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SESSION 2013

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SENATE DRS75246-MC-129 (03/14)

Short Title: New Markets Jobs Act.

(Public)

Sponsors: Senator Gunn (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT NEW MARKETS JOBS 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 Jobs 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 Jobs 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, twelve percent (12%) for the next three credit allowance dates, and
15 eleven percent (11%) for the following two credit allowance dates.
- 16 (2) Credit allowance date. – With respect to any qualified equity investment, the
17 date on which the investment is initially made and each of the six
18 anniversary 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 of
29 the 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.
- 35 (5) Purchase price. – The amount paid to the issuer of a qualified equity
36 investment for such qualified equity investment.



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- 1 (6) Qualified active low-income community business. – Defined in section 45D
2 of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. §
3 1.45D-1. A business shall be considered a qualified active low-income
4 community business for the duration of the qualified community
5 development entity's investment in or loan to the business if the entity
6 reasonably expects, at the time it makes the investment or loan, that the
7 business will continue to satisfy the requirements for being a qualified active
8 low-income community business throughout the entire period of the
9 investment or loan. The term excludes any business that derives or projects
10 to derive fifteen percent (15%) or more of its annual revenue from the rental
11 or sale of real estate. This exclusion does not apply to a business that is
12 controlled by or under common control with another business if the second
13 business (i) does not derive or project to derive fifteen percent (15%) or
14 more of its annual revenue from the rental or sale of real estate and (ii) is the
15 primary tenant of the real estate leased from the first business.
- 16 (7) Qualified community development entity. – The meaning given such term in
17 section 45D of the Internal Revenue Code of 1986, as amended, and 26
18 C.F.R. § 1.45D-1 but limited to those businesses meeting the SBA size
19 eligibility standards established in 13 C.F.R. § 121.101-201 at the time the
20 qualified low-income community investment is made. A business shall be
21 considered a qualified active low-income community business for the
22 duration of the qualified community development entity's investment in or
23 loan to the business if the entity reasonably expects, at the time it makes the
24 investment or loan, that the business will continue to satisfy the requirements
25 for being a qualified active low-income community business, other than the
26 SBA size standards, throughout the entire period of the investment or loan.
27 The term excludes any business that derives or projects to derive fifteen
28 percent (15%) or more of its annual revenue from the rental or sale of real
29 estate. This exclusion does not apply to a business that is controlled by or
30 under common control with another business if the second business (i) does
31 not derive or project to derive fifteen percent (15%) or more of its annual
32 revenue from the rental or sale of real estate and (ii) is the primary tenant of
33 the real estate leased from the first business.
- 34 (8) Qualified community development entity. – The meaning given such term in
35 section 45D of the Internal Revenue Code of 1986, as amended; provided
36 that such entity has entered into, for the current year or any prior year, an
37 allocation agreement with the Community Development Financial
38 Institutions Fund of the U.S. Treasury Department with respect to credits
39 authorized by section 45D of the Internal Revenue Code of 1986, as
40 amended, which includes the State of North Carolina within the service area
41 set forth in the allocation agreement. The term shall include subsidiary
42 community development entities of any qualified community development
43 entity.
- 44 (9) Qualified equity investment. – Any equity investment in or long-term debt
45 security issued by a qualified community development entity that meets each
46 of the following requirements:
- 47 a. Is acquired after the effective date of this act at its original issuance
48 solely in exchange for cash.
- 49 b. Has at least eighty-five percent (85%) of its cash purchase price used
50 by the issuer to make qualified low-income community investments

1 in qualified active low-income community businesses located in this
2 State by the first anniversary of the initial credit allowance date.

3 c. Is designated by the issuer as a qualified equity investment under this
4 subdivision and is certified by the Department as not exceeding the
5 limitation contained in subdivision (5) of this section. This term shall
6 include any qualified equity investment that does not meet the
7 provisions of sub-subdivision a. of this subdivision if such
8 investment was a qualified equity investment in the hands of a prior
9 holder.

10 (10) Qualified low-income community investment. – Any capital or equity
11 investment in or loan to any qualified active low-income community
12 business.

13 (11) Secretary. – The Secretary of Commerce.

14 (12) State premium tax liability. – Any liability incurred by any entity under the
15 gross premiums tax or the retaliatory premium tax levied in Article 8B of
16 this Chapter, or, if the tax liability under the gross premiums tax or the
17 retaliatory premium tax levied in Article 8B of this Chapter is eliminated or
18 reduced, the term shall also mean any tax liability imposed on an insurance
19 company or other person that had premium tax liability under the laws of
20 this State.

21 **"§ 105-129.102. Credit for qualified equity investment.**

22 (a) Credit Established. – A person that makes a qualified equity investment earns a
23 vested right to a tax credit against the person's State premium tax liability on a premium tax
24 report filed under this Article. On each credit allowance date of the qualified equity investment,
25 the taxpayer or subsequent holder of the qualified equity investment may utilize a portion of the
26 tax credit during the taxable year including the credit allowance date. The tax credit amount is
27 equal to the applicable percentage for the credit allowance date multiplied by the purchase price
28 paid to the issuer of the qualified equity investment. The amount of the tax credit claimed by a
29 taxpayer shall not exceed the amount of such taxpayer's State tax liability for the tax year for
30 which the tax credit is claimed. Any amount of tax credit that the taxpayer is prohibited from
31 claiming in a taxable year as a result of this section may be carried forward for use in any
32 subsequent taxable year.

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

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

43 (1) Evidence of the entity's certification as a qualified community development
44 entity, including evidence of the service area of the entity that includes this
45 State.

46 (2) A copy of the allocation agreement executed by the entity or its controlling
47 entity and the Community Development Financial Institutions Fund.

48 (3) A certificate executed by an executive officer of the entity (i) attesting that
49 the allocation agreement remains in effect and has not been revoked or
50 cancelled by the Community Development Financial Institutions Fund and

1 (ii) stating the cumulative amount of allocations awarded to the entity by the
2 Community Development Financial Institutions Fund.

3 (4) A description of the proposed amount, structure, and purchaser of the
4 qualified equity investment.

5 (5) Identifying information for any known taxpayer eligible to utilize tax credits
6 earned as a result of the issuance of the qualified equity investment.

7 (6) Examples of the types of qualified active low-income businesses in which
8 the applicant, its controlling entity, or affiliates of its controlling entity have
9 invested under the Federal New Markets Tax Credit Program. Applications
10 are not required to identify qualified active low-income community
11 businesses in which they will invest when submitting an application.

12 (7) A nonrefundable application fee of five thousand dollars (\$5,000).

13 (8) The refundable performance fee required by G.S. 105-129.104.

14 (d) A qualified community development entity, on an aggregate basis with all of its
15 subsidiary qualified community development entities, may not apply to have equity investment
16 or long-term debt instruments designated as qualified equity investments under this section in
17 excess of the total amount of allocations awarded to the application and its subsidiary qualified
18 community development entities by the Community Development Financial Institutions Fund
19 under section 45D of the Internal Revenue Code.

20 Within 30 days after receipt of a completed application containing the information
21 necessary for the Department to certify a potential qualified equity investment, including the
22 payment of the application fee, the Department shall grant or deny the application in full or in
23 part. If the Department denies any part of the application, it shall inform the qualified
24 community development entity of the grounds for the denial. If the qualified community
25 development entity provides any additional information required by the Department or
26 otherwise completes its application within 15 days of the notice of denial, the application shall
27 be considered completed as of the original date of submission. If the qualified community
28 development entity fails to provide the information or complete its application within the
29 15-day period, the application is denied and must be resubmitted in full with a new submission
30 date.

31 If the application is deemed complete, the Department shall certify the proposed equity
32 investment or long-term debt security as a qualified equity investment that is eligible for tax
33 credits under this section, subject to the limitations contained in this subsection. The
34 Department shall provide written notice of the certification to the qualified community
35 development entity. The notice shall include the names of those taxpayers who are eligible to
36 utilize the credits and their respective credit amounts. If the names of the taxpayers who are
37 eligible to utilize the credits change due to a transfer of a qualified equity investment or a
38 change in an allocation pursuant to this section, the qualified community development entity
39 shall notify the Department of such change.

40 Once the Department has certified a qualified equity investment, the qualified community
41 development entity may suballocate all or any portion of the amount of the certified equity
42 investment to one or more qualified community development entities with the same controlling
43 entity as the applicant qualified community development entity, provided that the applicant
44 qualified community development entity files a notice of such suballocation with the
45 Department and the recipient of the suballocation meets all the requirements of a qualified
46 community development entity under this section. The notice of suballocation shall include the
47 information required in the application for all suballocates.

48 The Department shall certify qualified equity investments in the order applications are
49 received by the Department. Applications received on the same day shall be deemed to have
50 been received simultaneously. For applications received on the same day and deemed complete,
51 the Department shall certify, consistent with remaining tax credit capacity, qualified equity

1 investments in proportionate percentages based upon the ratio of the amount of qualified equity
2 investment requested in an application to the total amount of qualified equity investments
3 requested in all applications received on the same day.

4 The Department shall certify five hundred million dollars (\$500,000,000) in qualified
5 equity investment. If a pending request cannot be fully certified due to this limit, the
6 Department shall certify the portion that may be certified unless the qualified community
7 development entity elects to withdraw its request rather than receive partial certification.

8 Within 30 days after receiving notice of certification, the qualified community development
9 entity or any transferee under this section shall issue the qualified equity investment and
10 receive cash in the amount of the certified amount. The qualified community development
11 entity or transferee must provide the Department with evidence of the receipt of the cash
12 investment within 10 business days after receipt. If the qualified community development
13 entity or transferee does not receive the cash investment and issue the qualified equity
14 investment within 30 days following receipt of the certification notice, the certification shall
15 lapse and the entity may not issue the qualified equity investment without reapplying to the
16 Department for certification. A certification that lapses reverts back to the Department and may
17 be reissued pro rata to other applicants whose qualified equity investment allocations were
18 reduced under this section and thereafter in accordance with the application process.

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

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

26 (2) The issuer redeems or makes principal repayment with respect to a qualified
27 equity investment prior to the seventh anniversary of the issuance of such
28 qualified equity investment. In such case, the Department's recapture shall be
29 proportionate to the amount of the redemption or repayment with respect to
30 such qualified equity investment.

31 (3) The issuer fails to invest at least eighty-five percent (85%) of the purchase
32 price of the qualified equity investment in qualified low-income investments
33 in the State within 12 months of the issuance of the qualified equity
34 investment and maintain such level of investment in qualified low-income
35 community investments in the State until the last credit allowance date for
36 the qualified equity investment. For purposes of this section, an investment
37 shall be considered held by an issuer even if the investment has been sold or
38 repaid if the issuer reinvests an amount equal to the capital returned to or
39 recovered by the issuer from the original investment, exclusive of any profits
40 realized, in another qualified low-income community investment within 12
41 months of the receipt of such capital. An issuer shall not be required to
42 reinvest capital returned from qualified low-income community investments
43 after the earlier of (i) the sixth anniversary of the issuance of the qualified
44 equity investment or (ii) the date by which a qualified community
45 development entity has made qualified low-income community investment
46 with the proceeds of the qualified equity investment on a cumulative basis
47 equal to at least one hundred fifty percent (150%) of the proceeds, and the
48 qualified low-income community investment shall be considered held by the
49 issuer through the seventh anniversary of the qualified equity investment's
50 issuance.

1 (4) At any time prior to the final credit allowance date of a qualified equity
2 investment, the proceeds were used to make qualified low-income equity
3 investments in any one qualified active low-income community businesses,
4 including affiliated qualified active low-income community businesses,
5 exclusive of reinvestments of capital returned or repaid with respect to
6 earlier investments in the qualified active low-income community business
7 and its affiliates, in excess of twenty-five percent (25%) of the cash
8 proceeds.

9 **"§ 105-129.103. Notice of noncompliance.**

10 Enforcement of the recapture under this Article shall not occur until the qualified
11 community development entity shall have been given notice of noncompliance and afforded six
12 months from the date of such notice to cure the noncompliance.

13 **"§ 105-129.104. Refundable performance fee.**

14 (a) A qualified community development entity that seeks to have an equity investment
15 or long-term debt security designated as a qualified equity investment and eligible for tax
16 credits under this Article shall pay a fee in the amount of one-half of one percent (.5%) of the
17 amount of the equity investment or long-term debt security requested to be designated as a
18 qualified equity investment to the Department for deposit in the New Markets performance
19 guarantee account, which is hereby established. The entity shall forfeit the fee if (i) the
20 qualified community development entity and its subsidiary qualified community development
21 entities, if any, fail to issue the total amount of qualified equity investments certified by the
22 Administrator and receive cash in the total amount certified under G.S. 105-129.102 or (ii) the
23 qualified community development entity or any subsidiary qualified community development
24 entity that issues a qualified equity investment certified under this Article fails to meet the
25 investment requirement under this Article; provided that forfeiture for this failure is subject to
26 the cure period established in G.S. 105-129.103.

27 (b) The fee required under this section shall be paid to the Department and held in the
28 New Markets performance guarantee account until such time as compliance with the provisions
29 of this section have been established. The qualified community development entity may request
30 a refund of the fee from the Department no sooner than 30 days after having met all the
31 requirements of this section. The State Treasurer shall have 30 days to comply with the request
32 or give notice of noncompliance.

33 **"§ 105-129.105. Letter rulings.**

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

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

- 44 (1) The applicant requests the director to determine whether a statute is
45 constitutional or a regulation is lawful.
46 (2) The request involves a hypothetical situation or alternative plans.
47 (3) The facts or issues presented in the request are unclear, overbroad,
48 insufficient, or otherwise inappropriate as a basis upon which to issue a letter
49 ruling.

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

4 (c) Letter rulings shall bind the Secretary and the Secretary's agents and their successors
5 until such time as the entity or its shareholders, members, or partners, as applicable, claim all of
6 the credits on a North Carolina tax return or report, subject to the terms and conditions set forth
7 in properly published regulations. The letter ruling shall apply only to the applicant.

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

12 **"§ 105-129.106. Retaliatory tax.**

13 An entity claiming a credit under this Article is not required to pay any additional
14 retaliatory tax levied under this Chapter as a result of claiming the credit. It is the intent of the
15 General Assembly that an entity claiming a credit under this Article is not required to pay any
16 additional tax that may arise as a result of claiming that credit.

17 **"§ 105-129.107. Decertification.**

18 (a) Once certified under this Article, a qualified equity investment may not be
19 decertified unless all of the requirements of this section have been met. Until all qualified
20 equity investments issued by a qualified community development entity are decertified under
21 this section, the qualified community development entity shall not be entitled to distribute to its
22 equity holders or make cash payments on long-term debt securities that have been designated as
23 qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating
24 income, as defined by regulations adopted under section 45D of the Internal Revenue Code of
25 1986, as amended, earned by the qualified community development entity since issuance of the
26 qualified equity investment, prior to giving effect to any expense from the payment of interest
27 on long-term debt securities designated as qualified equity investments and (ii) fifty percent
28 (50%) of the purchase price of the qualified equity investments issued by the qualified
29 community development entity.

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

31 (1) The qualified equity investment is beyond its seventh credit allowance date.

32 (2) The qualified equity investment was in compliance with the requirements of
33 this Article through its seventh credit allowance date, including any cures.

34 (3) The qualified equity investment has its proceeds invested in qualified active
35 low-income community investments such that the total qualified active
36 low-income community investments made, cumulatively including
37 reinvestments, exceeds one hundred fifty percent (150%) of its qualified
38 equity investment.

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

47 **"§ 105-129.111. Limitation on fees.**

48 No qualified community development entity shall be entitled to pay any affiliate of such
49 qualified community development entity any fees in connection with any activity under this
50 Article prior to decertification under G.S. 105-129.107 of all qualified equity investment issued
51 by the qualified community development entity. The foregoing shall not prohibit a qualified

1 community development entity from allocating or distributing income earned by it to the
2 affiliates or paying reasonable interest on amounts lent to the qualified community
3 development entity by such affiliates."

4 **SECTION 2.** This act is effective for taxable years beginning on or after January 1,
5 2013, and applies to qualified equity investments made on or after November 1, 2013.