WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 667

FISCAL NOTE

BY SENATOR NELSON

[Introduced March 18, 2021; referred

to the Committee on Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5, §31-15D-6, and §31-15D-7; and to amend said code by adding thereto a new section, designated §33-3-14e, all relating to establishing a West Virginia business growth in low-income communities tax credit; providing title; defining terms; establishing amount of credit allowed; transferability; certification of qualified equity investment; recapture of tax credits; 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.

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

§31-15D-2. Definitions.

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

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

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

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

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

“Compliance period” means the period beginning on the date the qualified equity investment is initially made and ending on the sixth anniversary of the date of the qualified equity investment;

"Credit allowance date" means with respect to any qualified equity investment:

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

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

"Insurance Commissioner" means the Insurance Commissioner of West Virginia or his or her designee as provided in §15-1-4 of this code;

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

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

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

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

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

(1) Is acquired after the effective date of this article at its original issuance solely in exchange for cash;

(2) Has 100 percent of its cash purchase price used by the qualified community development entity to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit

allowance date; and

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

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

"Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business: *Provided,* That with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in the business, on a collective basis with all of the businesses' affiliates, with the proceeds of qualified equity investments certified under section four of this article, shall be $5 million, exclusive of qualified low-income community investments made with repaid or redeemed qualified low-income community investments or interest or profits realized thereon;

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

"Full-time equivalent employee" means the quotient obtained by dividing the total number of hours for which employees were compensated for employment over the preceding 12 month period by $2,080.

“High wage” means an hourly wage rate of at least 150 percent of the federal minimum wage.

“New annual jobs” means the difference between:

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

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

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

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

“Opportunity zone” means the low-income census tracts located in West Virginia receiving such designation from the U.S. Treasury Department.

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

“Tier Two Job” means a new annual job held by an employee who received or had a family member to receive with neither still receiving benefits under West Virginia Medicaid, West Virginia Unemployment Insurance, the West Virginia Supplemental Nutrition Assistance Program, the West Virginia Children’s Health Insurance Program, and West Virginia Head Start.

“Tier Three Job” means all new annual jobs that are not Tier One Jobs or Two Tier Jobs.

§31-15D-3. Transferability.

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

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

(a) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this article shall first file a credit application with the authority. The authority shall begin accepting applications on July 1, 2021. The application filed by the qualified community development entity shall include the following:

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

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

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

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

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

(6) A business plan that includes a revenue impact assessment projecting state and local tax revenue to be generated by the applicant's proposed qualified low-income community

investments prepared by a nationally recognized third-party independent economic forecasting firm using a dynamic economic forecasting model that analyzes the applicant's business plan over the 10 years following the date the application is submitted to the authority; and

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

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

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

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

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

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

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

(h) Within one calendar year of the applicant receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount and, if applicable, designate the required amount of qualified equity investment authority as a federal qualified equity investment. The qualified community development entity shall provide the authority with evidence of the receipt of the cash investment and designation as a federal qualified equity investment, if applicable, within one calendar year and five days of the applicant receiving notice of certification. If the qualified community development entity does not receive the cash investment, issue the qualified equity investment and, if applicable, designate the qualified equity investment as a federal qualified equity investment within the time period following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the authority for certification.

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

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

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

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

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

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

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

§31-15D-5. New capital requirement.

No qualified active low-income community business that receives a qualified low-income community investment from a qualified community development entity that issues qualified equity investments under this article, or any affiliates of such a qualified active low-income community business, may directly or indirectly: (1) Own or have the right to acquire an ownership interest in a qualified community development entity or member or affiliate of a qualified community development entity, including, but not limited to, a holder of a qualified equity investment issued by the qualified community development entity; or (2) loan to or invest in a qualified community development entity or member or affiliate of a qualified community development entity, including, but not limited to, a holder of a qualified equity investment issued by a qualified community development entity, where the proceeds of such loan or investment are directly or indirectly used to fund or refinance the purchase of a qualified equity investment hereunder. For purposes of this section, a qualified community development entity may not be considered an affiliate of a qualified active low-income community business solely as a result of its qualified low-income community investment in that business.

§31-15D-6. Reporting.

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

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

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

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

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

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

(6) Any information that the qualified community development entity failed to invest an

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

(7) Such other information required by the authority.

(b) Thereafter, the qualified community development entity shall submit an annual report to the authority within 45 days of the beginning of each calendar year during the compliance period. No annual report may be due prior to the first anniversary of the initial credit allowance date. The report shall include, but is not limited to the following:

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

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

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

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

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

(6) If the authority is provided any information required by §31-15D-6(b)(3), §3115D-

6(b)(4), or §31-15D-6(b)(5) of this code, the authority shall provide that information to the insurance commissioner.

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

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

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

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

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

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

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

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

(a)(1) For each calendar year in which a community development entity makes or maintains a low-income community investment in a low-income community business in this state, the entity shall determine the number of new full-time equivalent employees produced at the low-income community business on the date of the entity's initial investment in the low-income community business from the number of full-time equivalent employees at the low-income community business on the last day of the calendar year. If the computation results in a number less than zero, the number of new full-time equivalent employees, produced by the entity's low-income community investment for that calendar year period shall be zero. Only employees with an hourly wage rate of at least 150 percent of the federal minimum wage may be considered in computing the number of new full-time equivalent employees for the purposes of this section.

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

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

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

(d) The authority, upon the request of a community development entity, may waive all or a portion of the remission required under subsection (c) of this section if the authority determines, based on an affidavit of the chief executive officer or president of a low-income community business, that the low-income community investments of the entity resulted in the retention of employment positions that would have otherwise been eliminated at low-income community businesses in this state. The amount waived may not exceed the product of $30,000 multiplied by the number of retained employment positions multiplied by the number of years in which the entity made or maintained a low-income community investment in the low-income community 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.

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

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

"Compliance period" means the period beginning on the date the qualified equity investment is initially made and ending on the sixth anniversary of the date of the qualified equity investment;

"Credit allowance date" means with respect to any qualified equity investment:

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

(2) Each of the six anniversary dates of the date thereafter.

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

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

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

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

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

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

(1) Is acquired after the effective date of this article at its original issuance solely in exchange for cash;

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

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

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

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

“State premium tax liability” means any liability incurred by any entity under §33-314, §33-3-14a, §33-3-15, §33-3-16 or §33-3-17 of this code: *Provided*, That if the tax liability imposed under these sections is eliminated or reduced, the term “state premium tax liability” shall also include any tax liability imposed by this state on an insurance company or other person that had premium tax liability under the laws of this state for the purpose of making up tax revenue lost by the state as a result of the elimination or reduction of the taxes imposed under said sections.

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

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

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

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

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

(1) Any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit under this article is recaptured under 26 U. S. C. § 45D, as amended.

In such case the Insurance Commissioner's recapture shall be proportionate to the federal recapture with respect to such qualified equity investment;

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

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

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

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

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

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

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

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