

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 119**

BY SENATORS FERNS AND BOSO

[Originating in the Committee on Economic  
Development; Reported on February 12, 2018]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5, and §31-15D-6;  
3 and to amend said code by adding thereto a new section, designated §33-3-14e, all  
4 relating to establishing a West Virginia business growth in low-income communities tax  
5 credit for entities making certain investments; providing title; defining terms; establishing  
6 amount of credit allowed; establishing limitations on transferability; providing process for  
7 certification of qualified equity investment; providing for nonrefundable application fee;  
8 providing maximum amount to be certified for each fund; prohibiting entity making  
9 investment from owning or operating business beneficiary of loan made thereunder;  
10 providing new capital requirement; providing reporting requirements; providing eligibility  
11 requirements for receiving tax credits; providing method for calculating amount of  
12 allowable tax credit; providing for recapture of tax credits under certain circumstances;  
13 providing reissue of recaptured tax credits; and providing for letter rulings.

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 31. CORPORATIONS.**

**ARTICLE 15D. WEST VIRGINIA BUSINESS GROWTH IN LOW-INCOME COMMUNITIES TAX**

**CREDIT.**

**§31-15D-1. Title.**

1 The provisions of this article shall be known as, and may be cited as, the “West Virginia  
2 New Markets Jobs Act”.

**§31-15D-2. Definitions.**

1 (a) Any term used in this article has the meaning ascribed by this section unless a different  
2 meaning is clearly required by the context of its use or by definition in this article.

3 (b) For purposes of this article, the term:

4 (1) “Affiliate” means an entity that directly or indirectly through one or more intermediaries  
5 controls, is controlled by, or is under common control with the entity specified;

6 (2) “Applicable percentage” means zero percent for the first three credit allowance dates  
7 and 15 percent of the qualified equity investment for the next four credit allowance dates;

8 (3) “Authority” means the West Virginia Economic Development Authority as provided in  
9 §31-15-4 of this code;

10 (4) “Compliance period” means the period beginning on the date the qualified equity  
11 investment is initially made and ending on the sixth anniversary of the date of the qualified equity  
12 investment;

13 (5) “Credit allowance date” means with respect to any qualified equity investment:

14 (A) The date on which the investment is initially made; and

15 (B) Each of the six anniversary dates of such date thereafter.

16 (6) “Insurance Commissioner” means the Insurance Commissioner of West Virginia or his  
17 or her designee as provided in §15-1-4 of this code;

18 (7) “Long-term debt security” means any debt instrument issued by a qualified community  
19 development entity with an original maturity date of at least seven years from the date of its  
20 issuance, with no repayment, amortization, or prepayment features prior to its original maturity  
21 date. The qualified community development entity that issues the debt instrument may not make  
22 cash interest payments on the debt instrument during the period beginning on the date of issuance  
23 and ending on the final credit allowance date in an amount that exceeds the cumulative operating  
24 income, as defined by regulations adopted under 26 U. S. C. § 45D, as amended, of the qualified  
25 community development entity for that period prior to giving effect to the interest expense of the  
26 long-term debt security. The foregoing shall in no way limit the holder’s ability to accelerate  
27 payments on the debt instrument in situations where the qualified community development entity  
28 has defaulted on covenants designed to ensure compliance with this 26 U. S. C. § 45D, as  
29 amended;

30 (8) “Purchase price” means the amount paid to the qualified community development  
31 entity for a qualified equity investment, which may not exceed the amount of qualified equity

32 investment authority certified pursuant to §31-15D-4 of this code;

33 (9) “Qualified active low-income community business” has the meaning given the term in  
34 26 U. S. C. § 45D, as amended, and 26 C. F. R. § 1.45D-1 (2012). Any business that is nonprofit  
35 or derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale  
36 of real estate is not considered to be a qualified active low-income community business. The real  
37 estate exception does not apply to a business that is controlled by or under common control with  
38 another business if the second business: (i) Does not derive or project to derive 15 percent or  
39 more of its annual revenue from the rental or sale of real estate; and (ii) is the primary tenant of  
40 the real estate leased from the initial business. A business shall be considered a qualified active  
41 low-income community business for the duration of the qualified community development entity’s  
42 investment in, or loan to, the business if the entity reasonably expects, at the time it makes the  
43 investment or loan, that the business will continue to satisfy the requirements of being a qualified  
44 active low-income community business, other than the size and net income standards, throughout  
45 the entire period of the investment or loan;

46 (10) “Qualified community development entity” has the meaning given the term in 26 U. S.  
47 C. § 45D, as amended: *Provided*, That the entity has entered into an allocation agreement with  
48 the Community Development Financial Institutions Fund of the U. S. Treasury Department with  
49 respect to credits authorized by 26 U. S. C. § 45D, as amended, which includes the State of West  
50 Virginia within the service area set forth in the allocation agreement. An entity may not be deemed  
51 to be controlled by another entity solely as a result of the entity’s having made a direct or indirect  
52 equity investment in the other entity that earns tax credits under 26 U. S. C. § 45D, as amended,  
53 or similar state program. The term shall include subsidiary community development entities of any  
54 qualified community development entity and transferees of qualified equity investment authority  
55 pursuant to §31-15D-4 of this code;

56 (11) “Qualified equity investment” means any equity investment in, or long-term debt  
57 security issued by, a qualified community development entity that:

58 (A) Is acquired after the effective date of this act at its original issuance solely in exchange  
59 for cash;

60 (B) Has one 100 percent of its cash purchase price used by the qualified community  
61 development entity to make qualified low-income community investments in qualified active low-  
62 income community businesses located in this state by the first anniversary of the initial credit  
63 allowance date; and

64 (C) Is designated by the qualified community development entity as a qualified equity  
65 investment hereunder and is certified by the authority pursuant to §31-15D-4 of this code.

66 This term shall include any qualified equity investment that does not meet the provisions  
67 of paragraph (A) of this subdivision if the investment was a qualified equity investment in the  
68 hands of a prior holder;

69 (12) “Qualified low-income community investment” means any capital or equity investment  
70 in, or loan to, any qualified active low-income community business: *Provided*, That with respect  
71 to any one qualified active low-income community business, the maximum amount of qualified  
72 low-income community investments made in the business, on a collective basis with all of the  
73 businesses’ affiliates, with the proceeds of qualified equity investments certified under §31-15D-  
74 4 of this code, shall be \$5 million, exclusive of qualified low-income community investments made  
75 with repaid or redeemed qualified low-income community investments or interest or profits  
76 realized thereon;

77 (13) “State premium tax liability” means any liability incurred by any entity under §33-3-  
78 14, §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability  
79 imposed under these sections is eliminated or reduced, the term “state premium tax liability” shall  
80 also include any tax liability imposed by this state on an insurance company or other person that  
81 had premium tax liability under the laws of this state for the purpose of making up tax revenue  
82 lost by the state as a result of the elimination or reduction of the taxes imposed under these  
83 sections: *Provided, however*, That the issuance of tax credits pursuant to §33-3-14e of this code

84 shall in no way affect the funding of any fire department or volunteer fire department that receives  
85 any moneys from revenues generated by any of the taxes for which credits are issued pursuant  
86 to §33-3-14e of this code.

**§31-15D-3. Transferability.**

1 No tax credit earned under this article is transferrable to another entity other than an  
2 affiliate subject to state premium tax liability or saleable on the open market: *Provided*, That tax  
3 credits earned by or allocated to a partnership, limited liability company, or S-corporation may be  
4 further allocated to the partners, members, or shareholders of the entity in accordance with the  
5 provisions of any agreement among the partners, members, or shareholders. The allocation shall  
6 not be considered a sale for purposes of this article.

**§31-15D-4. Certification of qualified equity investments.**

1 (a) A qualified community development entity that seeks to have an equity investment or  
2 long-term debt security designated as a qualified equity investment and eligible for tax credits  
3 under this article shall first file a credit application with the authority. The authority shall begin  
4 accepting applications on July 1, 2018. The application filed by the qualified community  
5 development entity shall include the following:

6 (1) The amount of qualified equity investment authority requested;

7 (2) The amount of qualified equity investment authority requested that the applicant agrees  
8 to designate as a federal qualified equity investment with the Community Development Financial  
9 Institutions Fund;

10 (3) Evidence of the applicant's certification as a qualified community development entity,  
11 including evidence of the service area of the entity that includes this state;

12 (4) A copy of an allocation agreement executed by the applicant, or its controlling entity,  
13 and the Community Development Financial Institutions Fund;

14 (5) A certificate executed by an executive officer of the applicant attesting that the

15 allocation agreement remains in effect and has not been revoked or canceled by the Community  
16 Development Financial Institutions Fund;

17 (6) A business plan that includes a revenue impact assessment projecting state and local  
18 tax revenue to be generated by the applicant's proposed qualified low-income community  
19 investments prepared by a nationally recognized third-party independent economic forecasting  
20 firm using a dynamic economic forecasting model that analyzes the applicant's business plan over  
21 the 10 years following the date the application is submitted to the authority; and

22 (7) A nonrefundable application fee of \$10,000. This fee shall be paid to the authority and  
23 shall be required of each application submitted.

24 (b) Within 30 days of receipt of a completed application containing the information set forth  
25 in subsection (a) of this section, the authority shall grant or deny the application in full or in part.  
26 The authority shall deny an application if the business plan submitted with the application does  
27 not project revenue neutrality against the proposed tax credit utilization. If the authority denies  
28 any part of the application, the authority shall inform the qualified community development entity  
29 of the grounds for the denial. If the qualified community development entity provides any  
30 additional information required by the authority or otherwise completes its application within 15  
31 days of the notice of denial, the application shall be considered complete as of the original date  
32 of submission. If the qualified community development entity fails to provide the information or  
33 complete its application within the 15 day period, the application remains denied and must be  
34 resubmitted in full with a new submission date.

35 (c) If the application is complete, the authority shall certify the proposed equity investment  
36 or long-term debt security as a qualified equity investment that is eligible for tax credits under this  
37 article, subject to the limitations contained in §31-15D-4(f) of this code. The tax commissioner  
38 shall provide written notice of the certification to the qualified community development entity.

39 (d) The authority shall certify qualified equity investments in the order applications are

40 received by the authority. Applications received on the same day shall be deemed to have been  
41 received simultaneously.

42 (e) For applications that are complete and received on the same day, the authority shall  
43 first certify applications by applicants that agree to designate qualified equity investments as  
44 federal qualified equity investments in proportionate percentages based on the ratio of the amount  
45 of qualified equity investments requested in an application to be designated as a federal qualified  
46 equity investment to the total amount of qualified equity investments to be designated as federal  
47 qualified equity investments in all applications in which applicants agree to designate qualified  
48 equity investments. Thereafter, the authority shall certify the qualified equity investments of all  
49 other applicants, including the remaining qualified equity investment authority requested by  
50 applicants not designated as federal qualified equity investments, in proportionate percentages  
51 based on the ratio of the amount of qualified equity investments not requested in an application  
52 to be designated as a federal qualified equity investment to the total amount of qualified equity  
53 investments not requested in applications to be designated as federal qualified equity  
54 investments.

55 (f) The authority shall certify no more than \$60 million in qualified equity investments  
56 pursuant to this article.

57 (g) An approved applicant may transfer all or a portion of its certified qualified equity  
58 investment authority to its controlling entity or any subsidiary qualified community development  
59 entity of the controlling entity: *Provided*, That the applicant and the transferee notify the authority  
60 of the transfer with the notice set forth in §31-15D-4(h) of this code and include the information  
61 required in the application with respect to such transferee with such notice.

62 (h) Within one calendar year of the applicant's receiving notice of certification, the qualified  
63 community development entity shall issue the qualified equity investment and receive cash in the  
64 amount of the certified amount and, if applicable, designate the required amount of qualified equity  
65 investment authority as a federal qualified equity investment. The qualified community



66 development entity must provide the authority with evidence of the receipt of the cash investment  
67 and designation as a federal qualified equity investment, if applicable, within one calendar year  
68 and five days of the applicant's receiving notice of certification. If the qualified community  
69 development entity does not receive the cash investment, issue the qualified equity investment  
70 and, if applicable, designate the qualified equity investment as a federal qualified equity  
71 investment within such time period following receipt of the certification notice, the certification  
72 shall lapse and the entity may not issue the qualified equity investment without reapplying to the  
73 authority for certification.

74 (i) Lapsed certifications revert to the authority and shall be reissued:

75 (1) First, pro rata to applicants whose qualified equity investment allocations were reduced  
76 pursuant §31-15D-4(e) of this code with a preference to applicants who have agreed to designate  
77 qualified equity investments as federal qualified equity investments; and

78 (2) Thereafter, in accordance with the provisions of this article.

79 (j) Recaptured tax credits and the related qualified equity investment authority are eligible  
80 for reissuance to qualified community development entities under the provisions of this article and  
81 recaptured tax credits shall be reissued:

82 (1) First, pro rata to applicants whose qualified equity investment allocations were reduced  
83 pursuant to §31-15D-4(e) of this code, with a preference to applicants who agreed to designate  
84 qualified equity investments as federal qualified equity investments; and

85 (2) Thereafter, in accordance with the provisions of this article.

86 (k) The authority must notify the insurance commissioner of the names of the entities that  
87 are eligible to use tax credits provided under §31-15D-3 of this code, pursuant to an allocation of  
88 tax credits or change in allocation of tax credits or due to a transfer of a qualified equity investment  
89 upon the allocation, change, or transfer.

**§31-15D-5. New capital requirement.**

1 No qualified active low-income community business that receives a qualified low-income

2 community investment from a qualified community development entity that issues qualified equity  
3 investments under this article, or any affiliates of such a qualified active low-income community  
4 business, may directly or indirectly: (1) Own or have the right to acquire an ownership interest in  
5 a qualified community development entity or member or affiliate of a qualified community  
6 development entity, including, but not limited to, a holder of a qualified equity investment issued  
7 by the qualified community development entity; or (2) loan to or invest in a qualified community  
8 development entity or member or affiliate of a qualified community development entity, including,  
9 but not limited to, a holder of a qualified equity investment issued by a qualified community  
10 development entity, where the proceeds of such loan or investment are directly or indirectly used  
11 to fund or refinance the purchase of a qualified equity investment hereunder. For purposes of  
12 this section, a qualified community development entity shall not be considered an affiliate of a  
13 qualified active low-income community business solely as a result of its qualified low-income  
14 community investment in such business.

**§31-15D-6. Reporting.**

1 (a) Qualified community development entities shall submit a report to the authority within  
2 the first five business days after the second anniversary of the initial credit allowance date that  
3 provides documentation as to the investment of 100 percent of the purchase price of the qualified  
4 equity investment in qualified low-income community investments in qualified active low-income  
5 community businesses located in West Virginia. The report shall include:

6 (1) The location of the qualified active low-income community business;

7 (2) A bank statement of the qualified community development entity evidencing each  
8 qualified low-income community investment;

9 (3) Evidence that the business was a qualified active low-income community business at  
10 the time of the qualified low-income community investment; and

11 (4) Any information regarding the recapture under 26 U. S. C. § 45D, as amended, of a  
12 federal tax credit available with respect to a qualified equity investment that is eligible for a credit

13 under this article.

14 (5) Any information regarding the qualified community development entity's redeeming or  
15 making principal repayment with respect to a qualified equity investment prior to the seventh  
16 anniversary of the issuance of such qualified equity investment.

17 (6) Any information that the qualified community development entity failed to invest an  
18 amount equal to 100 percent of the purchase price of the qualified equity investment in qualified  
19 low-income community investments in West Virginia within 24 months of the issuance of the  
20 qualified equity investment and maintain the level of investment in qualified low-income  
21 community investments in West Virginia until the last credit allowance date for the qualified equity  
22 investment. For purposes of this article, an investment shall be considered held by a qualified  
23 community development entity even if the investment has been sold or repaid, if the qualified  
24 community development entity reinvests an amount equal to the capital returned to or recovered  
25 by the qualified community development entity from the original investment, exclusive of any  
26 profits realized, in another qualified low-income community investment within 12 months of the  
27 receipt of the capital. Periodic amounts received as repayment of principal pursuant to regularly  
28 scheduled amortization payments on a loan that is a qualified low-income community investment  
29 shall be treated as continuously invested in a qualified low-income community investment if the  
30 amounts are reinvested in one or more qualified low-income community investments by the end  
31 of the following calendar year. A qualified community development entity shall not be required to  
32 reinvest capital returned from qualified low-income community investments after the sixth  
33 anniversary of the issuance of the qualified equity investment, and the qualified low-income  
34 community investment shall be considered held by the qualified community development entity  
35 through the seventh anniversary of the qualified equity investment's issuance.

36 (7) Such other information required by the authority.

37 (b) Thereafter, the qualified community development entity shall submit an annual report  
38 to the authority within 45 days of the beginning of each calendar year during the compliance

39 period. No annual report may be due prior to the first anniversary of the initial credit allowance  
40 date. The report shall include, but is not limited to the following:

41 (1) Number of employment positions created and retained as a result of qualified low-  
42 income community investments.

43 (2) Average annual salary of employment positions described in this subsection.

44 (3) Any information regarding the recapture under 26 U. S. C. § 45D, as amended, of a  
45 federal tax credit available with respect to a qualified equity investment that is eligible for a credit  
46 under this article.

47 (4) Any information regarding the qualified community development entity's redeeming or  
48 making principal repayment with respect to a qualified equity investment prior to the seventh  
49 anniversary of the issuance of such qualified equity investment.

50 (5) Any information that the qualified community development entity failed to invest an  
51 amount equal to 100 percent of the purchase price of the qualified equity investment in qualified  
52 low-income community investments in West Virginia within 24 months of the issuance of the  
53 qualified equity investment and maintain that level of investment in qualified low-income  
54 community investments in West Virginia until the last credit allowance date for the qualified equity  
55 investment. For purposes of this article, an investment shall be considered held by a qualified  
56 community development entity even if the investment has been sold or repaid, if the qualified  
57 community development entity reinvests an amount equal to the capital returned to or recovered  
58 by the qualified community development entity from the original investment, exclusive of any  
59 profits realized, in another qualified low-income community investment within 12 months of the  
60 receipt of such capital. Periodic amounts received as repayment of principal pursuant to regularly  
61 scheduled amortization payments on a loan that is a qualified low-income community investment  
62 shall be treated as continuously invested in a qualified low-income community investment if the  
63 amounts are reinvested in one or more qualified low-income community investments by the end  
64 of the following calendar year. A qualified community development entity shall not be required to

65 reinvest capital returned from qualified low-income community investments after the sixth  
66 anniversary of the issuance of the qualified equity investment, and the qualified low-income  
67 community investment shall be considered held by the qualified community development entity  
68 through the seventh anniversary of the qualified equity investment's issuance.

69 (6) In the event the authority is provided any information required by §31-15D-6(b)(3), §31-  
70 15D-6(b)(4), or §31-15D-6(b)(5) of this code, the authority shall provide that information to the  
71 insurance commissioner.

### CHAPTER 33. INSURANCE.

#### ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

##### **§33-3-14e. Credits against premium tax for investment pursuant to the West Virginia New Market Jobs Act.**

1 (a) For the purpose of this section, the term:

2 (1) "Applicable percentage" means zero percent for the first three credit allowance dates  
3 and 15 percent of the qualified equity investment for the next four credit allowance dates;

4 (2) "Compliance period" means the period beginning on the date the qualified equity  
5 investment is initially made and ending on the sixth anniversary of the date of the qualified equity  
6 investment;

7 (3) "Credit allowance date" means with respect to any qualified equity investment:

8 (A) The date on which the investment is initially made; and

9 (B) Each of the six anniversary dates of the date thereafter.

10 (4) "Insurance Commissioner" means the Insurance Commissioner of West Virginia or his  
11 or her designee as provided in §15-1-4 of this code.

12 (5) "Long-term debt security" means any debt instrument issued by a qualified community  
13 development entity with an original maturity date of at least seven years from the date of its  
14 issuance, with no repayment, amortization, or prepayment features prior to its original maturity  
15 date. The qualified community development entity that issues the debt instrument may not make

16 cash interest payments on the debt instrument during the period beginning on the date of issuance  
17 and ending on the final credit allowance date in an amount that exceeds the cumulative operating  
18 income, as defined by regulations adopted under 26 U. S. C. § 45D, as amended, of the qualified  
19 community development entity for that period prior to giving effect to the interest expense of the  
20 long-term debt security. The foregoing shall in no way limit the holder's ability to accelerate  
21 payments on the debt instrument in situations where the qualified community development entity  
22 has defaulted on covenants designed to ensure compliance with 26 U. S. C. § 45D, as amended;

23 (6) "Purchase price" means the amount paid to the qualified community development  
24 entity for a qualified equity investment, which may not exceed the amount of qualified equity  
25 investment authority certified pursuant to §31-15D-4 of this code;

26 (7) "Qualified active low-income community business" has the meaning given the term in  
27 26 U. S. C. § 45D, as amended, and 26 C. F. R. Sec. 1.45D-1 (2012). Any business that is a  
28 nonprofit or derives or projects to derive 15 percent or more of its annual revenue from the rental  
29 or sale of real estate is not considered to be a qualified active low-income community business.  
30 The real estate exception does not apply to a business that is controlled by or under common  
31 control with another business if the second business: (i) Does not derive or project to derive 15  
32 percent or more of its annual revenue from the rental or sale of real estate; and (ii) is the primary  
33 tenant of the real estate leased from the initial business. A business shall be considered a qualified  
34 active low-income community business for the duration of the qualified community development  
35 entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes  
36 the investment or loan, that the business will continue to satisfy the requirements for being a  
37 qualified active low-income community business, other than the size and net income standards,  
38 throughout the entire period of the investment or loan;

39 (8) "Qualified community development entity" has the meaning given the term in 26 U. S.  
40 C. § 45D, as amended: *Provided*, That the entity has entered into an allocation agreement with  
41 the Community Development Financial Institutions Fund of the U. S. Treasury Department with

42 respect to credits authorized by 26 U. S. C. § 45D, as amended, which includes the State of West  
43 Virginia within the service area set forth in the allocation agreement. An entity may not be deemed  
44 to be controlled by another entity solely as a result of the entity's having made a direct or indirect  
45 equity investment in the other entity that earns tax credits under 26 U. S. C. § 45D, as amended,  
46 or similar state program. The term shall include subsidiary community development entities of any  
47 such qualified community development entity and transferees of qualified equity investment  
48 authority pursuant to §31-15D-4 of this code;

49 (9) "Qualified Equity Investment" means any equity investment in, or long-term debt  
50 security issued by, a qualified community development entity that:

51 (A) Is acquired after the effective date of this act at its original issuance solely in exchange  
52 for cash;

53 (B) Has 100 percent of its cash purchase price used by the qualified community  
54 development entity to make qualified low-income community investments in qualified active low-  
55 income community businesses located in this state by the first anniversary of the initial credit  
56 allowance date; and

57 (C) Is designated by the qualified community development entity as a qualified equity  
58 investment hereunder and is certified by the Economic Development Authority pursuant to §31-  
59 15D-4 of this code.

60 This term shall include any qualified equity investment that does not meet the provisions  
61 of §33-3-14(e)(a)(9)(A) of this code if the investment was a qualified equity investment in the  
62 hands of a prior holder;

63 (10) "Qualified low-income community investment" means any capital or equity investment  
64 in, or loan to, any qualified active low-income community business: *Provided*, That with respect  
65 to any one qualified active low-income community business, the maximum amount of qualified  
66 low-income community investments made in the business, on a collective basis with all of the  
67 businesses' affiliates, with the proceeds of qualified equity investments certified under §31-15D-

68 4 of this code, shall be \$5 million, exclusive of qualified low-income community investments made  
69 with repaid or redeemed qualified low-income community investments or interest or profits  
70 realized thereon;

71 (11) "State premium tax liability" means any liability incurred by any entity under §33-3-  
72 14, §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability  
73 imposed under these sections is eliminated or reduced, the term "state premium tax liability" shall  
74 also include any tax liability imposed by this state on an insurance company or other person that  
75 had premium tax liability under the laws of this state for the purpose of making up tax revenue  
76 lost by the state as a result of the elimination or reduction of the taxes imposed under these  
77 sections: *Provided, however*, That the issuance of tax credits pursuant to this section shall in no  
78 way affect the funding of any fire department or volunteer fire department that receives any  
79 moneys from revenues generated by any of the taxes for which credits are issued pursuant to this  
80 section.

81 (b) Any entity that makes a qualified equity investment pursuant to §31-15D-2 of this code  
82 shall be allowed an earned and vested tax credit against the entity's state premium tax liability  
83 that may be used as follows:

84 (1) The amount of tax credit allowable on each credit allowance date to an entity that  
85 makes a qualified equity investment, or to a subsequent holder of the qualified equity investment,  
86 shall be annually computed by multiplying the purchase price paid to the qualified community  
87 development entity for the qualified equity investment by the applicable percentage for the credit  
88 allowance date;

89 (2) The annual credit allowance, computed pursuant to §33-3-14(e) (1) of this code, may  
90 be used to offset the entity's state premium tax liability for tax periods ending on or after the credit  
91 allowance date; and

92 (3) The amount of the credit claimed by an entity shall not exceed the amount of the entity's  
93 state premium tax liability for the tax year for which the credit is claimed. Any amount of tax credit



94 remaining, after the credit is used as provided in this section, may be carried forward for use in  
95 any subsequent taxable year.

96 (c) The insurance commissioner may recapture, from the entity that claimed the credit on  
97 a return, the tax credit allowed under this article if:

98 (1) Any amount of a federal tax credit available with respect to a qualified equity investment  
99 that is eligible for a credit under this article is recaptured under 26 U. S. C. § 45D, as amended.  
100 In such case the Insurance Commissioner's recapture shall be proportionate to the federal  
101 recapture with respect to such qualified equity investment;

102 (2) The qualified community development entity redeems or makes principal repayment  
103 with respect to a qualified equity investment prior to the seventh anniversary of the issuance of  
104 the qualified equity investment. In such case the Insurance Commissioner's recapture shall be  
105 proportionate to the amount of the redemption or repayment with respect to the qualified equity  
106 investment;

107 (3) The qualified community development entity fails to invest an amount equal to 100  
108 percent of the purchase price of the qualified equity investment in qualified low-income community  
109 investments in West Virginia within 24 months of the issuance of the qualified equity investment  
110 and maintain that level of investment in qualified low-income community investments in West  
111 Virginia until the last credit allowance date for the qualified equity investment. For purposes of  
112 this article, an investment shall be considered held by a qualified community development entity  
113 even if the investment has been sold or repaid, if the qualified community development entity  
114 reinvests an amount equal to the capital returned to or recovered by the qualified community  
115 development entity from the original investment, exclusive of any profits realized, in another  
116 qualified low-income community investment within 12 months of the receipt of such capital.  
117 Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization  
118 payments on a loan that is a qualified low-income community investment shall be treated as  
119 continuously invested in a qualified low-income community investment if the amounts are

120 reinvested in one or more qualified low-income community investments by the end of the following  
121 calendar year. A qualified community development entity may not be required to reinvest capital  
122 returned from qualified low-income community investments after the sixth anniversary of the  
123 issuance of the qualified equity investment, and the qualified low-income community investment  
124 shall be considered held by the qualified community development entity through the seventh  
125 anniversary of the qualified equity investment's issuance; or

126 (4) As a result of any violation of §33-3-9 of this code.

127 (d) Recaptured tax credits and the related qualified equity investment authority are eligible  
128 for reissuance to qualified community development entities under the provisions of this article and  
129 recaptured tax credits shall be reissued:

130 (1) First, pro rata to applicants whose qualified equity investment allocations were reduced  
131 pursuant to subsection (e), section four, article fifteen-d, chapter thirty-one of this code, with a  
132 preference to applicants who agreed to designate qualified equity investments as federal qualified  
133 equity investments; and

134 (2) Thereafter, in accordance with the provisions of this article.

135 (e) Enforcement of the recapture provisions set forth in this section shall be subject to a  
136 six-month cure period. No recapture shall occur until the qualified community development entity  
137 shall have been given notice of noncompliance and afforded six months from the date of such  
138 notice to cure the noncompliance.

139 (f) In rendering letter rulings and making other determinations under this section, to the  
140 extent applicable, the Insurance Commissioner shall look for guidance in 26 U. S. C. § 45D, as  
141 amended, and the rules and regulations issued thereunder.