaser's state corporate income tax return or state premium
16 tax filing.

17 Q. The qualified community development entity shall
18 keep sufficiently detailed books and records with respect to
19 the investments made with the proceeds of qualified equity
20 investments to allow the direct tracing of proceeds into
21 qualified low-income community investments in a qualified
22 active low-income community businesses in the state.

23 R. By July 1, 2014 and each year thereafter, each
24 qualified community development entity whose qualified equity
25 investments were certified under this section and that have not

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1 achieved their final credit allowance dates shall:

2 (1) report to the department information about
3 each qualified active low-income community business, including
4 a detailed description of:

5 (a) the type of businesses that received
6 the qualified equity investment;

7 (b) the location of businesses that
8 received the qualified equity investment;

9 (c) the physical infrastructure that was
10 created or preserved;

11 (d) the number of new jobs created;

12 (e) the number of New Mexico residents
13 employed by the qualified active low-income community business
14 and the aggregate wages paid to them;

15 (f) the number of nonresidents employed
16 by the qualified active low-income community business and the
17 aggregate wages paid to them; and

18 (g) any other information required by
19 the department; and

20 (2) provide to the department financial
21 statements and audit reports prepared by an independent
22 auditor.

23 S. By October 1, 2014 and each year thereafter, the
24 department shall:

25 (1) compile and assess direct tracking data

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1 and any other data that allow the department to assess
2 objectively the effectiveness of the new markets tax credits;
3 and

4 (2) with the support and assistance of the
5 legislative finance committee staff, the taxation and revenue
6 department and the insurance division of the public regulation
7 commission, create an annual report that provides an objective
8 assessment of the effectiveness of the new markets tax credits
9 for annual presentation to the revenue stabilization and tax
10 policy committee and any other appropriate legislative
11 committees.

12 T. For purposes of assessing the effectiveness of
13 the new markets tax credits, the inability of the department to
14 aggregate data due to sample size shall not relieve the
15 department of the requirement to report all relevant data to
16 the legislature. The department shall provide notice to
17 qualified community development entities applying for the new
18 markets tax credits that information provided to the department
19 might be revealed by the department in reports to the
20 legislature.

21 U. The revenue stabilization and tax policy
22 committee and other appropriate legislative committees shall
23 review the new markets tax credits for their effectiveness in
24 achieving the goals and meeting the purposes for which the
25 credits were adopted. The review shall be completed by October

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1 1 of each calendar year.

2 V. As used in this section:

3 (1) "certificate" means a certificate of
4 eligibility issued by the department stating the maximum amount
5 of a tax credit vested in a certified qualified equity
6 investment and the date and terms of use;

7 (2) "credit allowance date" means, with
8 respect to any qualified equity investment:

9 (a) the date on which the qualified
10 equity investment is initially made; and

11 (b) each of the six anniversary dates
12 thereafter;

13 (3) "direct tracing" means the tracking, by
14 accepted accounting methods, of the proceeds of qualified
15 equity investments into qualified low-income community
16 investments;

17 (4) "long-term debt security" means any debt
18 instrument issued by a qualified community development entity,
19 at par value or at a premium, with an original maturity date of
20 at least seven years from the date of its issuance, with no
21 acceleration of repayment, amortization or prepayment features
22 prior to its original maturity date. The qualified community
23 development entity that issues the debt instrument shall not
24 make cash interest payments on the debt instrument during the
25 period beginning on the date of issuance and ending on the

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1 final credit allowance date in an amount that exceeds the
2 cumulative operating income, as defined by regulations adopted
3 under Section 45D of the Internal Revenue Code of the qualified
4 community development entity for that period prior to giving
5 effect to the expense of such cash interest payments. The
6 foregoing shall in no way limit the holder's ability to
7 accelerate payments on the debt instrument in situations where
8 the issuer has defaulted on covenants designed to ensure
9 compliance with this section or Section 45D of the Internal
10 Revenue Code;

11 (5) "low-income community" has the same
12 meaning given to that same term in Section 45D of the Internal
13 Revenue Code;

14 (6) "new markets tax credit" means a state new
15 markets corporate income tax credit or a state new markets
16 premium tax credit;

17 (7) "purchase price" means the amount of cash
18 paid to the issuer of a qualified equity investment for the
19 qualified equity investment;

20 (8) "purchaser" means an original purchaser of
21 the qualified equity investment or a subsequent purchaser of
22 the qualified equity investment;

23 (9) "qualified active low-income community
24 business" has the same meaning given to that same term in
25 Section 45D of the Internal Revenue Code, except that any

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

18 (10) "qualified community development entity"
19 has the same meaning given to that same term in Section 45D of
20 the Internal Revenue Code; provided that the qualified
21 community development entity has entered into an allocation
22 agreement with the community development financial institutions
23 fund of the United States department of treasury, with respect
24 to credits authorized by Section 45D of the Internal Revenue
25 Code, that includes the state within the service area set forth

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1 in the allocation agreement. "Qualified community development
2 entity" also includes a subordinate community development
3 entity that also is a qualified community development entity
4 under Section 45D of the Internal Revenue Code and is
5 controlled by or under common control with the qualified
6 community development entity that applied for the state new
7 markets tax credits;

8 (11) "qualified equity investment" means any
9 equity investment in, or long-term debt security issued by, a
10 qualified community development entity that:

11 (a) is acquired after the effective date
12 of this section, at its original issuance, solely in exchange
13 for cash, or that was constituted a qualified equity investment
14 in the hands of a prior holder;

15 (b) has at least eighty-five percent of
16 its cash purchase price used by the qualified community
17 development entity to make qualified low-income community
18 investments in qualified active low-income community businesses
19 located in the state; and

20 (c) is designated by the department as a
21 qualified equity investment under this section and is certified
22 by the department as not exceeding the limitations on the
23 aggregate amounts of qualified equity investments that may be
24 certified pursuant to this section, the Corporate Income and
25 Franchise Tax Act and the New Mexico Insurance Code;

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1 (12) "qualified low-income community
2 investment" means any capital or equity investment in, or loan
3 to, any qualified active low-income community business by the
4 qualified community development entity; and

5 (13) "tax credit" means a credit against the
6 tax liability otherwise due under state law."

7 SECTION 2. A new section of the Corporate Income and
8 Franchise Tax Act is enacted to read:

9 "[NEW MATERIAL] CORPORATE INCOME TAX CREDIT--QUALIFIED
10 EQUITY INVESTMENT.--

11 A. A purchaser of a qualified equity investment
12 certified under the Statewide Economic Development Finance Act
13 may claim, and the department may allow, a tax credit against
14 the purchaser's corporate income tax liability in accordance
15 with the terms of a certificate of eligibility issued by the
16 economic development department subject to the limitations in
17 this section and the Statewide Economic Development Finance
18 Act. The tax credit that may be claimed pursuant to this
19 section may be referred to as the "state new markets corporate
20 income tax credit".

21 B. The purposes of the state new markets corporate
22 income tax credit are to:

23 (1) promote long-term job creation and
24 investment in new, viable businesses; and

25 (2) fulfill the immediate and long-term goals

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1 adopted by the economic development department in its rules.

2 C. From July 1, 2012 through June 30, 2019:

3 (1) the maximum amount of qualified equity
4 investments that may be certified and upon which both the
5 thirty-nine-percent state new markets corporate income tax
6 credits and thirty-nine-percent state new markets premium tax
7 credits may be calculated shall be two hundred million dollars
8 (\$200,000,000);

9 (2) the maximum amount of state new markets
10 corporate income tax credits and state new markets premium tax
11 credits that may be issued in certificates of eligibility and
12 claimed by purchasers shall be seventy-eight million dollars
13 (\$78,000,000);

14 (3) for any one calendar year, no more than
15 sixteen million dollars (\$16,000,000) of aggregate state new
16 markets corporate income tax credits and state new markets
17 premium tax credits may be claimed or allowed; and

18 (4) the maximum amount of a qualified
19 low-income community investment in any one qualified active
20 low-income community business, on a collective basis with all
21 of the affiliates of that qualified active low-income community
22 business, that may be counted toward the certification of a
23 qualified equity investment, whether issued to one or several
24 qualified community development entities, shall be ten million
25 dollars (\$10,000,000).

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1 D. For any taxable year, the amount of the tax
2 credit claimed by a purchaser shall not exceed the amount of
3 the taxpayer's corporate income tax liability for that year.

4 E. A purchaser claiming a state new markets
5 corporate income tax credit shall not claim any other state tax
6 credit, deduction or exemption for the same qualified equity
7 investment that the purchaser used to qualify for the state new
8 markets corporate income tax credit.

9 F. If the purchaser of a qualified equity
10 investment is a corporation, partnership or limited liability
11 company, any credits earned by the purchaser may be allocated
12 to the partners, members or shareholders of the purchaser for
13 their direct use in accordance with a written agreement between
14 the partners, members or shareholders. For purposes of this
15 section, such an allocation shall not be considered a sale or
16 transfer of the credits.

17 G. To claim the state new markets corporate income
18 tax credit, a purchaser shall attach to its tax return a
19 certificate of eligibility issued by the economic development
20 department to be applied against the purchaser's corporate
21 income tax liability pursuant to the terms stated on the
22 certificate.

23 H. The department shall coordinate with the
24 insurance division of the public regulation commission and the
25 economic development department to maintain a record of the

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1 cumulative amount of claims for the state new markets corporate
2 income tax credits and state new markets premium tax credits
3 that have been issued.

4 I. If the amount of the state new markets corporate
5 income tax credit stated on a certificate of eligibility as
6 eligible for use in a particular taxable year exceeds the
7 taxpayer's corporate income tax liability for the taxable year,
8 the excess credit may be carried forward for use in any of the
9 next five taxable years. The latest date of the carryforward
10 is twelve years after the first credit allowance date on which
11 the initial qualified equity investment was made.

12 J. The state new markets corporate income tax
13 credit and the certificate of eligibility shall not be sold,
14 exchanged or otherwise transferred to another purchaser. The
15 credit is not refundable.

16 K. When the economic development department
17 provides to the taxation and revenue department a notice of
18 decertification of the qualified equity investment, the
19 taxation and revenue department shall recapture from purchasers
20 that claimed the state new markets corporate income tax credit
21 any used tax credits in the amounts stated on the notice of
22 decertification and cause the forfeiture of any unused tax
23 credits and cancellation of certificates. A recapture shall
24 create a first priority lien on the assets and property of the
25 purchaser in favor of the state and a recurring tax liability

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1 for the purchaser until the amount of all state new markets
2 corporate income tax credits received by the purchaser are
3 repaid.

4 L. Acceptance by a purchaser of a state new markets
5 corporate income tax credit pursuant to this section is
6 authorization by the purchaser for the department to reveal
7 information to the legislature necessary to analyze the
8 effectiveness of the state new markets corporate income tax
9 credit.

10 M. Notwithstanding any other section of law to the
11 contrary, the department may disclose the number of purchasers
12 allowed to receive the state new markets corporate income tax
13 credit, the amount of each credit approved and any other
14 information required by the legislature, the economic
15 development department or the taxation and revenue department
16 to aid in evaluating the effectiveness of the state new markets
17 corporate income tax credit.

18 N. The revenue stabilization and tax policy
19 committee and other appropriate legislative committees shall
20 review the state new markets corporate income tax credit and
21 the state new markets premium tax credit for their
22 effectiveness in achieving the goals and achieving the purposes
23 for which the credits were adopted. The review shall be
24 completed by October 1 of the calendar year.

25 O. The department may receive a request from and

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1 may issue an advisory letter to a qualified community
2 development entity regarding its certified qualified equity
3 investment. The statements contained in an advisory letter
4 shall not be relied upon by any person or entity other than the
5 qualified community development entity that applied for the
6 certification and the purchasers that are entitled to any tax
7 credits generated from investment in the qualified equity
8 investment.

9 P. As used in this section:

10 (1) "certificate" means a certificate of
11 eligibility issued by the economic development department
12 stating the maximum amount of a tax credit vested in a
13 certified qualified equity investment and the terms of use;

14 (2) "credit allowance date" means, with
15 respect to any qualified equity investment:

16 (a) the date on which the qualified
17 equity investment is initially made; and

18 (b) each of the six anniversary dates
19 thereafter;

20 (3) "purchaser" means an original purchaser of
21 the qualified equity investment or a subsequent purchaser of
22 the qualified equity investment;

23 (4) "qualified community development entity"
24 has the same meaning given to that same term in Section 45D of
25 the Internal Revenue Code; provided that the qualified

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1 community development entity has entered into an allocation
2 agreement with the community development financial institutions
3 fund of the United States department of treasury, with respect
4 to credits authorized by Section 45D of the Internal Revenue
5 Code, that includes the state within the service area set forth
6 in the allocation agreement. "Qualified community development
7 entity" includes a subordinate community development entity
8 that also is a qualified community development entity under
9 Section 45D of the Internal Revenue Code and is controlled by
10 or under common control with the qualified community
11 development entity that applied for the state new markets
12 corporate income tax credit; and

13 (5) "qualified equity investment" means any
14 equity investment in, or long-term debt security issued by, a
15 qualified community development entity that:

16 (a) is acquired after the effective date
17 of this section, at its original issuance, solely in exchange
18 for cash, or that was constituted a qualified equity investment
19 in the hands of a prior holder;

20 (b) has at least eighty-five percent of
21 its cash purchase price used by the qualified community
22 development entity to make qualified low-income community
23 investments in qualified active low-income community businesses
24 located in the state; and

25 (c) is designated by the economic

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1 development department as a qualified equity investment under
2 the Statewide Economic Development Finance Act and is certified
3 by the economic development department as not exceeding the
4 limitations on the aggregate amounts of qualified equity
5 investments that may be certified pursuant to this section, the
6 New Mexico Insurance Code and the Statewide Economic
7 Development Finance Act."

8 SECTION 3. A new section of the New Mexico Insurance Code
9 is enacted to read:

10 "[NEW MATERIAL] PREMIUM TAX CREDIT--QUALIFIED EQUITY
11 INVESTMENT.--

12 A. A purchaser of a qualified equity investment
13 certified under the Statewide Economic Development Finance Act
14 may claim, and the division may allow, a tax credit against the
15 purchaser's premium tax liability in accordance with the terms
16 of a certificate of eligibility issued by the economic
17 development department, subject to the limitations in this
18 section and the Statewide Economic Development Finance Act.
19 The tax credit that may be claimed pursuant to this section may
20 be referred to as the "state new markets premium tax credit".

21 B. The purposes of the state new markets premium
22 tax credit are to:

23 (1) promote long-term job creation and
24 investment in new, viable businesses; and

25 (2) fulfill the immediate and long-term goals

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1 adopted by the economic development department in its rules.

2 C. From July 1, 2012 through June 30, 2019:

3 (1) the maximum amount of qualified equity
4 investments that may be certified and upon which both the
5 thirty-nine-percent state new markets premium tax credits and
6 thirty-nine-percent state new markets corporate income tax
7 credits may be calculated shall be two hundred million dollars
8 (\$200,000,000);

9 (2) the maximum amount of state new markets
10 premium tax credits and state new markets corporate income tax
11 credits that may be issued in certificates of eligibility and
12 claimed by purchasers shall be seventy-eight million dollars
13 (\$78,000,000);

14 (3) for any one calendar year, no more than
15 sixteen million dollars (\$16,000,000) of aggregate state new
16 markets premium tax credits and state new markets corporate
17 income tax credits may be claimed or allowed; and

18 (4) the maximum amount of a qualified
19 low-income community investment in any one qualified active
20 low-income community business, on a collective basis with all
21 of the affiliates of that qualified active low-income community
22 business, that may be counted toward the certification of a
23 qualified equity investment, whether issued to one or several
24 qualified community development entities, shall be ten million
25 dollars (\$10,000,000).

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1 D. For any calendar year, the amount of the tax
2 credit claimed by a purchaser shall not exceed the amount of
3 the purchaser's state premium tax liability for that year.

4 E. A purchaser claiming a state new markets premium
5 tax credit shall not claim any other state tax credit,
6 deduction or exemption for the same qualified equity investment
7 that the purchaser used to qualify for the state new markets
8 premium tax credit.

9 F. If a purchaser of a qualified equity investment
10 is a corporation, partnership or limited liability company, any
11 credits earned by the purchaser may be allocated to the
12 partners, members or shareholders of the purchaser for their
13 direct use in accordance with a written agreement between the
14 partners, members or shareholders. For purposes of this
15 section, such an allocation shall not be considered a sale or
16 transfer of the credits.

17 G. To claim the state new markets premium tax
18 credit, a purchaser shall attach to its premium tax filings a
19 certificate of eligibility issued by the economic development
20 department to be applied against the purchaser's premium tax
21 liability pursuant to the terms stated on the certificate.

22 H. The division shall coordinate with the taxation
23 and revenue department and the economic development department
24 to maintain a record of the cumulative amount of claims for the
25 state new markets premium tax credits and state new markets

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1 corporate income tax credits that have been issued.

2 I. If the amount of the state new markets premium
3 tax credit stated on a certificate of eligibility as eligible
4 for use in a particular calendar year exceeds the taxpayer's
5 premium tax liability for the calendar year, the excess credit
6 may be carried forward for use in any of the next five calendar
7 years from the date of maturity of each certificate. The
8 latest date of the carryforward is twelve years after the first
9 credit allowance date on which the initial qualified equity
10 investment was made.

11 J. The state new markets premium tax credit and the
12 certificate of eligibility shall not be sold, exchanged or
13 otherwise transferred to another purchaser. The credit is not
14 refundable.

15 K. When the economic development department
16 provides to the division a notice of decertification of the
17 qualified equity investment, the division shall recapture from
18 purchasers that claimed the state new markets premium tax
19 credit any used tax credits in the amounts stated on the notice
20 of decertification and cause the forfeiture of any unused tax
21 credits and cancellation of certificates. A recapture shall
22 create a first priority lien on the assets and property of the
23 purchaser in favor of the state and a recurring tax liability
24 for the purchaser until the amount of all state new markets
25 premium tax credits received by the purchaser are repaid.

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1 L. Acceptance by a purchaser of a state new markets
2 premium tax credit pursuant to this section is authorization by
3 the purchaser for the division to reveal information to the
4 legislature necessary to analyze the effectiveness of the state
5 new markets premium tax credit.

6 M. Notwithstanding any other section of law to the
7 contrary, the division may disclose the number of purchasers
8 allowed to receive the state new markets premium tax credit,
9 the amount of each credit approved and any other information
10 required by the legislature, the economic development
11 department or the division to aid in evaluating the
12 effectiveness of the state new markets premium tax credit.

13 N. The revenue stabilization and tax policy
14 committee and any other appropriate legislative committees
15 shall review the state new markets premium tax credit and state
16 new markets corporate income tax credit for their effectiveness
17 in achieving the goals and meeting the purposes for which the
18 credits were adopted. The review shall be completed by October
19 1 of the calendar year.

20 O. The division may receive a request from and may
21 issue an advisory letter to a qualified community development
22 entity regarding its certified qualified equity investment.
23 The statements contained in an advisory letter shall not be
24 relied upon by any person or entity other than the qualified
25 community development entity that applied for the certification

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1 and the purchasers that are entitled to any tax credits
2 generated from investment in the qualified equity investment.

3 P. As used in this section:

4 (1) "certificate" means a certificate of
5 eligibility issued by the economic development department
6 stating the maximum amount of a tax credit vested in a
7 certified qualified equity investment and the terms of use;

8 (2) "credit allowance date" means, with
9 respect to any qualified equity investment:

10 (a) the date on which the qualified
11 equity investment is initially made; and

12 (b) each of the six anniversary dates
13 thereafter;

14 (3) "purchaser" means an original purchaser of
15 the qualified equity investment or a subsequent purchaser of
16 the qualified equity investment;

17 (4) "qualified community development entity"
18 has the same meaning given to that same term in Section 45D of
19 the Internal Revenue Code of 1986; provided that the qualified
20 community development entity has entered into an allocation
21 agreement with the community development financial institutions
22 fund of the United States department of treasury, with respect
23 to credits authorized by Section 45D of the Internal Revenue
24 Code of 1986 that includes the state within the service area
25 set forth in the allocation agreement. "Qualified community

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1 development entity" includes a subordinate community
2 development entity that also is a qualified community
3 development entity under Section 45D of the Internal Revenue
4 Code of 1986 and is controlled by or under common control with
5 the qualified community development entity that applied for the
6 state new markets premium tax credit; and

7 (5) "qualified equity investment" means any
8 equity investment in, or long-term debt security issued by, a
9 qualified community development entity that:

10 (a) is acquired after the effective date
11 of this 2012 act, at its original issuance, solely in exchange
12 for cash, or that was constituted a qualified equity investment
13 in the hands of a prior holder;

14 (b) has at least eighty-five percent of
15 its cash purchase price used by the qualified community
16 development entity to make qualified low-income community
17 investments in qualified active low-income community businesses
18 located in the state; and

19 (c) is designated by the New Mexico
20 finance authority as a qualified equity investment under the
21 Statewide Economic Development Finance Act and is certified by
22 the New Mexico finance authority as not exceeding the
23 limitations on the aggregate amounts of qualified equity
24 investments that may be certified pursuant to this section, the
25 Corporate Income and Franchise Tax Act and the Statewide

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1 Economic Development Finance Act."

2 SECTION 4. DELAYED REPEAL.--The provisions of this act
3 are repealed on July 1, 2019.

4 SECTION 5. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2012.

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