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121st Session, 2015-2016

S. 337

STATUS INFORMATION

General Bill

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Introduced in the Senate on January 15, 2015

Currently residing in the Senate Committee on **Finance**

Summary: SC New Market Jobs Act

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
1/15/2015	Senate	Introduced and read first time (Senate Journal-page 18)
1/15/2015	Senate	Referred to Committee on Banking and Insurance (Senate Journal-page 18)
1/28/2015	Senate	Recalled from Committee on Banking and Insurance (Senate Journal-page 9)
1/28/2015	Senate	Committed to Committee on Finance (Senate Journal-page 9)

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VERSIONS OF THIS BILL

[1/15/2015](#)

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 TO TITLE 38 ENACTING 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 meeting the SBA size eligibility standards
16 established in 13 C.F.R. 121.101-201 at the time the qualified
17 low-income community investment is made. A business that
18 derives or projects to derive fifteen percent or more of its annual
19 revenue from the rental or sale of real estate is not considered to be
20 a qualified active low-income community business. This
21 exception does not apply to a business that is controlled by or
22 under common control with another business if the second
23 business does not derive or project to derive fifteen percent or
24 more of its annual revenue from the rental or sale of real estate and
25 is the primary tenant of the real estate leased from the initial
26 business. A business is considered a qualified active low-income
27 community business for the duration of the qualified community
28 development entity's investment in, or loan to, the business if the
29 entity reasonably expects, at the time it makes the investment or
30 loan, that the business will continue to satisfy the requirements for
31 being a qualified active low-income community business, other
32 than the United States Small Business Administration size
33 standards, throughout the entire period of the investment or loan.

34 (11) 'Qualified community development entity' has the meaning
35 given that term in Internal Revenue Code Section 45D if the entity
36 has entered into an allocation agreement with the Community
37 Development Financial Institutions Fund of the United States
38 Treasury Department with respect to credits authorized by Internal
39 Revenue Code Section 45D which includes the State of South
40 Carolina within the service area set forth and is dated on or after
41 January 1, 2014. An entity may not be considered to be controlled
42 by another entity solely as a result of such entity having made a
43 direct or indirect equity investment in the other entity that earns tax

1 credits under Internal Revenue Code Section 45D or a similar state
2 program. The term includes subsidiary community development
3 entities of any such qualified community development entity.

4 (12) 'Qualified Equity Investment' means an equity investment
5 in, or long-term debt security issued by, a qualified community
6 development entity that:

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

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

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

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

31 (14) 'SBA' means the United States Small Business
32 Administration.

33 (15) 'State premium tax liability' means any liability incurred
34 by an entity pursuant to Sections 38-7-20, 38-7-30, 38-7-40,
35 38-7-50, and 38-7-90. If this tax liability is eliminated or reduced,
36 the term also includes any state tax liability imposed on an
37 insurance company or other person that had premium tax liability
38 under the laws of this State.

39

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

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

4 (2) the credit amount is equal to the applicable percentage for
5 the credit allowance date multiplied by the purchase price paid to
6 the qualified community development entity for the qualified
7 equity investment; and

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

14

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

23

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

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

35 (2) a copy of an allocation agreement executed by the
36 applicant, or its controlling entity, and the Community
37 Development Financial Institutions Fund dated after January 1,
38 2014;

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

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

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

9 (6) a nonrefundable application fee of five thousand dollars,
10 which must be paid to the department for each application
11 submitted;

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

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

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

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

1 with a new submission date, and the department shall return any
2 refundable performance deposit pursuant to Section 38-8-80(A).

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

11 (1) already had qualified equity investments certified
12 pursuant to this section;

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

15 (3) filed a new application after satisfying the requirements of
16 items (1) and (2). The department shall provide written notice of
17 the certification to the qualified community development entity.
18 The notice must include the names of those entities who will earn
19 the credits and their respective credit amounts.

20 (D) The department shall certify qualified equity investments in
21 the order applications are received by the department.
22 Applications received on the same day are considered to have been
23 received simultaneously.

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

31 (F) The department shall certify two hundred fifty million
32 dollars in qualified equity investments pursuant to this section. If a
33 pending request cannot be fully certified due to this limit, the
34 department shall certify the portion that may be certified unless the
35 qualified community development entity elects to withdraw its
36 request rather than receive partial certification. Upon withdrawal
37 the department shall return any refundable performance deposit
38 required pursuant to Section 38-8-80(A). A partial certification
39 does not decrease the amount of the refundable performance
40 deposit required pursuant to Section 38-8-80(A).

41 (G) An approved applicant may transfer all or a portion of its
42 certified qualified equity investment authority to its controlling
43 entity or a subsidiary qualified community development entity of

1 the controlling entity if the applicant and the transferee notify the
2 department of the transfer with the notice provided pursuant to
3 subsection (H) and include the information required in the
4 application with respect to the transferee with the notice.

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

20 (1) first, pro rata to applicants whose qualified equity
21 investment allocations were reduced pursuant to subsection (E);
22 and

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

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

30
31 Section 38-8-60. (A) The department may recapture, from the
32 entity that claimed the credit on a return, the tax credit allowed
33 pursuant to this chapter if:

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

40 (2) the qualified community development entity redeems or
41 makes principal repayment with respect to a qualified equity
42 investment before the seventh anniversary of the issuance of the
43 qualified equity investment. In this case, the department's

1 recapture must be proportionate to the amount of the redemption or
2 repayment with respect to the qualified equity investment;

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

32 (4) a distribution or debt payment in violation of Section
33 38-8-110(A); or

34 (5) a violation of Section 38-8-130.

35 (B) Recaptured tax credits and the related qualified equity
36 investment authority revert back to the department and must be
37 reissued:

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

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

42

1 Section 38-8-70. Enforcement of each of the recapture
2 provisions is subject to a six-month cure period. A recapture may
3 not occur until the qualified community development entity has
4 been given notice of noncompliance and afforded six months from
5 the date of the notice to cure the noncompliance.

6

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

21 (1) the qualified community development entity and its
22 subsidiary qualified community development entities fail to issue
23 the total amount of qualified equity investments certified by the
24 department and receive cash in the total amount certified pursuant
25 Section 38-8-50; or

26 (2) the qualified community development entity or any
27 subsidiary qualified community development entity that issues a
28 qualified equity investment certified pursuant to this section fails
29 to make qualified low-income community investments in qualified
30 active low-income community businesses in this State equal to at
31 least eighty-five percent of the purchase price of the qualified
32 equity investment by the second credit allowance date of the
33 qualified equity investment. The six month cure period allowed
34 pursuant to Section 38-8-70 is not applicable to the forfeiture of
35 deposits pursuant to this item.

36 (B) The deposit required pursuant to subsection (A) must be
37 paid to the department and held in the account until the time
38 compliance with the provisions of this subsection has been
39 established. The qualified community development entity may
40 request a refund of the deposit from the department no sooner than
41 thirty days after the qualified community development entity and
42 all transferees under Section 38-8-50(G) have invested eighty-five
43 percent of the purchase price of the qualified equity investment

1 authority certified by the department pursuant to Section
2 38-8-50(C). The department has thirty days to comply with the
3 request or give notice of noncompliance.

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

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

7 (2) not forfeited a deposit made pursuant to this section.
8

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

12 (B) The department shall respond to a request for a letter ruling
13 within sixty days of receipt of the request. The applicant may
14 provide a draft letter ruling for the department's consideration.
15 The applicant may withdraw the request for a letter ruling, in
16 writing, before the issuance of the letter ruling. The department
17 may refuse to issue a letter ruling for good cause, but must list the
18 specific reasons for refusing to issue the letter ruling. Good cause
19 includes, but is not limited to, when:

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

22 (2) the request involves a hypothetical situation or
23 alternative plans; or

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

27 (C) Letter rulings bind the department, the Department of
28 Insurance, and the agents and their successors of these departments
29 until the time the applicant or its shareholders, members, or
30 partners, as applicable, claim all of the credits on a South Carolina
31 tax return or report, subject to the terms and conditions set forth in
32 properly published regulations. The letter ruling applies only to
33 the applicant.

34 (D) In rendering letter rulings and making other determinations
35 pursuant to this chapter, to the extent applicable, the department
36 shall look for guidance to Internal Revenue Code Section 45D and
37 the rules and regulations issued under it.
38

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

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

5

6 Section 38-8-110. (A) Once certified pursuant to Section
7 38-8-50, a qualified equity investment remains under certification
8 until all of the requirements of subsection (B) have been met.
9 Until all qualified equity investments issued by a qualified
10 community development entity are no longer under certification
11 pursuant to this section, the qualified community development
12 entity is not entitled to distribute to its equity holders or make cash
13 payments on long-term debt securities that have been designated as
14 qualified equity investments in an amount that exceeds the sum of:

15 (1) the cumulative operating income, as defined by
16 regulations promulgated pursuant to Internal Revenue Code
17 Section 45D earned by the qualified community development
18 entity since issuance of the qualified equity investment, before
19 giving effect to any interest expense from long-term debt securities
20 designated as qualified equity investments; and

21 (2) fifty percent of the purchase price of the qualified equity
22 investments issued by the qualified community development
23 entity.

24 (B) A qualified equity investment ceases to be qualified under
25 certification when:

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

27 (2) the qualified community development entity issuing the
28 qualified equity investment has been in compliance with Section
29 38-8-60 through its seventh credit allowance date, including any
30 cures allowed pursuant to Section 38-8-70; and

31 (3) the qualified community development entity issuing the
32 qualified equity investment has used the cash purchase of the
33 qualified equity investment, together with capital returned, repaid
34 or redeemed or profits realized with qualified low-income
35 community investments, to invest in qualified active low-income
36 community businesses such that the total qualified low-income
37 community investments made, cumulatively including
38 reinvestments, exceeds one hundred fifty percent of the qualified
39 equity investment. For purposes of making this calculation,
40 qualified low-income community investments to any one qualified
41 active low-income community business, on a collective basis with
42 its affiliates, in excess of four million dollars is not included unless
43 the investments are made with capital returned or repaid from

1 qualified low-income community investments made by the
2 qualified community development entity in other qualified active
3 low-income community businesses or interest earned on or profits
4 realized from any qualified low-income community investments.

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

17
18 Section 38-8-120. A qualified community development entity
19 or purchaser of a qualified equity investment may not pay to a
20 qualified community development entity or affiliate a fee in
21 connection with an activity pursuant to this section before meeting
22 the requirements of Section 38-8-110(B) with respect to all
23 qualified equity investments issued by the qualified community
24 development entity and its affiliates. The provisions of this section
25 do not prohibit the allocation or distribution of income earned by a
26 qualified community development entity or purchaser of a
27 qualified equity investment to their equity owners or the payment
28 of reasonable interest on amounts lent to a qualified community
29 development entity or purchaser of a qualified equity investment.

30
31 Section 38-8-130. (A) A qualified active low-income
32 community business that receives a qualified low-income
33 community investment from a qualified community development
34 entity that issues qualified equity investments pursuant to this
35 chapter, or any affiliates of such a qualified active low-income
36 community business, may not directly or indirectly:

37 (1) own or have the right to acquire an ownership interest in a
38 qualified community development entity or member or affiliate of
39 a qualified community development entity including, but not
40 limited to, a holder of a qualified equity investment issued by the
41 qualified community development entity; or

42 (2) lend to or invest in a qualified community development
43 entity or member or affiliate of a qualified community

1 development entity including, but not limited to, a holder of a
2 qualified equity investment issued by a qualified community
3 development entity where the proceeds of the loan or investment
4 are directly or indirectly used to fund or refinance the purchase of
5 a qualified equity investment.

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

10

11 Section 38-8-140. (A) A qualified community development
12 entity that issues a qualified equity investment shall submit a
13 report to the department within the first five business days after the
14 first anniversary of the initial credit allowance date that provides
15 documentation as to the investment of eighty-five percent of the
16 purchase price in qualified low-income community investment in a
17 qualified active low-income community business located in this
18 State. The report must include:

19 (1) a bank statement of the qualified community
20 development entity evidencing each qualified low-income
21 community investment; and

22 (2) evidence that the business was a qualified active
23 low-income community business at the time of the qualified
24 low-income community investment.

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

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

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

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

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