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121st Session, 2015-2016

H. 3837

STATUS INFORMATION

General Bill

Sponsors: Reps. Loftis, Burns, Cobb-Hunter, Kirby, Clyburn, Hodges, Gilliard, Stavrinakis, Funderburk, Lowe, Merrill, Ott and G.M. Smith

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Introduced in the House on March 17, 2015

Currently residing in the House Committee on **Ways and Means**

Summary: SC New Market Jobs Act

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
3/17/2015	House	Introduced and read first time (House Journal-page 24)
3/17/2015	House	Referred to Committee on Ways and Means (House Journal-page 24)
3/20/2015		Scrivener's error corrected

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VERSIONS OF THIS BILL

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 TO TITLE 38 TO ENACT THE "SOUTH CAROLINA NEW MARKET JOBS ACT" SO AS TO PROVIDE A CREDIT AGAINST INSURANCE PREMIUM TAXES AND POSSIBLE OTHER STATES' TAXES MADE IN CERTAIN INVESTMENTS BY QUALIFIED COMMUNITY DEVELOPMENT ENTITIES, PROVIDING INVESTMENT CAPITAL FOR A QUALIFIED ACTIVE LOW-INCOME COMMUNITY SMALL BUSINESS LOCATED IN THIS STATE, TO MODEL THIS STATE INSURANCE PREMIUM TAX CREDIT ON THE FEDERAL NEW MARKETS TAX CREDIT PROGRAM PROVIDING FEDERAL INCOME TAX CREDITS FOR SUCH INVESTMENTS BUT LIMITED TO INVESTMENTS IN THIS STATE, TO ADOPT FEDERAL DEFINITIONS AS APPLICABLE FOR THE CREDIT BUT MODIFIED TO REFLECT THE PARTICULAR SOUTH CAROLINA APPLICATION OF THE CREDITS, TO PROVIDE A MAXIMUM INITIAL INDIVIDUAL INVESTMENT, A MAXIMUM OVERALL LIMIT FOR ALL SUCH INVESTMENTS ELIGIBLE FOR THE CREDIT, AND AN ANNUAL MAXIMUM AMOUNT OF CREDIT THAT MAY BE CLAIMED, TO PROVIDE THAT THESE CREDITS APPLY OVER SEVEN YEARS AND ARE NONREFUNDABLE AND NOT SALEABLE, TO REQUIRE FEES FOR PROCESSING APPLICATIONS FOR SUCH CREDITS AND FOR RECAPTURE OF THE CREDITS IF QUALIFICATIONS ARE NOT MAINTAINED, TO PROVIDE FOR LETTER RULINGS BY THE DEPARTMENT OF REVENUE WHEN FEDERAL REGULATIONS DO NOT PROVIDE SPECIFIC GUIDANCE, AND TO PROVIDE OTHER LIMITATIONS AND RESTRICTIONS AND REPORTING REQUIREMENTS.

1 Be it enacted by the General Assembly of the State of South
2 Carolina:

3
4 SECTION 1. Title 38 of the 1976 Code is amended by adding:

5
6 "CHAPTER 8

7
8 South Carolina New Market Jobs Act

9
10 Section 38-8-10. This chapter must be known and may be cited
11 as the 'South Carolina New Market Jobs Act'.

12
13 Section 38-8-20. As used in this chapter:

14 (1) 'Account' means the New Market Performance Guarantee
15 Account.

16 (2) 'Affiliate' means an entity that directly, or indirectly
17 through one or more intermediaries, controls, or is controlled by,
18 or is under common control with, the entity specified.

19 (3) 'Applicable percentage' means zero percent for the first
20 two credit allowance dates, twelve percent for the next four credit
21 allowance dates, and ten percent for the final credit allowance date.

22 (4) 'Credit allowance date' means with respect to any qualified
23 equity investment:

24 (a) the date on which the investment is initially made; and

25 (b) each of the six anniversary dates of that date.

26 (5) 'Department' means the South Carolina Department of
27 Revenue.

28 (6) 'Internal Revenue Code' has the meaning of that term
29 provided pursuant to Section 12-6-40.

30 (7) 'Letter ruling' means a written interpretation of law to a
31 specific set of facts provided by the applicant requesting a letter
32 ruling.

33 (8) 'Long-term debt security' means any debt instrument
34 issued by a qualified community development entity with an
35 original maturity date of at least seven years after the date of its
36 issuance, with no repayment, amortization, or prepayment features
37 before its original maturity date. The qualified community
38 development entity that issues the debt instrument may not make
39 cash interest payments on the debt instrument during the period
40 beginning on the date of issuance and ending on the final credit
41 allowance date in an amount that exceeds the cumulative operating
42 income, as defined by regulations promulgated pursuant to Internal
43 Revenue Code Section 45D, of the qualified community

1 development entity for that period before giving effect to the
2 interest expense of the long-term debt security. The provisions of
3 this item do not limit the holder's ability to accelerate payments on
4 the debt instrument when the qualified community development
5 entity has defaulted on covenants designed to ensure compliance
6 with this chapter or Internal Revenue Code Section 45D.

7 (9) 'Purchase price' means the amount paid to the qualified
8 community development entity that issues a qualified equity
9 investment for the qualified equity investment which may not
10 exceed the amount of qualified equity investment authority
11 certified pursuant to Section 38-8-50.

12 (10) 'Qualified active low-income community business' has the
13 meaning given that term provided pursuant to Internal Revenue
14 Code Section 45D, and 26 C.F.R. Sec. 1.45D-1, but limited to
15 those businesses that have fewer than two hundred fifty employees
16 and not more than ten million dollars in net income in the previous
17 year at the time the qualified low-income community investment is
18 made, provided that the employees and the net income of affiliates
19 of the business are not aggregated for purposes of satisfying this
20 requirement if the affiliate business is classified under a different
21 North American Industry Classification System code. A business
22 that derives or projects to derive fifteen percent or more of its
23 annual revenue from the rental or sale of real estate is not
24 considered to be a qualified active low-income community
25 business. This exception does not apply to a business that is
26 controlled by or under common control with another business if
27 the second business does not derive or project to derive fifteen
28 percent or more of its annual revenue from the rental or sale of real
29 estate and is the primary tenant of the real estate leased from the
30 initial business. A business is considered a qualified active
31 low-income community business for the duration of the qualified
32 community development entity's investment in, or loan to, the
33 business if the entity reasonably expects, at the time it makes the
34 investment or loan, that the business will continue to satisfy the
35 requirements for being a qualified active low-income community
36 business, other than the United States Small Business
37 Administration size standards, throughout the entire period of the
38 investment or loan.

39 (11) 'Qualified community development entity' has the meaning
40 given that term in Internal Revenue Code Section 45D if the entity
41 has entered into an allocation agreement with the Community
42 Development Financial Institutions Fund of the United States
43 Treasury Department with respect to credits authorized by Internal

1 Revenue Code Section 45D which includes the State of South
2 Carolina within the service area set forth. An entity may not be
3 considered to be controlled by another entity solely as a result of
4 such entity having made a direct or indirect equity investment in
5 the other entity that earns tax credits under Internal Revenue Code
6 Section 45D or a similar state program. The term includes
7 subsidiary community development entities of any such qualified
8 community development entity.

9 (12) 'Qualified equity investment' means an equity investment
10 in, or long-term debt security issued by, a qualified community
11 development entity that:

12 (a) is acquired after the effective date of this chapter at its
13 original issuance solely in exchange for cash;

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

19 (c) is designated by the qualified community development
20 entity as a qualified equity investment hereunder and is certified by
21 the department pursuant to Section 38-8-50. This term includes
22 any qualified equity investment that does not meet the provisions
23 of subitem (a) if the investment was a qualified equity investment
24 in the hands of a prior holder.

25 (13) 'Qualified low-income community investment' means a
26 capital or equity investment in, or loan to, a qualified active
27 low-income community business; but, with respect to any one
28 qualified active low-income community business, the maximum
29 amount of qualified low-income community investments made in
30 the business, on a collective basis with all of the businesses'
31 affiliates, with the proceeds of qualified equity investments
32 certified pursuant to Section 38-8-50, is four million dollars,
33 exclusive of qualified low-income community investments made
34 with repaid or redeemed qualified low-income community
35 investments or interest or profits realized thereon.

36 (14) 'SBA' means the United States Small Business
37 Administration.

38 (15) 'State premium tax liability' means any liability incurred
39 by an entity pursuant to Sections 38-7-20, 38-7-30, 38-7-40,
40 38-7-50, and 38-7-90. If this tax liability is eliminated or reduced,
41 the term also includes any state tax liability imposed on an
42 insurance company or other person that had premium tax liability
43 under the laws of this State.

1

2 Section 38-8-30. An entity that makes a qualified equity
3 investment earns a vested right to credit against the entity's state
4 premium tax liability on a premium tax return filed under this title
5 that may be used as follows:

6 (1) the entity, or subsequent holder of the qualified equity
7 investment, is entitled to use a portion of the credit during the
8 taxable year that includes a credit allowance date;

9 (2) the credit amount is equal to the applicable percentage for
10 the credit allowance date multiplied by the purchase price paid to
11 the qualified community development entity for the qualified
12 equity investment; and

13 (3) the amount of the credit claimed by an entity may not
14 exceed the amount of the entity's state premium tax liability for the
15 tax year for which the credit is claimed. Any amount of tax credit
16 that the entity is prohibited from claiming in a taxable year as a
17 result of this chapter may be carried forward for use in a
18 subsequent taxable year.

19

20 Section 38-8-40. A tax credit claimed pursuant to this chapter is
21 not refundable or saleable on the open market. Tax credits earned
22 by or allocated to a partnership, limited liability company, S
23 corporation may be allocated to the partners, members, or
24 shareholders of the entity for their use pursuant to the provisions of
25 an agreement among the partners, members, or shareholders.
26 These allocations are not considered a sale for purposes of this
27 chapter.

28

29 Section 38-8-50. (A) A qualified community development
30 entity that seeks to have an equity investment or long-term debt
31 security designated as a qualified equity investment and eligible
32 for tax credits pursuant to this chapter shall apply to the
33 department for this designation. The department shall begin
34 accepting applications on September 1, 2015. The application of
35 the qualified community development entity must include the
36 following:

37 (1) evidence of the applicant's certification as a qualified
38 community development entity, including evidence of the service
39 area of the entity that includes this State;

40 (2) a copy of an allocation agreement executed by the
41 applicant, or its controlling entity, and the Community
42 Development Financial Institutions Fund dated after January 1,
43 2014;

1 (3) a certificate executed by an executive officer of the
2 applicant attesting that the allocation agreement remains in effect
3 and has not been revoked or canceled by the Community
4 Development Financial Institutions Fund;

5 (4) a description of the proposed amount, structure, and
6 purchaser of the qualified equity investment;

7 (5) examples of the types of qualified active low-income
8 businesses in which the applicant, its controlling entity or affiliates
9 of its controlling entity have invested under the federal New
10 Market Tax Credit Program. Applicants are not required to
11 identify qualified active low-income community businesses in
12 which they will invest when submitting an application;

13 (6) a nonrefundable application fee of five thousand dollars,
14 which must be paid to the department for each application
15 submitted;

16 (7) if applicable, the refundable performance deposit
17 required pursuant to Section 38-8-80(A);

18 (8) a copy of at least two certificates of qualified equity
19 investment authority under at least two different state new markets
20 tax credit programs; and

21 (9) evidence that the applicant, its controlling entity, and
22 subsidiary qualified community development entities of the
23 controlling entity have made at least forty million dollars in
24 qualified low-income community investments under Internal
25 Revenue Code Section 45D and other state new markets tax credit
26 programs with a maximum qualified low-income community
27 investment size of four million dollars for each qualified active
28 low-income community business. No qualified active low-income
29 community business included may have received in excess of four
30 million dollars in qualified low-income community investments,
31 cumulatively, from the applicant, its controlling entity, and
32 subsidiary qualified community entities of the controlling entity.

33 (B) Within thirty days after receipt of a completed application
34 containing the information set forth in subsection (A), including
35 the payment of the application fee and, if applicable, the
36 refundable performance deposit pursuant to Section 38-8-80(A),
37 the department shall grant or deny the application in full or in part.
38 If the department denies any part of the application, it shall inform
39 the qualified community development entity of the grounds for the
40 denial. If the qualified community development entity provides
41 additional information required by the department or otherwise
42 completes its application within fifteen days of the notice of denial,
43 the application must be considered completed as of the original

1 date of submission. If the qualified community development entity
2 fails to provide the information or complete its application within
3 the fifteen-day period, the application remains denied, must be
4 resubmitted in full with a new submission date, and the department
5 shall return any refundable performance deposit pursuant to
6 Section 38-8-80(A).

7 (C) If the application is complete, the department shall certify
8 the proposed equity investment or long-term debt security as a
9 qualified equity investment that is eligible for tax credits pursuant
10 to this chapter, subject to the limitations contained in subsection
11 (F), but the department may not certify qualified equity
12 investments for any applicant, on a combined basis with all of its
13 affiliates, in excess of sixty million dollars unless the applicant
14 has:

15 (1) already had qualified equity investments certified
16 pursuant to this section;

17 (2) satisfied the requirements of Section 38-8-80 with
18 respect to the qualified equity investments; and

19 (3) filed a new application after satisfying the requirements of
20 items (1) and (2). The department shall provide written notice of
21 the certification to the qualified community development entity.
22 The notice must include the names of those entities who will earn
23 the credits and their respective credit amounts which may be
24 further allocated pursuant to Section 38-8-40.

25 (D) The department shall certify qualified equity investments in
26 the order applications are received by the department.
27 Applications received on the same day are considered to have been
28 received simultaneously.

29 (E) For applications that are completed and received on the
30 same day, the department first shall certify, consistent with
31 remaining qualified equity investment capacity, the qualified
32 equity investments of applicants in proportionate percentages
33 based upon the ratio of the amount of qualified equity investments
34 requested in an application to the total amount of qualified equity
35 investments requested in all applications received on the same day.

36 (F) The department shall certify two hundred fifty million
37 dollars in qualified equity investments pursuant to this section. If a
38 pending request cannot be fully certified due to this limit, the
39 department shall certify the portion that may be certified unless the
40 qualified community development entity elects to withdraw its
41 request rather than receive partial certification. Upon withdrawal
42 the department shall return any deposit required pursuant to

1 Section 38-8-80(A). A partial certification does not decrease the
2 amount of the deposit required pursuant to Section 38-8-80(A).

3 (G) An approved applicant may transfer all or a portion of its
4 qualified equity investment authority to its controlling entity or a
5 subsidiary qualified community development entity of the
6 controlling entity if the applicant and the transferee notify the
7 department of the transfer with the notice provided pursuant to
8 subsection (H) and include the information required in the
9 application with respect to the transferee with the notice.

10 (H) Within forty-five days of the applicant receiving notice of
11 certification, the qualified community development entity or any
12 transferee pursuant to subsection (G) shall issue the qualified
13 equity investment and receive cash in the amount of the certified
14 amount. The qualified community development entity or
15 transferee pursuant to subsection (G) shall provide the department
16 with evidence of the receipt of the cash investment within fifty
17 days of the applicant receiving notice of certification. If the
18 qualified community development entity or any transferee pursuant
19 to subsection (G) does not receive the cash investment and issue
20 the qualified equity investment within forty-five days following
21 receipt of the certification notice, the certification lapses and the
22 entity may not issue the qualified equity investment without
23 reapplying to the department for certification. Lapsed
24 certifications revert to the department and must be reissued:

25 (1) first, pro rata to applicants whose qualified equity
26 investment allocations were reduced pursuant to subsection (E);
27 and

28 (2) thereafter, pursuant to the application process.

29 (I) A qualified community development entity that issues
30 qualified equity investments shall notify the department of the
31 names of the entities that are eligible to use tax credits allowed
32 pursuant to Section 38-8-40 based on an allocation of tax credits or
33 change in allocation of tax credits or due to a transfer of a qualified
34 equity investment.

35

36 Section 38-8-60. (A) The department may recapture, from the
37 entity that claimed the credit on a return, the tax credit allowed
38 pursuant to this chapter if:

39 (1) any amount of a federal tax credit available with respect
40 to a qualified equity investment that is eligible for a credit pursuant
41 to this chapter is recaptured pursuant to Internal Revenue Code
42 Section 45D. In this case, the department's recapture must be

1 proportionate to the federal recapture with respect to the qualified
2 equity investment;

3 (2) the qualified community development entity redeems or
4 makes principal repayment with respect to a qualified equity
5 investment before the seventh anniversary of the issuance of the
6 qualified equity investment. In this case, the department's
7 recapture must be proportionate to the amount of the redemption or
8 repayment with respect to the qualified equity investment;

9 (3) the qualified community development entity fails to
10 invest an amount equal to eighty-five percent of the purchase price
11 of the qualified equity investment in qualified low-income
12 community investments in this State within twelve months of the
13 issuance of the qualified equity investment and maintain at least
14 eighty-five percent of the level of investment in qualified
15 low-income community investments in this State until the last
16 credit allowance date for the qualified equity investment. For
17 purposes of this chapter, an investment is considered held by a
18 qualified community development entity even if the investment
19 has been sold or repaid if the qualified community development
20 entity reinvests an amount equal to the capital returned to or
21 recovered by the qualified community development entity from the
22 original investment, exclusive of any profits realized, in another
23 qualified low-income community investment within twelve months
24 of the receipt of the capital. Periodic amounts received as
25 repayment of principal pursuant to regularly scheduled
26 amortization payments on a loan that is a qualified low-income
27 community investment must be treated as continuously invested in
28 a qualified low-income community investment if the amounts are
29 reinvested in one or more qualified low-income community
30 investments by the end of the following calendar year. A qualified
31 community development entity is not required to reinvest capital
32 returned from qualified low-income community investments after
33 the sixth anniversary of the issuance of the qualified equity
34 investment, and the qualified low-income community investment
35 is considered held by the qualified community development entity
36 through the seventh anniversary of the qualified equity
37 investment's issuance;

38 (4) a distribution or debt payment in violation of Section
39 38-8-110(A);

40 (5) a violation of Section 38-8-120; or

41 (6) a violation of 38-8-130.

1 (B) Recaptured tax credits and the related qualified equity
2 investment authority revert back to the department and must be
3 reissued:

4 (1) first, pro rata to applicants whose qualified equity
5 investment allocations were reduced under Section 38-8-50(E);
6 and

7 (2) thereafter, pursuant to the application process.

8

9 Section 38-8-70. Enforcement of each of the recapture
10 provisions is subject to a six-month cure period. A recapture may
11 not occur until the qualified community development entity has
12 been given notice of noncompliance and afforded six months from
13 the date of the notice to cure the noncompliance. This cure period
14 is not available for any forfeiture of the deposit required pursuant
15 to Section 38-8-80(A).

16

17 Section 38-8-80. (A) A qualified community development
18 entity seeking to have an equity investment or long-term debt
19 security designated as a qualified equity investment and eligible
20 for tax credits pursuant to this chapter shall pay a deposit in the
21 amount of one half of one percent of the amount of the equity
22 investment or long-term debt security requested in an application
23 to be designated as a qualified equity investment to the department
24 for deposit in the New Market Performance Guarantee Account
25 'account', which is hereby established in the State Treasury
26 separate and distinct from the general fund of the State and all
27 other funds. Funds in this account at the end of a fiscal year carry
28 forward to the succeeding fiscal year. Revenue in the fund must be
29 used for the purposes of this chapter. The entity forfeits the
30 deposit in its entirety if:

31 (1) the qualified community development entity and its
32 subsidiary qualified community development entities fail to issue
33 the total amount of qualified equity investments certified by the
34 department and receive cash in the total amount certified pursuant
35 Section 38-8-50; or

36 (2) the qualified community development entity or any
37 subsidiary qualified community development entity that issues a
38 qualified equity investment certified pursuant to this section fails
39 to make qualified low-income community investments in qualified
40 active low-income community businesses in this State equal to at
41 least eighty-five percent of the purchase price of the qualified
42 equity investment by the second credit allowance date of the
43 qualified equity investment.

1 (B) The deposit required pursuant to subsection (A) must be
2 paid to the department and held in the account until the time
3 compliance with the provisions of this subsection has been
4 established. The qualified community development entity may
5 request a refund of the deposit from the department no sooner than
6 thirty days after the qualified community development entity and
7 all transferees under Section 38-8-50(G) have invested eighty-five
8 percent of the purchase price of the qualified equity investment
9 authority certified by the department pursuant to Section
10 38-8-50(C). The department has thirty days to comply with the
11 request or give notice of noncompliance.

12 (C) No deposit may be received from an applicant who has:

13 (1) had proposed qualified equity investments certified
14 pursuant to Section 38-8-50; and

15 (2) not forfeited a deposit made pursuant to this section.

16

17 Section 38-8-90. (A) The department shall issue letter rulings
18 regarding the tax credit program authorized pursuant this chapter,
19 subject to the terms and conditions set forth in this section.

20 (B) The department shall respond to a request for a letter ruling
21 within sixty days of receipt of the request. The applicant may
22 provide a draft letter ruling for the department's consideration.
23 The applicant may withdraw the request for a letter ruling, in
24 writing, before the issuance of the letter ruling. The department
25 may refuse to issue a letter ruling for good cause, but must list the
26 specific reasons for refusing to issue the letter ruling. Good cause
27 includes, but is not limited to, when:

28 (1) the applicant requests the department to determine
29 whether a statute is constitutional or a regulation is lawful;

30 (2) the request involves a hypothetical situation or
31 alternative plans; or

32 (3) the issue is currently being considered in a rulemaking
33 procedure, contested case, or other agency or judicial proceeding
34 that may definitely resolve the issue.

35 (C) Letter rulings bind the department, the Department of
36 Insurance, and the agents and their successors of these departments
37 until the time the applicant or its shareholders, members, or
38 partners, as applicable, claim all of the credits on a South Carolina
39 tax return or report, subject to the terms and conditions set forth in
40 properly published regulations. The letter ruling applies only to
41 the applicant.

42 (D) In rendering letter rulings and making other determinations
43 pursuant to this chapter, to the extent applicable, the department

1 shall look for guidance to Internal Revenue Code Section 45D and
2 the rules and regulations issued under it.

3

4 Section 38-8-100. (A) An entity claiming a credit pursuant to
5 this chapter is not required to pay any additional retaliatory tax
6 levied pursuant to Section 38-7-90 as a result of claiming that
7 credit.

8 (B) In addition to the exclusion in subsection (A), it is the
9 intent of this chapter that an entity claiming a credit pursuant to
10 this chapter is not required to pay any additional tax that may arise
11 as a result of claiming that credit.

12

13 Section 38-8-110. (A) Once certified pursuant to Section
14 38-8-50, a qualified equity investment remains under certification
15 until all of the requirements of subsection (B) have been met.
16 Until all qualified equity investments issued by a qualified
17 community development entity are no longer under certification
18 pursuant to this section, the qualified community development
19 entity is not entitled to distribute to its equity holders or make cash
20 payments on long-term debt securities that have been designated as
21 qualified equity investments in an amount that exceeds the sum of:

22 (1) the cumulative operating income, as defined by
23 regulations promulgated pursuant to Internal Revenue Code
24 Section 45D earned by the qualified community development
25 entity since issuance of the qualified equity investment, before
26 giving effect to any interest expense from long-term debt securities
27 designated as qualified equity investments; and

28 (2) fifty percent of the purchase price of the qualified equity
29 investments issued by the qualified community development
30 entity.

31 (B) A qualified equity investment ceases to be qualified under
32 certification when:

33 (1) it is beyond its seventh credit allowance date;

34 (2) the qualified community development entity issuing the
35 qualified equity investment has been in compliance with Section
36 38-8-60 through its seventh credit allowance date, including any
37 cures allowed pursuant to Section 38-8-70; and

38 (3) the qualified community development entity issuing the
39 qualified equity investment has used the cash purchase of the
40 qualified equity investment, together with capital returned, repaid
41 or redeemed or profits realized with qualified low-income
42 community investments, to invest in qualified active low-income
43 community businesses such that the total qualified low-income

1 community investments made, cumulatively including
2 reinvestments, exceeds one hundred fifty percent of the qualified
3 equity investment. For purposes of making this calculation,
4 qualified low-income community investments to any one qualified
5 active low-income community business, on a collective basis with
6 its affiliates, in excess of four million dollars is not included unless
7 the investments are made with capital returned or repaid from
8 qualified low-income community investments made by the
9 qualified community development entity in other qualified active
10 low-income community businesses or interest earned on or profits
11 realized from any qualified low-income community investments.

12 (C) A qualified community development entity that has met the
13 requirements of subsection (B) shall send notice to the department
14 of its satisfaction of these requirements along with evidence
15 supporting the request. The provisions of subsection (B)(2) are
16 considered to be met if no recapture action has been commenced
17 by the department as of the seventh credit allowance date. This
18 request must not be unreasonably denied and must be responded to
19 within thirty days of receiving the request. When the request is
20 granted, the qualified community development entity is no longer
21 subject to Section 38-8-140. If the request is denied for any
22 reason, the burden of proof is on the department in an
23 administrative or legal proceeding that follows.

24
25 Section 38-8-120. A qualified community development entity
26 or purchaser of a qualified equity investment may not pay to a
27 qualified community development entity or affiliate a fee in
28 connection with an activity pursuant to this section before meeting
29 the requirements of Section 38-8-110(B) with respect to all
30 qualified equity investments issued by the qualified community
31 development entity and its affiliates. The provisions of this section
32 do not prohibit the allocation or distribution of income earned by a
33 qualified community development entity or purchaser of a
34 qualified equity investment to their equity owners or the payment
35 of reasonable interest on amounts lent to a qualified community
36 development entity or purchaser of a qualified equity investment.

37
38 Section 38-8-130. (A) A qualified active low-income
39 community business that receives a qualified low-income
40 community investment from a qualified community development
41 entity that issues qualified equity investments pursuant to this
42 chapter, or any affiliates of such a qualified active low-income
43 community business, may not directly or indirectly:

1 (1) own or have the right to acquire an ownership interest in a
2 qualified community development entity or member or affiliate of
3 a qualified community development entity including, but not
4 limited to, a holder of a qualified equity investment issued by the
5 qualified community development entity; or

6 (2) lend to or invest in a qualified community development
7 entity or member or affiliate of a qualified community
8 development entity including, but not limited to, a holder of a
9 qualified equity investment issued by a qualified community
10 development entity where the proceeds of the loan or investment
11 are directly or indirectly used to fund or refinance the purchase of
12 a qualified equity investment.

13 (B) For purposes of this section, a qualified community
14 development entity is not considered an affiliate of a qualified
15 active low-income community business solely as a result of its
16 qualified low-income community investment in the business.

17

18 Section 38-8-140. (A) A qualified community development
19 entity that issues a qualified equity investment shall submit a
20 report to the department within the first five business days after the
21 first anniversary of the initial credit allowance date that provides
22 documentation as to the investment of eighty-five percent of the
23 purchase price in qualified low-income community investment in a
24 qualified active low-income community business located in this
25 State. The report must include:

26 (1) a bank statement of the qualified community
27 development entity evidencing each qualified low-income
28 community investment; and

29 (2) evidence that the business was a qualified active
30 low-income community business at the time of the qualified
31 low-income community investment.

32 (B) After the reporting required pursuant to subsection (A), the
33 qualified community development entity annually shall submit a
34 report to the department within sixty days of the beginning of the
35 calendar year during the compliance period. The annual report is
36 not due before the first anniversary of the initial credit allowance
37 date. The report must include, but is not limited to:

38 (1) number of employment positions created and retained as
39 a result of qualified low-income community investments; and

40 (2) average annual salary of positions described in item (1).”

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1 SECTION 2. This act takes effect August 1, 2015, and applies
2 with respect to returns and returns originally due on or after that
3 date.

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