

# WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

House Bill 2828

BY DELEGATES HIGGINBOTHAM, QUEEN, SKAFF,  
ATKINSON, C. MARTIN, NELSON, TONEY, WAXMAN,  
CAPITO, LOVEJOY AND HICKS

[Passed March 9, 2019; in effect ninety days from  
passage.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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HB2828 Retired

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section  
2 designated §11-21-12j; and to amend said code by adding thereto a new section,  
3 designated §11-24-6b; and to amend said code by adding thereto a new article,  
4 designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, and  
5 §31-15D-7; and to amend said code by adding thereto a new section, designated §33-3-  
6 14e; all relating to promoting investment and business growth in low-income communities  
7 in West Virginia; providing title; defining terms; providing for transferability; certification of  
8 qualified equity investment; providing for recapture of tax credits; requiring notice of  
9 noncompliance; letter rulings; new capital requirement; reporting; providing penalty for job  
10 creation underperformance; establishing amount of credit allowed; providing mechanism  
11 to exempt corporate net income tax and personal income tax for new businesses in  
12 Qualified Opportunity Zones located in West Virginia; providing effective date; authorizing  
13 rulemaking in Commissioner.

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

## **CHAPTER 11. TAXATION.**

### **ARTICLE 21. PERSONAL INCOME TAX.**

#### **§11-21-12j. Decreasing modification reducing federal adjusted gross income for the net income of Qualified Opportunity Zone Businesses; effective date.**

1 (a) *General.* — In addition to the amounts authorized to be subtracted from federal  
2 adjusted gross income pursuant to §11-21-12(c) of this code, a modification reducing federal  
3 adjusted gross income is hereby authorized for taxable years beginning on and after January 1,  
4 2020:

5 (1) For individuals: in an amount equal to and limited to that portion of net income included  
6 in federal adjusted gross income by a taxpayer in the taxable year that is directly derived from a  
7 qualified opportunity zone business located in a qualified opportunity zone which is located in  
8 West Virginia;

9           (2) For partners or members of limited liability companies that are treated as partnerships  
10 for federal income tax purposes, and other pass-through entities: in an amount equal to and  
11 limited to that portion of the distributive share of the partner or member that is attributable to the  
12 flow through income directly derived from the qualified opportunity zone business located in West  
13 Virginia. A similar rule applies to shareholders in corporations taxed under subchapter S of the  
14 Internal Revenue Code.

15           (b) *Eligibility.* — To be entitled to modification provided for in subsection (a) of this section,  
16 the qualified opportunity zone business must be a newly registered business in West Virginia  
17 registered on or after January 1, 2020, or an existing West Virginia business that has qualified as  
18 a qualified opportunity zone business in West Virginia on or after that date. Limited liability  
19 companies that are treated as corporations for purposes of the federal income tax and West  
20 Virginia corporation net income tax and which otherwise qualify in accordance with the  
21 requirements and limitations of this section may qualify for the modification authorized under this  
22 section.

23           (c) *Duration.* — The modification provided for in subsection (a) of this section shall apply  
24 with respect to a taxpayer for a 10-year period beginning with the first full taxable year during  
25 which the qualified opportunity zone business first qualifies as a qualified opportunity zone  
26 business, or the first year in which the qualified opportunity zone business reports net income:  
27 *Provided*, That the qualified opportunity zone business first qualifies as such on or after January  
28 1, 2020.

29           (d) The following definitions apply to this section:

30           (1) “Qualified Opportunity Zone Business” means “Qualified Opportunity Zone Business”  
31 as that term is defined in 26 U.S.C. §1400Z-2.

32           (2) “Qualified Opportunity Zone” means “Qualified Opportunity Zone” as that term is  
33 defined in 26 U.S.C. §1400Z-1.

34 (e) The Tax Commissioner may propose rules necessary to carry out the provisions of  
35 this section and to provide guidelines and requirements to ensure uniform administrative  
36 practices statewide to effect the intent of this section, all in accordance with the provisions of  
37 §29A-3-1 *et seq.* of this code.

**ARTICLE 24. CORPORATION NET INCOME TAX.**

**§11-24-6b. Decreasing modification reducing federal taxable income for the income of  
Qualified Opportunity Zone Businesses; effective date.**

1 (a) *General.* — In addition to the amounts authorized to be subtracted from federal taxable  
2 income pursuant to §11-24-6(c) of this article, there shall be subtracted from federal taxable  
3 income, an amount equal to net income included in federal taxable income by a corporate  
4 taxpayer in a taxable year that is ordinary income derived from a qualified opportunity zone  
5 business located in a qualified opportunity zone located in West Virginia: *Provided*, That in any  
6 case in which a consolidated or combined return is filed, or required to be filed, the amount  
7 subtracted from federal taxable income under this section may not exceed that member's  
8 proportionate share of the affiliated, combined or unitary group's tax liability under this article, that  
9 is ordinary income derived from a qualified opportunity zone business located in a qualified  
10 opportunity zone located in West Virginia for the taxable year. The provisions of this section are  
11 effective for taxable years beginning on and after January 1, 2020.

12 (b) *Eligibility.* - To be entitled to modification provided for in subsection (a), the qualified  
13 opportunity zone business must be a newly registered business in West Virginia registered on or  
14 after January 1, 2020, or an existing West Virginia business that has qualified as a qualified  
15 opportunity zone business in West Virginia on or after that date. Limited liability companies that  
16 are treated as corporations for purposes of the federal income tax and West Virginia corporation  
17 net income tax and which otherwise qualify in accordance with the requirements and limitations  
18 of this section may qualify for the modification authorized under this section.

19 (c) *Duration.* - The modification provided for in subsection (a) of this section shall apply  
20 with respect to a taxpayer during the 10-year period beginning with the first full taxable year during  
21 which the qualified opportunity zone business first qualifies as a qualified opportunity zone  
22 business, or the first year in which the qualified opportunity zone business reports net income:  
23 *Provided,* That the qualified opportunity zone business first qualifies as such on or after January  
24 1, 2020.

25 (d) The following definitions apply to this section:

26 (1) "Qualified Opportunity Zone Business" means "Qualified Opportunity Zone Business"  
27 as that term is defined in 26 U.S.C. §1400Z-2.

28 (2) "Qualified Opportunity Zone" means "Qualified Opportunity Zone" as that term is  
29 defined in 26 U.S.C. §1400Z-1.

30 (e) The Tax Commissioner may propose rules necessary to carry out the provisions of  
31 this section and to provide guidelines and requirements to ensure uniform administrative  
32 practices statewide to carry out the intent of this section, all in accordance with the provisions of  
33 §29A-3-1 *et seq.* of this code.

## **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) "Aggregate offset" shall mean the sum of the West Virginia New Market Jobs offset  
7 reported in each annual report to the authority pursuant to §31-15D-6(a)(10).

8 (3) "Annual jobs retained" means the number of full-time equivalent employees that  
9 existed before the initial qualified low-income community investment in the qualified active low-  
10 income community business that are paid a high wage and for which:

11 (A) The qualified active low-income community business's chief executive officer or similar  
12 officer certifies that the full-time equivalent employee positions would have been eliminated but  
13 for the initial qualified low-income community investment; and

14 (B) The qualified community development entity receives approval from the authority of  
15 the satisfaction of this definition;

16 (4) "Applicable percentage" means zero percent of the qualified equity investment for the  
17 first two credit allowance dates, five percent of the qualified equity investment for the third credit  
18 allowance date, and 10 percent of the qualified equity investment for each of the final four credit  
19 allowance dates;

20 (5) "Authority" means the West Virginia Economic Development Authority as provided in  
21 §31-15-4 of this code;

22 (6) "Credit allowance date" means with respect to any qualified equity investment:

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

24 (B) Each of the six anniversary dates of such date thereafter;

25 (7) "Full-time equivalent employee" means the quotient obtained by dividing the total  
26 number of hours for which employees were compensated for employment over the preceding 12  
27 month period by 2,080;

28 (8) "High wage" means an hourly wage rate of at least 150 percent of the federal minimum  
29 wage;

30 (9) "Insurance Commissioner" means the Insurance Commissioner of West Virginia or his  
31 or her designee as provided in §33-2-1 of this code;

32 (10) "Investor allocation" means the allocation of tax credits to insurance companies  
33 pursuant to §31-15D-3.

34 (11) "Long-term debt security" means any debt instrument issued by a qualified community  
35 development entity with an original maturity date of at least seven years from the date of its  
36 issuance, with no repayment, amortization or prepayment features prior to its original maturity  
37 date. The qualified community development entity that issues the debt instrument may not make  
38 cash interest payments on the debt instrument during the period beginning on the date of issuance  
39 and ending on the final credit allowance date in an amount that exceeds the cumulative operating  
40 income, as defined by regulations adopted under 26 U.S.C. §45D, as amended, of the qualified  
41 community development entity for that period prior to giving effect to the interest expense of the  
42 long-term debt security. The foregoing shall in no way limit the holder's ability to accelerate  
43 payments on the debt instrument in situations where the qualified community development entity  
44 has defaulted on covenants designed to ensure compliance with this 26 U.S.C. §45D, as  
45 amended;

46 (12) "New annual jobs" means the difference, provided that if such difference is less than  
47 zero, the new annual jobs shall be zero, between:

48 (A)(i) The monthly average of full-time equivalent employees that are paid a high wage at  
49 a qualified low-income community business for the preceding calendar year; or

50 (ii) If the preceding calendar year contains the initial low-income community investment,  
51 the monthly average of full-time employees that are paid a high-wage at a qualified active low-  
52 income community investment, the monthly average of full-time employees that are paid a high  
53 wage at a qualified low-income community business for the months including and after the initial  
54 low-income community investment and before the end of the preceding calendar year;



55 (B) The number of full-time equivalent employees at the qualified active low-income  
56 community business on the day of the initial qualified low-income community investment;

57 (13) "Opportunity zone" means the low-income census tracts located in West Virginia  
58 receiving such designation from the U.S. Treasury Department;

59 (14) "Principal business operations" of business is the location or locations where at least  
60 60 percent of the business's employees work or where the employees who are paid at least 60  
61 percent of the business's payroll are located. A business that agrees to relocate or hire new  
62 employees using the proceeds of a qualified low-income community investment to establish its  
63 principal business operations at a location is deemed to have its principal business operations in  
64 the new location provided it satisfies this definition within 180 days after receiving the qualified  
65 low-income community investment, unless the authority agrees to a later date;

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

69 (16) "Qualified active low-income community business" has the meaning given the term in  
70 26 U.S.C. §45D, as amended, and 26 C.F.R. §1.45D-1 (2012). Any business that is nonprofit or  
71 derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of  
72 real estate is not considered to be a qualified active low-income community business. The real  
73 estate exception does not apply to a business that is controlled by or under common control with  
74 another business if the second business: (A) Does not derive or project to derive 15 percent or  
75 more of its annual revenue from the rental or sale of real estate; and (B) is the primary tenant of  
76 the real estate leased from the initial business. A business shall be considered a qualified active  
77 low-income community business for the duration of the qualified community development entity's  
78 investment in, or loan to, the business if the entity reasonably expects, at the time it makes the  
79 investment or loan, that the business will continue to satisfy the requirements of being a qualified

80 active low-income community business, other than the size and net income standards, throughout  
81 the entire period of the investment or loan;

82 (17) "Qualified community development entity" has the meaning given the term in 26  
83 U.S.C. §45D, as amended: *Provided*, That the entity has entered into an allocation agreement  
84 with the Community Development Financial Institutions Fund of the U. S. Treasury Department  
85 with respect to credits authorized by 26 U.S.C. §45D, as amended, which includes the State of  
86 West Virginia within the service area set forth in the allocation agreement. An entity may not be  
87 deemed to be controlled by another entity solely as a result of the entity having made a direct or  
88 indirect equity investment in the other entity that earns tax credits under 26 U.S.C. §45D, as  
89 amended, or similar state program. The term shall include subsidiary qualified community  
90 development entities of any qualified community development entity and transferees of qualified  
91 equity investment authority pursuant to §31-15D-4 of this code;

92 (18) "Qualified equity investment" means any equity investment in, or long-term debt  
93 security issued by, a qualified community development entity that:

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

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

100 (C) Is designated by the qualified community development entity as a qualified equity  
101 investment hereunder and is certified by the authority pursuant to §31-15D-4 of this code. This  
102 term shall include any qualified equity investment that does not meet the provisions of paragraph  
103 (A) of this subdivision if the investment was a qualified equity investment in the hands of a prior  
104 holder;

105 (19) "Qualified low-income community investment" means any capital or equity investment  
106 in, or loan to, any qualified active low-income community business: *Provided*, That with respect  
107 to any one qualified active low-income community business, the maximum amount of qualified  
108 low-income community investments made in the business, on a collective basis with all of the  
109 businesses' affiliates, with the proceeds of qualified equity investments certified under §31-15D-  
110 4 of this code, shall be \$5 million, exclusive of qualified low-income community investments made  
111 with repaid or redeemed qualified low-income community investments or interest or profits  
112 realized thereon;

113 (20) "State premium tax liability" means any liability incurred by any entity under §33-3-  
114 14, §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability  
115 imposed under these sections is eliminated or reduced, the term "state premium tax liability" shall  
116 also include any tax liability imposed by this state on an insurance company or other person that  
117 had premium tax liability under the laws of this state for the purpose of making up tax revenue  
118 lost by the state as a result of the elimination or reduction of the taxes imposed under these  
119 sections: *Provided, however*, That the issuance of tax credits pursuant to §33-3-14e of this code  
120 shall in no way affect the funding of any fire department or volunteer fire department that receives  
121 any moneys from revenues generated by any of the taxes for which credits are issued pursuant  
122 to §33-3-14e of this code.

123 (21) "State reimbursement amount" means the difference, provided that if such difference  
124 is less than zero, the state reimbursement amount shall be zero, between:

125 (A) The product of the amount of qualified equity investment authority certified and 45  
126 percent; and

127 (B) The aggregate offset;

128 (22) "Tier One Job" means a new annual job held by an employee who served in the active  
129 military, naval or air service and who was discharged or released under conditions other than

130 dishonorable, suffers from a disability, was found guilty of a crime and sentenced by a court to a  
131 prison term, or was a non-West Virginia resident within the prior 12 months;

132 (23) "Tier Two Job" means a new annual job held by an employee who received or had a  
133 family member receive, with neither still receiving, benefits under West Virginia Medicaid, West  
134 Virginia Unemployment Insurance, the West Virginia Supplemental Nutrition Assistance Program,  
135 the West Virginia Children's Health Insurance Program, and West Virginia Head Start;

136 (24) "Tier Three Job" means all new annual jobs that are not Tier One Jobs or Two Tier  
137 Jobs.

**§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, 2019. 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  
21 over the 10 years following the date the application is submitted to the authority; and

22 (7) A signed affidavit from each insurance company stating the amount of investor  
23 allocation the insurance company commits to receiving;

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

26 (b) Within 30 days of receipt of a completed application containing the information set forth  
27 in subsection (a) of this section, the authority shall grant or deny the application in full or in part.  
28 The authority shall deny an application if the business plan submitted with the application does  
29 not project revenue neutrality against the proposed tax credit utilization or if the applicant does  
30 not submit affidavits committing to the allocations equal to 45 percent of the amount of qualified  
31 equity authority requested. If the authority denies any part of the application, the authority shall  
32 inform the qualified community development entity of the grounds for the denial. If the qualified  
33 community development entity provides any additional information required by the authority or  
34 otherwise completes its application within days of the notice of denial, the application shall be  
35 considered complete as of the original date of submission. If the qualified community development

36 entity fails to provide the information or complete its application within the 15 day period, the  
37 application remains denied and must be resubmitted in full with a new submission date.

38 (c) If the application is complete, the authority shall certify the proposed equity investment  
39 or long-term debt security as a qualified equity investment that is eligible for tax credits under this  
40 article, subject to the limitations contained in subsection (f) of this section. The Tax Commissioner  
41 shall provide written notice of the certification to the qualified community development entity.

42 (d) The authority shall certify qualified equity investments in the order applications are  
43 received by the authority. Applications received on the same day shall be deemed to have been  
44 received simultaneously.

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

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

60 (g) An approved applicant may transfer all or a portion of its certified qualified equity  
61 investment authority to its controlling entity or any subsidiary qualified community development

62 entity of the controlling entity: *Provided*, That the applicant and the transferee notify the authority  
63 of the transfer with the notice set forth in §31-15D-4(h) of this code and include the information  
64 required in the application with respect to such transferee with such notice.

65 (h) Within one calendar year of the applicant receiving notice of certification, the qualified  
66 community development entity shall issue the qualified equity investment and receive cash in the  
67 amount of the certified amount and, if applicable, designate the required amount of qualified equity  
68 investment authority as a federal qualified equity investment. The qualified community  
69 development entity must provide the authority with evidence of the receipt of the cash investment  
70 and designation as a federal qualified equity investment, if applicable and the allocation of tax  
71 credits to insurance companies that submitted affidavits in the qualified community development  
72 entity's application at least equal to 45 percent of the amount of qualified equity investment  
73 authority certified by the authority, within one calendar year and five days of the applicant  
74 receiving notice of certification. If the qualified community development entity does not receive  
75 the cash investment, issue the qualified equity investment and, if applicable, designate the  
76 qualified equity investment as a federal qualified equity investment and make such allocation of  
77 tax credits to insurance companies within such time period following receipt of the certification  
78 notice, the certification shall lapse and the entity may not issue the qualified equity investment  
79 without reapplying to the authority for certification.

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

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

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

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

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

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

92 (k) The authority must notify the Insurance Commissioner of the names of the entities that  
93 are eligible to use tax credits provided under §31-15D-3 of this code, pursuant to an allocation of  
94 tax credits or change in allocation of tax credits or due to a transfer of a qualified equity investment  
95 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 Qualified community development entities shall submit a report to the authority within the  
2 first five business days after each anniversary of the initial credit allowance date. The report due



3 for the second anniversary of the credit allowance date shall provide documentation as to the  
4 investment of 100 percent of the purchase price of the qualified equity investment in qualified low-  
5 income community investments in qualified active low-income community businesses located in  
6 West Virginia. Each report shall include:

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

8 (2) A bank statement of the qualified community development entity evidencing each  
9 qualified low-income community investment if such qualified low-income community investment  
10 occurred after the prior annual report;

11 (3) Evidence that the business was a qualified active low-income community business at  
12 the time of the qualified low-income community investment if evidence was not submitted in a  
13 prior annual report;

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

17 (5) Any information regarding the qualified community development entity redeeming or  
18 making principal repayment with respect to a qualified equity investment prior to the seventh  
19 anniversary of the issuance of such qualified equity investment;

20 (6) Any information that the qualified community development entity failed to invest an  
21 amount equal to 100 percent of the purchase price of the qualified equity investment in qualified  
22 low-income community investments in West Virginia within 24 months of the issuance of the  
23 qualified equity investment and maintain the level of investment in qualified low-income  
24 community investments in West Virginia until the last credit allowance date for the qualified equity  
25 investment. For purposes of this article, an investment shall be considered held by a qualified  
26 community development entity even if the investment has been sold or repaid, if the qualified  
27 community development entity reinvests an amount equal to the capital returned to or recovered  
28 by the qualified community development entity from the original investment, exclusive of any

29 profits realized, in another qualified low-income community investment within 12 months of the  
30 receipt of the capital. Periodic amounts received as repayment of principal pursuant to regularly  
31 scheduled amortization payments on a loan that is a qualified low-income community investment  
32 shall be treated as continuously invested in a qualified low-income community investment if the  
33 amounts are reinvested in one or more qualified low-income community investments by the end  
34 of the following calendar year. A qualified community development entity shall not be required to  
35 reinvest capital returned from qualified low-income community investments after the sixth  
36 anniversary of the issuance of the qualified equity investment, and the qualified low-income  
37 community investment shall be considered held by the qualified community development entity  
38 through the seventh anniversary of the qualified equity investment's issuance;

39 (7) Number of new annual jobs and annual jobs retained as a result of qualified low-income  
40 community investments;

41 (8) Average annual salary of employment positions described in this subsection;

42 (9) In the event the authority is provided any information required by subdivision (4), (5) or  
43 (6) of this subsection, the authority shall provide that information to the insurance commissioner;  
44 and

45 (10) A qualified community development entity shall calculate the West Virginia New  
46 Market Jobs offset annually and include such amount in its annual report. A qualified community  
47 development entity may include new annual jobs and annual jobs retained at qualified active low-  
48 income community businesses that have repaid or redeemed their qualified low-income  
49 community investment. The West Virginia New Markets Job offset shall equal the sum of the  
50 following:

51 (A) The product of the number of new annual jobs that are Tier 1 Jobs and \$50,000;

52 (B) The product of the number of new annual jobs that are Tier 2 Jobs and \$40,000;

53 (C) The product of the number of new annual jobs that are Tier 3 Jobs and \$25,000;

54 (D) The product of the number of annual jobs retained and \$10,000; and

55 (E) A \$10,000 bonus added to the West Virginia New Markets offset of each of the  
56 following:

57 (I) Each new annual job at qualified active low-income community businesses whose  
58 principal business operations are in an opportunity zone; and

59 (II) Each new annual job held by an employee who has received workforce training either  
60 internally or externally, provided such training is verified by the president or similar officer of the  
61 qualified low-income community business and approved by the authority.

**§31-15D-7. Penalty for Job Creation Underperformance.**

1 (a) At any time after the seventh anniversary of the initial credit allowance date and prior  
2 to making any distributions or payments that exceed the qualified community development entity's  
3 qualified equity investment authority, the qualified community development entity shall calculate  
4 the state reimbursement amount and submit such calculation to the authority.

5 (b) Thereafter, prior to any distribution or payment, the qualified community development  
6 entity must remit the state reimbursement amount to the authority.

7 (c) All amounts received by the authority under this section shall be submitted to the  
8 general revenue fund.

**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 Acts.**

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

2 (1) "Applicable percentage" means zero percent of the qualified equity investment for the  
3 first two credit allowance dates, five percent of the qualified equity investment for the third credit  
4 allowance date, and ten percent of the qualified equity investment for each of the final four credit  
5 allowance dates;

6 (2) "Credit allowance date" means with respect to any qualified equity investment:

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

8 (B) Each of the six anniversary dates of the date thereafter;

9 (3) "Insurance Commissioner" means the Insurance Commissioner of West Virginia or his  
10 or her designee as provided in §33-2-1 of this code;

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

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

25 (6) "Qualified active low-income community business" has the meaning given the term in  
26 26 U.S.C. §45D, as amended, and 26 C.F.R. §1.45D-1 (2012). Any business that is a nonprofit  
27 or derives or projects to derive 15 percent or more of its annual revenue from the rental or sale of  
28 real estate is not considered to be a qualified active low-income community business. The real  
29 estate exception does not apply to a business that is controlled by or under common control with  
30 another business if the second business: (A) Does not derive or project to derive 15 percent or  
31 more of its annual revenue from the rental or sale of real estate; and (B) is the primary tenant of

32 the real estate leased from the initial business. A business shall be considered a qualified active  
33 low-income community business for the duration of the qualified community development entity's  
34 investment in, or loan to, the business if the entity reasonably expects, at the time it makes the  
35 investment or loan, that the business will continue to satisfy the requirements for being a qualified  
36 active low-income community business, other than the size and net income standards, throughout  
37 the entire period of the investment or loan;

38 (7) "Qualified community development entity" has the meaning given the term in Section  
39 26 U.S.C §45D, as amended: *Provided*, That the entity has entered into an allocation agreement  
40 with the Community Development Financial Institutions Fund of the U. S. Treasury Department  
41 with respect to credits authorized by 26 U.S.C §45D, as amended, which includes the State of  
42 West Virginia within the service area set forth in the allocation agreement. An entity may not be  
43 deemed to be controlled by another entity solely as a result of the entity having made a direct or  
44 indirect equity investment in the other entity that earns tax credits under 26 U.S.C §45D, as  
45 amended, or similar state program. The term shall include subsidiary community development  
46 entities of any such qualified community development entity and transferees of qualified equity  
47 investment authority pursuant to §31-15D-4 of this code;

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

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

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

56 (C) Is designated by the qualified community development entity as a qualified equity  
57 investment hereunder and is certified by the Economic Development Authority pursuant to §31-

58 15D-4 of this code. This term shall include any qualified equity investment that does not meet the  
59 provisions of §33-3-14e(a)(9) of this code if the investment was a qualified equity investment in  
60 the hands of a prior holder;

61 (9) “Qualified low-income community investment” means any capital or equity investment  
62 in, or loan to, any qualified active low-income community business: *Provided*, That with respect  
63 to any one qualified active low-income community business, the maximum amount of qualified  
64 low-income community investments made in the business, on a collective basis with all of the  
65 businesses’ affiliates, with the proceeds of qualified equity investments certified under §31-15D-  
66 4 of this code, shall be \$5 million, exclusive of qualified low-income community investments made  
67 with repaid or redeemed qualified low-income community investments or interest or profits  
68 realized thereon;

69 (10) “State premium tax liability” means any liability incurred by any entity under §33-3-14,  
70 §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability imposed  
71 under these sections is eliminated or reduced, the term “state premium tax liability” shall also  
72 include any tax liability imposed by this state on an insurance company or other person that had  
73 premium tax liability under the laws of this state for the purpose of making up tax revenue lost by  
74 the state as a result of the elimination or reduction of the taxes imposed under said sections.

75 (b) Any entity that makes a qualified equity investment pursuant to §31-15D-4 of this code  
76 shall be allowed an earned and vested tax credit against the entity’s state premium tax liability  
77 that may be used as follows:

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

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

86           (3) The amount of the credit claimed by an entity shall not exceed the amount of the entity's  
87 state premium tax liability for the tax year for which the credit is claimed. Any amount of tax credit  
88 remaining, after the credit is used as provided in this section, may be carried forward for use in  
89 any subsequent taxable year.

90           (c) The Insurance Commissioner may recapture, from the entity that claimed the credit on  
91 a return, the tax credit allowed under this article if:

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

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

101           (3) The qualified community development entity fails to invest an amount equal to 100  
102 percent of the purchase price of the qualified equity investment in qualified low-income community  
103 investments in West Virginia within 24 months of the issuance of the qualified equity investment  
104 and maintain that level of investment in qualified low-income community investments in West  
105 Virginia until the last credit allowance date for the qualified equity investment. For purposes of  
106 this article, an investment shall be considered held by a qualified community development entity  
107 even if the investment has been sold or repaid, if the qualified community development entity  
108 reinvests an amount equal to the capital returned to or recovered by the qualified community

109 development entity from the original investment, exclusive of any profits realized, in another  
110 qualified low-income community investment within 12 months of the receipt of such capital.  
111 Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization  
112 payments on a loan that is a qualified low-income community investment shall be treated as  
113 continuously invested in a qualified low-income community investment if the amounts are  
114 reinvested in one or more qualified low-income community investments by the end of the following  
115 calendar year. A qualified community development entity may not be required to reinvest capital  
116 returned from qualified low-income community investments after the sixth anniversary of the  
117 issuance of the qualified equity investment, and the qualified low-income community investment  
118 shall be considered held by the qualified community development entity through the seventh  
119 anniversary of the qualified equity investment's issuance; or

120 (4) As a result of any violation of §31-15D-5 of this code.

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

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

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

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

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



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Noel Spivey*  
.....  
Chairman, House Committee

*E. J. Z.*  
.....  
Member Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Steve Harrison*  
.....  
Clerk of the House of Delegates

*Deborah*  
.....  
Clerk of the Senate

*Ray Walker*  
.....  
Speaker of the House of Delegates

*Michelle B. Cantrich*  
.....  
President of the Senate

FILED  
2019 MAR 27 P 5:09  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within *is disapproved* this the *27th*  
*March*  
day of ..... 2019.

*James Justice*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 25 2010

Time 12:50 pm