

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2887

**FISCAL
NOTE**

BY DELEGATES CAPITO, NELSON AND LOVEJOY

[Introduced February 7, 2019; Referred
to the Committee on Small Business,
Entrepreneurship and Economic Development then
Finance.]

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 §31-15D-7; and to amend said code by adding thereto a new section, designated §33-3-
 4 14e, all relating to establishing a West Virginia business growth in low-income
 5 communities tax credit; providing title; defining terms; establishing amount of credit
 6 allowed; transferability; certification of qualified equity investment; recapture of tax credits;
 7 notice of noncompliance; letter rulings; new capital requirement; and reporting.

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. Section 45D, as amended: *Provided*, That the entity has entered into an allocation agreement
48 with the Community Development Financial Institutions Fund of the U. S. Treasury Department
49 with respect to credits authorized by Section 26 U. S. C. 45D, as amended, which includes the
50 State of West Virginia within the service area set forth in the allocation agreement. An entity may
51 not be deemed to be controlled by another entity solely as a result of the entity having made a
52 direct or indirect equity investment in the other entity that earns tax credits under Section 45D, as
53 amended, or similar state program. The term shall include subsidiary community development
54 entities of any qualified community development entity and transferees of qualified equity
55 investment authority 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 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 section
74 four of this article, shall be \$5 million, exclusive of qualified low-income community investments
75 made 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 §33-3-14,
78 §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability imposed
79 under these sections is eliminated or reduced, the term “state premium tax liability” shall also
80 include any tax liability imposed by this state on an insurance company or other person that had
81 premium tax liability under the laws of this state for the purpose of making up tax revenue lost by
82 the state as a result of the elimination or reduction of the taxes imposed under these sections:
83 *Provided, however*, That the issuance of tax credits pursuant to 33-3-14e of this code shall in no
84 way affect the funding of any fire department or volunteer fire department that receives any
85 moneys from revenues generated by any of the taxes for which credits are issued pursuant to
86 §33-3-14e of this code.

87 (14) “Full-time equivalent employee” means the quotient obtained by dividing the total

88 number of hours for which employees were compensated for employment over the preceding 12
89 month period by \$2,080.

90 (15) "High wage" means an hourly wage rate of at least 150 percent of the federal
91 minimum wage.

92 (16) "New annual jobs" means the difference between:

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

95 (B) If the preceding calendar year contains the initial low-income community investment,
96 the monthly average of full-time employees that are paid a high-wage at a qualified low-income
97 community investment, the monthly average of full-time employees that are paid a high wage at
98 a qualified low-income community business for the months including and after the initial low-
99 income community investment and before the end of the preceding calendar year;

100 (ii)(A) The number of full-time equivalent employees at the qualified low-income
101 community business on the day of the initial low-income community investment;

102 (ii)(B) If the amount calculated in subsection (2)(a) is less than zero, the new annual jobs
103 amount is equal to zero.

104 (17) "Opportunity zone" means the low-income census tracts located in West Virginia
105 receiving such designation from the U.S. Treasury Department.

106 (18) "Tier One Job" means a new annual job held by an employee who served in the active
107 military, naval or air service and who was discharged or released under conditions other than
108 dishonorable, suffers from a disability, was found guilty of a crime and sentenced by a court to a
109 prison term, or was a non-West Virginia resident within the prior 12 months.

110 (19) "Tier Two Job" means a new annual job held by an employee who received or had a
111 family member to receive with neither still receiving benefits under West Virginia Medicaid, West
112 Virginia Unemployment Insurance, the West Virginia Supplemental Nutrition Assistance Program,
113 the West Virginia Children's Health Insurance Program, and West Virginia Head Start.

114 (20) "Tier Three Job" means all new annual jobs that are not Tier One Jobs or Two Tier
115 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 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 subsection (f) of this section. 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 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 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 to §31-15D-4(e) of this code with a preference to applicants who have agreed to
77 designate 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 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 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.

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

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

74 (7) A community development entity shall calculate the West Virginia New Market Jobs
75 offset annually and include such amount in its annual report. The West Virginia New Markets Job
76 offset shall equal the sum of the following:

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

78 (8) There shall be a \$10,000 bonus added to the West Virginia New Markets offset of each
79 of the following:

80 (A) Each new annual job at a qualified low-income community business whose principal
81 business operations are located in an opportunity zone; and

82 (B) Each new annual job held by an employee whom has received workforce training either
83 internally or externally, provided such training is verified by the president, chief executive officer,
84 chief financial officer or similar officer of the qualified low-income community business and
85 approved by the authority.

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

1 (a)(1) For each calendar year in which a community development entity makes or
2 maintains a low-income community investment in a low-income community business in this state,
3 the entity shall determine the number of new full-time equivalent employees produced at the low-
4 income community business on the date of the entity's initial investment in the low-income
5 community business from the number of full-time equivalent employees at the low-income
6 community business on the last day of the calendar year. If the computation results in a number

7 less than zero, the number of new full-time equivalent employees, produced by the entity's low-
8 income community investment for that calendar year period shall be zero. Only employees with
9 an hourly wage rate of at least 150 percent of the federal minimum wage may be considered in
10 computing the number of new full-time equivalent employees for the purposes of this section.

11 (2) A community development entity may determine and include, for the purposes of this
12 section and §31-15D-6 of this code, the number of new full-time equivalent employees produced
13 at a qualified low-income community business after the year in which the entity's low-income
14 community investment is repaid or redeemed. The new full-time equivalent employees shall be
15 computed in the same manner as in subsection (a)(1) of this section based on reporting
16 information provided by the low-income community business to the entity.

17 (b) After the seventh anniversary date of the initial investment, the community development
18 entity shall determine the state reimbursement amount. A community development entity's state
19 reimbursement amount shall equal the amount by which the entity's qualified equity investment
20 authority exceed the product obtained by multiplying the \$30,000 by the aggregate number of
21 new full-time equivalent employees at the low-income community business. If that product is
22 greater than the entity's qualified equity investment authority, the state reimbursement amount
23 shall equal zero. In the absence of additional information provided by the entity, or discovered by
24 the authority, the number of new full-time equivalent employees for the purposes of this division
25 equals the sum of all new full-time equivalent employees reported by the entity on the annual
26 reports required under §31-15D-6 of this code.

27 (c) After the state reimbursement amount is computed under subsection (b) of this section,
28 the community development entity must remit the state reimbursement amount to the authority.
29 All amounts received by the authority under this section shall be submitted to the general revenue
30 fund.

31 (d) The authority, upon the request of a community development entity, may waive all or a
32 portion of the remission required under subsection (c) of this section if the authority determines,

33 based on an affidavit of the chief executive officer or president of a low-income community
 34 business, that the low-income community investments of the entity resulted in the retention of
 35 employment positions that would have otherwise been eliminated at low-income community
 36 businesses in this state. The amount waived shall not exceed the product of \$30,000 multiplied
 37 by the number of retained employment positions multiplied by the number of years in which the
 38 entity made or maintained a low-income community investment in the low-income community
 39 business that retained the employment positions.

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 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 entity
24 for a qualified equity investment, which may not exceed the amount of qualified equity investment
25 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 Section
40 26 U. S. C §45D, as amended: *Provided*, That the entity has entered into an allocation agreement

41 with the Community Development Financial Institutions Fund of the U. S. Treasury Department
42 with respect to credits authorized by 26 U. S. C § 45D, as amended, which includes the State of
43 West Virginia within the service area set forth in the allocation agreement. An entity may not be
44 deemed to be controlled by another entity solely as a result of the entity having made a direct or
45 indirect equity investment in the other entity that earns tax credits under 26 U. S. C § 45D, as
46 amended, or similar state program. The term shall include subsidiary community development
47 entities of any such qualified community development entity and transferees of qualified equity
48 investment 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 §33-314,
72 §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability imposed
73 under these sections is eliminated or reduced, the term "state premium tax liability" shall also
74 include any tax liability imposed by this state on an insurance company or other person that had
75 premium tax liability under the laws of this state for the purpose of making up tax revenue lost by
76 the state as a result of the elimination or reduction of the taxes imposed under said sections.

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

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

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

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

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

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

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

103 (3) The qualified community development entity fails to invest an amount equal to 100
104 percent of the purchase price of the qualified equity investment in qualified low-income community
105 investments in West Virginia within 24 months of the issuance of the qualified equity investment
106 and maintain that level of investment in qualified low-income community investments in West
107 Virginia until the last credit allowance date for the qualified equity investment. For purposes of
108 this article, an investment shall be considered held by a qualified community development entity
109 even if the investment has been sold or repaid, if the qualified community development entity
110 reinvests an amount equal to the capital returned to or recovered by the qualified community
111 development entity from the original investment, exclusive of any profits realized, in another
112 qualified low-income community investment within 12 months of the receipt of such
113 capital. Periodic amounts received as repayment of principal pursuant to regularly scheduled
114 amortization payments on a loan that is a qualified low-income community investment shall be
115 treated as continuously invested in a qualified low-income community investment if the amounts
116 are reinvested in one or more qualified low-income community investments by the end of the
117 following calendar year. A qualified community development entity may not be required to

118 reinvest capital returned from qualified low-income community investments after the sixth
119 anniversary of the issuance of the qualified equity investment, and the qualified low-income
120 community investment shall be considered held by the qualified community development entity
121 through the seventh anniversary of the qualified equity investment's issuance; or

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

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

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

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

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

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

NOTE: The purpose of this bill is to establish a West Virginia business growth in low-income communities tax credit.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.