

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 95

By Senators Nelson, Woelfel, and Plymale

[Introduced January 11, 2023; referred
to the Committee on Economic Development; and
then to the Committee on 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, §31-15D-6, and
 3 §31-15D-7; and to amend said code by adding thereto a new section, designated §33-3-
 4 14f, all relating to establishing a West Virginia business growth in low-income communities
 5 tax credit; providing title; defining terms; establishing amount of credit allowed;
 6 transferability; certification of qualified equity investment; recapture of tax credits; notice of
 7 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 "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 "Applicable percentage" means zero percent for the first three credit allowance dates and
 7 15 percent of the qualified equity investment for the next four credit allowance dates;

8 "Authority" means the West Virginia Economic Development Authority as provided in §31-
 9 15-4 of this code;

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

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

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

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

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

33 "Qualified active low-income community business" has the meaning given the term in 26
34 U.S.C. §45D, as amended, and 26 C.F.R. §1.45D-1 (2012). Any business that is nonprofit or
35 derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of
36 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 the
40 real estate leased from the initial business. A business is considered a qualified active low-income
41 community business for the duration of the qualified community development entity's investment
42 in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or
43 loan, that the business will continue to satisfy the requirements of being a qualified active low-
44 income community business, other than the size and net income standards, throughout the entire
45 period of the investment or loan;

46 "Qualified community development entity" has the meaning given the term in 26 U.S.C.
47 §45D, as amended: *Provided*, That the entity has entered into an allocation agreement with the
48 Community Development Financial Institutions Fund of the U.S. Treasury Department with
49 respect to credits authorized by Section 26 U.S.C. 45D, as amended, which includes the State of
50 West Virginia within the service area set forth in the allocation agreement. An entity may not be
51 considered to be controlled by another entity solely as a result of the entity having made a direct or
52 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 "Qualified equity investment" means any equity investment in, or long-term debt security
57 issued by, a qualified community development entity that:

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

60 (2) 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 (3) 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 of
67 paragraph (A) of this subdivision if the investment was a qualified equity investment in the hands of
68 a prior holder;

69 "Qualified low-income community investment" means any capital or equity investment in,
70 or loan to, any qualified active low-income community business: *Provided*, That with respect to any
71 one qualified active low-income community business, the maximum amount of qualified low-
72 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 four
74 of this article, shall be \$5 million, exclusive of qualified low-income community investments made
75 with repaid or redeemed qualified low-income community investments or interest or profits
76 realized thereon;

77 "State premium tax liability" means any liability incurred by any entity under §33-3-14, §33-
78 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 may 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 §33-
86 3-14e of this code.

87 "Full-time equivalent employee" means the quotient obtained by dividing the total number
88 of hours for which employees were compensated for employment over the preceding 12-month

89 period by \$2,080.

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

92 "New annual jobs" means the difference between:

93 (1)(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 a
98 qualified low-income community business for the months including and after the initial low-income
99 community investment and before the end of the preceding calendar year;

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

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

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

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

§31-15D-3. Transferability.

1 A tax credit earned under this article is not 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 may
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, 2023. 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 not
27 project revenue neutrality against the proposed tax credit utilization. If the authority denies any
28 part of the application, the authority shall inform the qualified community development entity of the
29 grounds for the denial. If the qualified community development entity provides any additional
30 information required by the authority or otherwise completes its application within 15 days of the
31 notice of denial, the application is complete as of the original date of submission. If the qualified
32 community development entity fails to provide the information or complete its application within the
33 15-day period, the application remains denied and shall be resubmitted in full with a new
34 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 are considered 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 to
52 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 of
60 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 the transferee with the 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 shall 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 the time period following receipt of the certification notice, the certification shall
72 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 shall 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 A 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 not directly or indirectly: (1) own or have the right to acquire an ownership interest
5 in 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 by

7 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 this
12 section, a qualified community development entity may not be considered an affiliate of a qualified
13 active low-income community business solely as a result of its qualified low-income community
14 investment in that 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 the 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 is considered held by a qualified community
23 development entity even if the investment has been sold or repaid, if the qualified community
24 development entity reinvests an amount equal to the capital returned to or recovered by the
25 qualified community development entity from the original investment, exclusive of any profits
26 realized, in another qualified low-income community investment within 12 months of the receipt of
27 the capital. Periodic amounts received as repayment of principal pursuant to regularly scheduled
28 amortization payments on a loan that is a qualified low-income community investment shall be
29 treated as continuously invested in a qualified low-income community investment if the amounts
30 are reinvested in one or more qualified low-income community investments by the end of the
31 following calendar year. A qualified community development entity may not be required to reinvest
32 capital returned from qualified low-income community investments after the sixth anniversary of
33 the issuance of the qualified equity investment, and the qualified low-income community
34 investment is held by the qualified community development entity through the seventh anniversary
35 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 to
38 the authority within 45 days of the beginning of each calendar year during the compliance period.

39 An annual report may not be due prior to the first anniversary of the initial credit allowance date.

40 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 is considered held by a qualified community
56 development entity even if the investment has been sold or repaid, if the qualified community
57 development entity reinvests an amount equal to the capital returned to or recovered by the
58 qualified community development entity from the original investment, exclusive of any profits
59 realized, in another qualified low-income community investment within 12 months of the receipt of
60 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 of
64 the following calendar year. A qualified community development entity may 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 is considered held by the qualified community development entity through
68 the seventh anniversary of the qualified equity investment's issuance.

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

70 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 are 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 who 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 an
9 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
18 development entity shall determine the state reimbursement amount. A community development
19 entity's state reimbursement amount shall equal the amount by which the entity's qualified equity
20 investment authority exceed the product obtained by multiplying the \$30,000 by the aggregate
21 number of new full-time equivalent employees at the low-income community business. If that
22 product is greater than the entity's qualified equity investment authority, the state reimbursement
23 amount shall equal zero. In the absence of additional information provided by the entity, or
24 discovered by the authority, the number of new full-time equivalent employees for the purposes of
25 this division equals the sum of all new full-time equivalent employees reported by the entity on the
26 annual 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 shall remit the state reimbursement amount to the authority. All
29 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 may not exceed the product of \$30,000 multiplied by
 37 the number of retained employment positions multiplied by the number of years in which the entity
 38 made or maintained a low-income community investment in the low-income community business
 39 that retained the employment positions.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14f. Credits against premium tax for investment pursuant to the West Virginia New

<u>Market</u>	<u>Jobs</u>	<u>Acts.</u>
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1 (a) For the purpose of this section, the term:

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

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

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

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

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

12 "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. This in no way limits the holder's ability to accelerate payments on the
21 debt instrument in situations where the qualified community development entity has defaulted on
22 covenants designed to ensure compliance with 26 U.S.C. §45D, as amended;

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

39 "Qualified community development entity" has the meaning given the term in Section 26
40 U.S.C §45D, as amended: *Provided*, That the entity has entered into an allocation agreement with
41 the Community Development Financial Institutions Fund of the U.S. Treasury Department with
42 respect to credits authorized by 26 U.S.C §45D, as amended, which includes the State of West
43 Virginia within the service area set forth in the allocation agreement. An entity may not be

44 considered 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 includes subsidiary community development entities
47 of any such qualified community development entity and transferees of qualified equity investment
48 authority pursuant to §31-15D-4 of this code;

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

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

53 (2) 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 (3) 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 includes any qualified equity investment that does not meet the provisions of
61 §33-3-14(e)(a)(9)(A) of this code if the investment was a qualified equity investment in the hands
62 of a prior holder;

63 "Qualified low-income community investment" means any capital or equity investment in,
64 or loan to, any qualified active low-income community business: *Provided*, That with respect to any
65 one qualified active low-income community business, the maximum amount of qualified low-
66 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-4
68 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 "State premium tax liability" means any liability incurred by any entity under §33-3-14, §33-
72 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" also includes
74 any tax liability imposed by this state on an insurance company or other person that had premium
75 tax liability under the laws of this state for the purpose of making up tax revenue lost by the state as
76 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 is allowed an earned and vested tax credit against the entity's state premium tax liability that may
79 be used as follows:

80 (1) The amount of tax credit allowable on each credit allowance date to an entity that
81 makes a qualified equity investment, or to a subsequent holder of the qualified equity investment,
82 shall 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 be
86 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 may 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 any
91 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. the

96 Insurance Commissioner's recapture shall be proportionate to the federal recapture with respect
97 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 the
100 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 this
108 article, an investment is considered held by a qualified community development entity even if the
109 investment has been sold or repaid, if the qualified community development entity reinvests an
110 amount equal to the capital returned to or recovered by the qualified community development
111 entity from the original investment, exclusive of any profits realized, in another qualified low-
112 income community investment within 12 months of the receipt of the capital. Periodic amounts
113 received as repayment of principal pursuant to regularly scheduled amortization payments on a
114 loan that is a qualified low-income community investment shall be treated as continuously
115 invested in a qualified low-income community investment if the amounts are reinvested in one or
116 more qualified low-income community investments by the end of the following calendar year. A
117 qualified community development entity may not be required to reinvest capital returned from
118 qualified low-income community investments after the sixth anniversary of the issuance of the
119 qualified equity investment, and the qualified low-income community investment is considered
120 held by the qualified community development entity through the seventh anniversary of the
121 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 six-
131 month cure period. Recapture may not occur until the qualified community development entity
132 shall have been given notice of noncompliance and afforded six months from the date of the notice
133 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.