

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 76

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO TAXATION; PROVIDING CORPORATE INCOME TAX OR PREMIUM
TAX CREDITS FOR TAXPAYERS WHO QUALIFY FOR FEDERAL NEW MARKETS
TAX CREDITS AND WHO INVEST IN LOANS AND OTHER FINANCING FOR
BUSINESSES IN CERTAIN LOW-INCOME AREAS; PROVIDING FOR TAX
CREDIT CERTIFICATES TO BE TIERED OVER SEVEN YEARS WITH FIVE
YEARS OF ALLOWABLE CARRYOVER; PROVIDING THAT TAXPAYER
ELIGIBILITY BE DETERMINED AND TAX CREDIT CERTIFICATES BE ISSUED
BY THE NEW MEXICO FINANCE AUTHORITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Statewide Economic
Development Finance Act is enacted to read:

"[NEW MATERIAL] ADMINISTRATION OF STATE NEW MARKETS TAX
CREDITS BY THE NEW MEXICO FINANCE AUTHORITY.--

A. The authority shall receive applications for and

underscoring material = new
~~[bracketed material] = delete~~

1 determine the eligibility of taxpayers to receive new markets
2 tax credits, to certify a qualified equity investment made by a
3 taxpayer and to issue certificates of eligibility to an
4 eligible taxpayer.

5 B. The authority shall review taxpayer eligibility
6 on an annual basis. The authority shall notify the taxation
7 and revenue department or the insurance division of the public
8 regulation commission when a taxpayer loses its eligibility to
9 receive a new markets tax credit by providing a final notice of
10 decertification to the taxation and revenue department, the
11 insurance division of the public regulation commission, the
12 qualified community development entity and the taxpayer within
13 two weeks of decertifying the qualified equity investment.

14 C. The maximum amount of aggregate new markets tax
15 credits allowable in a calendar year is sixteen million dollars
16 (\$16,000,000). The authority shall coordinate at least monthly
17 with the taxation and revenue department and the insurance
18 division of the public regulation commission to maintain a
19 record of the cumulative amount of claims for the state new
20 markets corporate income tax credits and state new markets
21 premium tax credits that have been approved. To provide
22 guidance to qualified community development entities regarding
23 the amount of credit capacity remaining in a year, the
24 authority shall post monthly on the authority's web site the
25 aggregate amount of state new markets corporate income tax

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 credits and state new markets premium tax credits claimed and
2 authorized for that year.

3 D. Prior to October 31, 2012, the authority shall
4 establish by rule the procedures and forms for a qualified
5 community development entity to apply for certification of a
6 qualified equity investment for a new markets tax credit. The
7 rules and forms shall be presented to the New Mexico finance
8 authority oversight committee for its comments and approval
9 during the 2012 legislative interim.

10 E. Prior to October 31, 2012, the authority shall
11 establish by rule the minimum application requirements and
12 specific standards for qualifying for the new markets tax
13 credits that will produce the maximum long-term economic
14 benefits for the state. The rules shall be presented to the
15 New Mexico finance authority oversight committee for its
16 comments and approval during the 2012 legislative interim.

17 F. Prior to October 31, 2012, the authority shall
18 establish by rule the conditions and procedures for
19 certification and decertification of a qualified equity
20 investment. The rules shall be presented to the New Mexico
21 finance authority oversight committee for its comments and
22 approval during the 2012 legislative interim.

23 G. The authority shall provide a form on which a
24 qualified community development entity shall indicate:

25 (1) the name, address and tax identification

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 number of the qualified community development entity and
2 evidence of the entity's federal certification as a qualified
3 community development entity;

4 (2) a description of the proposed purchase
5 price and structure, amount and purchaser of the equity
6 investment;

7 (3) an acknowledgment and waiver allowing
8 information from the application and a taxpayer's tax returns,
9 reports and filings to be used for the authority's report to
10 the legislature about the effectiveness of the new markets tax
11 credits;

12 (4) the name and tax identification number of
13 any taxpayer that the qualified community development entity
14 reasonably expects to be eligible to claim the new markets tax
15 credit allowed as a result of the issuance of the qualified
16 equity investment;

17 (5) information about the type of qualified
18 active low-income community businesses in which the qualified
19 equity investment will likely be made, including, when
20 applicable and known, a detailed description of:

21 (a) the type of businesses to receive
22 the qualified equity investment;

23 (b) the location of the businesses to
24 receive the qualified equity investment;

25 (c) the number of new jobs to be created

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 or retained; and

2 (d) the physical infrastructure that may
3 be created or preserved; and

4 (6) any other information required by the
5 authority in its rules.

6 H. The application submission shall include:

7 (1) a copy of the allocation agreement
8 executed by the qualified community development entity, or in
9 the case of a subordinate qualified community development
10 entity, the entity that created the subordinate qualified
11 community development entity, and the federal community
12 development financial institutions fund;

13 (2) a certificate executed by an executive
14 officer of the qualified community development entity, or in
15 the case of a subordinate qualified community development
16 entity, the entity that created the subordinate qualified
17 community development entity, attesting that the allocation
18 agreement remains in effect and has not been revoked or
19 canceled by the community development financial institutions
20 fund; and

21 (3) an application fee of twenty thousand
22 dollars (\$20,000) that shall be nonrefundable, subject to the
23 provisions of this section, payable to the authority.

24 I. The authority shall approve applications that
25 comply with this section and its rules in the order that

.188047.3

underscored material = new
~~[bracketed material] = delete~~

1 completed applications are received. Applications received on
2 the same day shall be deemed to have been received
3 simultaneously. For applications received on the same day and
4 deemed complete, the authority shall certify, consistent with
5 remaining tax credit capacity under the annual cap, qualified
6 equity investments in proportionate percentages based on the
7 ratio of the amount of qualified equity investment requested in
8 an application to the total amount of qualified equity
9 investments requested in all applications received on the same
10 day. If a pending request cannot be certified fully because
11 the annual cap has been met, the authority shall certify the
12 portion that may be certified unless the qualified community
13 development entity elects to withdraw its request rather than
14 receive partial credit. A request withdrawn under this
15 subsection shall be accompanied by a refund of fifty percent of
16 the application fee. Withdrawn applications may not be
17 resubmitted. Any new application shall be submitted with the
18 full twenty-thousand-dollar (\$20,000) application fee for the
19 qualified community development entity to be considered for a
20 tax credit.

21 J. Within ninety days of the receipt of an
22 application that the authority determines to be complete, the
23 authority shall grant the application in whole or deny the
24 application in whole or in part. Subject to the limitations in
25 this section, the authority's rules and the new markets tax

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 credits provisions in the Corporate Income and Franchise Tax
2 Act and the New Mexico Insurance Code, the authority shall
3 certify the proposed equity investment or long-term debt
4 security as a qualified equity investment. If the authority
5 denies any part of the application, it shall inform the
6 qualified community development entity of the grounds for the
7 denial. The qualified community development entity shall have
8 fifteen days after the notice of denial to provide any
9 additional information required by the authority to its
10 application. If the qualified community development entity
11 fails to complete its application within the fifteen-day
12 period, the application shall remain denied. Any new
13 application shall be submitted in full with a new submission
14 date, subject to the annual cap of sixteen million dollars
15 (\$16,000,000) of aggregate new markets tax credits for the
16 calendar year of the new submission date.

17 K. Within two weeks of approving the application,
18 the authority shall provide written notice of the certification
19 to the qualified community development entity. The notice
20 shall include the names of the taxpayers that are eligible to
21 use the new markets tax credit, as stated in the application,
22 and their respective tax credit amounts. If the name of a
23 taxpayer or entity that is eligible to use a tax credit changes
24 due to a transfer of a qualified equity investment or a change
25 in an allocation under the allocation agreement between the

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 qualified community development entity and the community
2 development financial institutions fund, the qualified
3 community development entity shall notify the authority of the
4 change.

5 L. Within thirty days after receiving notice of
6 certification, a qualified community development entity shall
7 issue the qualified equity investment and shall receive cash in
8 the amount of the certified purchase price. The qualified
9 community development entity shall provide the authority with
10 evidence of the receipt of the cash investment within ten
11 business days after receipt.

12 M. If the qualified community development entity
13 does not receive the cash investment and issue the qualified
14 equity investment within thirty days following receipt of the
15 certification notice, the certification shall lapse, the
16 application shall be permanently rejected and the application
17 fee shall be forfeited. A certification that lapses reverts to
18 the authority and shall not be reissued.

19 N. Within thirty days of receiving evidence of a
20 qualified community development entity's receipt of cash in the
21 amount of the purchase price of the qualified active low-income
22 community business, the authority shall issue certificates of
23 eligibility to a qualified community development entity, whose
24 qualified equity investment has been certified and has not been
25 decertified, as follows:

.188047.3

underscored material = new
~~[bracketed material] = delete~~

1 (1) a certificate shall not be issued for use
2 in the first and second credit allowance dates of the
3 investment;

4 (2) a certificate in the amount of seven
5 percent of the amount of the investment shall be issued with a
6 maturity date of December 31 of the third credit allowance date
7 of the investment;

8 (3) a certificate in the amount of eight
9 percent of the amount of the investment shall be issued with a
10 maturity date of December 31 of the fourth credit allowance
11 date of the investment;

12 (4) a certificate in the amount of eight
13 percent of the amount of the investment shall be issued with a
14 maturity date of December 31 of the fifth credit allowance date
15 of the investment;

16 (5) a certificate in the amount of eight
17 percent of the amount of the investment shall be issued with a
18 maturity date of December 31 of the sixth credit allowance date
19 of the investment; and

20 (6) a certificate in the amount of eight
21 percent of the amount of the investment shall be issued with a
22 maturity date of December 31 of the seventh credit allowance
23 date of the investment.

24 0. The authority may issue certificates of
25 eligibility resulting in an annual aggregate amount of new

.188047.3

underscoring material = new
[bracketed material] = delete

1 markets tax credits not to exceed sixteen million dollars
2 (\$16,000,000).

3 P. A qualified community development entity whose
4 application is approved under this section shall pay to the
5 authority an annual evaluation fee of five thousand dollars
6 (\$5,000) on each of the second through seventh anniversary
7 dates of the initial credit allowance and on each year in which
8 the tax credit is carried forward.

9 Q. The authority shall decertify a qualified equity
10 investment when:

11 (1) any amount of federal tax credit available
12 with respect to qualified equity investments that are eligible
13 for a tax credit under the Statewide Economic Development Act
14 is recaptured under Section 45D of the Internal Revenue Code of
15 1986. The final notice of decertification shall include the
16 amount of recapture, which under this paragraph shall be
17 proportionate to the federal recapture with respect to the
18 qualified equity investment, and state that any unused
19 certificates of eligibility are canceled;

20 (2) the qualified community development entity
21 redeems or makes a principal repayment with respect to
22 qualified equity investments that generated the tax credit
23 prior to the final credit allowance date of the qualified
24 equity investment. The final notice of decertification shall
25 include the amount of recapture, which under this paragraph

.188047.3

underscored material = new
~~[bracketed material] = delete~~

1 shall be proportionate to the amount of the redemption or
2 repayment with respect to the qualified equity investment, and
3 state that any unused certificates of eligibility are canceled;

4 (3) the qualified community development entity
5 fails to invest at least eighty-five percent of the cash
6 purchase price of the qualified equity investment in qualified
7 active low-income community businesses located in the state
8 within twelve months of the issuance of the qualified equity
9 investment and maintain the same level of investment in
10 qualified low-income community investments located in the state
11 until the last credit allowance date for the qualified equity
12 investment. For purposes of calculating the amount of
13 qualified low-income community investments held by a qualified
14 community development entity, an investment shall be considered
15 held by the entity even if the investment has been sold or
16 repaid; provided that the entity reinvests an amount equal to
17 the capital returned to or recovered by the entity from the
18 original investment, exclusive of any profits realized, in
19 another qualified low-income community investment located in
20 the state within twelve months of the receipt of the capital.
21 The final notice of decertification shall include the amount of
22 recapture, which under this paragraph shall be the total amount
23 of all tax credits claimed by taxpayers that invested in the
24 qualified equity investment being decertified, and state that
25 any unused certificates of eligibility are canceled; or

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 (4) the qualified community development entity
2 or taxpayer fails to pay the annual evaluation fee to the
3 authority. The final notice of decertification shall include
4 the amount of recapture, which under this paragraph shall be
5 calculated by the authority under its rules, and state that any
6 unused certificates of eligibility are canceled.

7 R. The authority shall provide an initial notice of
8 decertification to the qualified community development entity
9 within two weeks of decertifying the qualified equity
10 investment. The qualified community development entity shall
11 have ninety days to cure any deficiency indicated in the
12 authority's initial notice of decertification. If the
13 qualified community development entity fails or is unable to
14 cure the deficiency within the ninety-day period, the authority
15 shall decertify the qualified equity investment and provide a
16 final notice of decertification to the qualified community
17 development entity, any taxpayer that was eligible to claim the
18 credit for the qualified equity investment, the taxation and
19 revenue department and the insurance division of the public
20 regulation commission within two weeks of decertifying the
21 qualified equity investment.

22 S. The qualified community development entity shall
23 keep sufficiently detailed books and records with respect to
24 the investments made with the proceeds of qualified equity
25 investments to allow the direct tracing of proceeds into

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 qualified low-income community investments in a qualified
2 active low-income community businesses in the state.

3 T. By July 1, 2014 and each year thereafter, each
4 qualified community development entity that received
5 certificates of eligibility that have not expired shall:

6 (1) report to the authority information about
7 each qualified active low-income community business, including
8 a detailed description of:

9 (a) the type of businesses that received
10 the qualified equity investment;

11 (b) the location of businesses that
12 received the qualified equity investment;

13 (c) the physical infrastructure that was
14 created or preserved;

15 (d) the number of new jobs created;

16 (e) the number of New Mexico residents
17 employed by the qualified active low-income community business
18 and the aggregate wages paid to them;

19 (f) the number of nonresidents employed
20 by the qualified active low-income community business and the
21 aggregate wages paid to them; and

22 (g) any other information required by
23 the authority; and

24 (2) provide to the authority an audit report
25 prepared by an independent auditor.

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 U. By October 31, 2014 and each year thereafter,
2 the authority shall:

3 (1) compile and assess direct tracking data
4 and any other data that allow the authority to assess
5 objectively the effectiveness of the new markets tax credits;
6 and

7 (2) with the support and assistance of the
8 legislative finance committee staff, the taxation and revenue
9 department and the insurance division of the public regulation
10 commission, create an annual report that provides an objective
11 assessment of the effectiveness of the new markets tax credits
12 for annual presentation to the New Mexico finance authority
13 oversight committee and the revenue stabilization and tax
14 policy committee.

15 V. For purposes of assessing the effectiveness of
16 the new markets tax credits, the inability of the authority to
17 aggregate data due to sample size shall not relieve the
18 authority of the requirement to report all relevant data to the
19 legislature. The authority shall provide notice to qualified
20 community development entities applying for the new markets tax
21 credits that information provided to the authority might be
22 revealed by the authority in reports to the legislature.

23 W. At four-year intervals beginning in calendar
24 year 2014, the New Mexico finance authority oversight committee
25 and the revenue stabilization and tax policy committee shall

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 review the new markets tax credits for their effectiveness in
2 achieving the goals and meeting the purposes for which the
3 credits were adopted. The review shall be completed by October
4 31 of the calendar year.

5 X. As used in this section:

6 (1) "applicable percentage" means zero percent
7 of the state new markets corporate income tax credit for each
8 of the first two credit allowance dates, seven percent of the
9 state new markets corporate income tax credit for the third
10 credit allowance date and eight percent of the state new
11 markets corporate income tax credit for each of the next four
12 credit allowance dates;

13 (2) "certificate" means a document issued by
14 the authority stating the maximum amount of a tax credit
15 allowed for a qualified community development entity and for
16 which a taxpayer may be eligible for a calendar year;

17 (3) "credit allowance date" means, with
18 respect to any qualified equity investment:

19 (a) the date on which the qualified
20 equity investment is initially made; and

21 (b) each of the six anniversary dates
22 thereafter;

23 (4) "direct tracing" means the tracking, by
24 accepted accounting methods, of the proceeds of qualified
25 equity investments into qualified low-income community

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 investments;

2 (5) "long-term debt security" means any debt
3 instrument issued by a qualified community development entity,
4 at par value or at a premium, with an original maturity date of
5 at least seven years from the date of its issuance, with no
6 acceleration of repayment, amortization or prepayment features
7 prior to its original maturity date. The qualified community
8 development entity that issues the debt instrument shall not
9 make cash interest payments on the debt instrument during the
10 period beginning on the date of issuance and ending on the
11 final credit allowance date in an amount that exceeds the
12 cumulative operating income, as defined by regulations adopted
13 under Section 45D of the Internal Revenue Code of 1986 of the
14 qualified community development entity for that period prior to
15 giving effect to the expense of such cash interest payments.
16 The foregoing shall in no way limit the holder's ability to
17 accelerate payments on the debt instrument in situations where
18 the issuer has defaulted on covenants designed to ensure
19 compliance with this section or Section 45D of the Internal
20 Revenue Code of 1986;

21 (6) "low-income community" has the same
22 meaning given to that same term in Section 45D of the Internal
23 Revenue Code of 1986;

24 (7) "new markets tax credit" means a state new
25 markets corporate income tax credit or a state new markets

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 premium tax credit;

2 (8) "purchase price" means the amount of cash
3 paid to the issuer of a qualified equity investment for the
4 qualified equity investment;

5 (9) "qualified active low-income community
6 business" has the same meaning given to that same term in
7 Section 45D of the Internal Revenue Code of 1986, except that
8 any business that derives or projects to derive fifteen percent
9 or more of its annual revenue from the rental or sale of real
10 estate shall not be considered a "qualified active low-income
11 community business". This exclusion does not apply to a
12 business that is controlled by, or under common control with,
13 another business if the second business does not derive or
14 project to derive fifteen percent or more of its annual revenue
15 from the rental or sale of real estate and is the primary
16 tenant of the real estate leased from the first business. A
17 business shall be considered a "qualified active low-income
18 community business" for the duration of the qualified community
19 development entity's investment in, or loan to, the business if
20 the entity reasonably expects, at the time it makes the
21 investment or loan, that the business will continue to satisfy
22 the requirements for being a qualified active low-income
23 community business throughout the entire period of the
24 investment or loan;

25 (10) "qualified community development entity"

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 has the same meaning given to that same term in Section 45D of
2 the Internal Revenue Code of 1986; provided that the qualified
3 community development entity has entered into an allocation
4 agreement with the community development financial institutions
5 fund of the United States department of treasury, with respect
6 to credits authorized by Section 45D of the Internal Revenue
7 Code of 1986, that includes the state within the service area
8 set forth in the allocation agreement. The term shall include
9 a subordinate community development entity established by a
10 qualified community development entity;

11 (11) "qualified equity investment" means any
12 equity investment in, or long-term debt security issued by, a
13 qualified community development entity that:

14 (a) is acquired after the effective date
15 of this 2012 act, at its original issuance, solely in exchange
16 for cash, or that was constituted a qualified equity investment
17 in the hands of a prior holder;

18 (b) has at least eighty-five percent of
19 its cash purchase price used by the qualified community
20 development entity to make qualified low-income community
21 investments in qualified active low-income community businesses
22 located in the state; and

23 (c) is designated by the authority as a
24 qualified equity investment under this 2012 act and is
25 certified by the authority as not exceeding the limitations in

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 the Corporate Income and Franchise Tax Act and the New Mexico
2 Insurance Code;

3 (12) "qualified low-income community
4 investment" means any capital or equity investment in, or loan
5 to, any qualified active low-income community business by the
6 qualified community development entity. With respect to any
7 one qualified active low-income community business, the maximum
8 amount of qualified low-income community investments made in
9 the qualified active low-income community business, on a
10 collective basis with all of the affiliates of the qualified
11 active low-income community business, that may be counted
12 toward the satisfaction of the definition of a qualified equity
13 investment shall be ten million dollars (\$10,000,000) for
14 purposes of calculating the amount of the new markets tax
15 credits, whether issued to one or several qualified community
16 development entities;

17 (13) "tax credit" means a credit against the
18 tax liability otherwise due under state law; and

19 (14) "taxpayer" means any investor in a
20 qualified community development entity subject to corporate
21 income taxes imposed pursuant to the Corporate Income and
22 Franchise Tax Act or premium taxes and health insurance premium
23 surtax imposed pursuant to Section 59A-6-2 NMSA 1978."

24 SECTION 2. A new section of the Corporate Income and
25 Franchise Tax Act is enacted to read:

.188047.3

1 "[NEW MATERIAL] TAX CREDIT--QUALIFIED EQUITY INVESTMENT.--

2 A. A taxpayer that files a New Mexico corporate
3 income tax return for a taxable year may claim, and the
4 department may allow, a tax credit against the corporate income
5 tax liability equal to thirty-nine percent of the purchase
6 price of a qualified equity investment, subject to the
7 limitations in this section and the Statewide Economic
8 Development Finance Act. The tax credit that may be claimed
9 pursuant to this section may be referred to as the "state new
10 markets corporate income tax credit".

11 B. The purposes of the state new markets corporate
12 income tax credit are:

13 (1) to provide a thirty-nine-percent state tax
14 credit for taxpayers that qualify to receive the federal new
15 markets tax credit for the same qualified equity investment in
16 a qualified active low-income community business;

17 (2) to promote long-term job creation and
18 investment in new, viable businesses; and

19 (3) to fulfill the goals adopted by the New
20 Mexico finance authority in its federal new markets tax credit
21 program economic impact policies.

22 C. For any taxable year, the amount of the tax
23 credit claimed by a taxpayer shall not exceed the amount of the
24 taxpayer's corporate income tax liability for that year.

25 D. A taxpayer claiming a state new markets

underscoring material = new
~~[bracketed material] = delete~~

1 corporate income tax credit shall not claim any other state tax
2 credit, deduction or exemption for the same qualified equity
3 investment that the taxpayer used to qualify for the state new
4 markets corporate income tax credit.

5 E. The total aggregate amount of state new markets
6 corporate income tax credits and state new markets premium tax
7 credits awarded to all taxpayers in a calendar year shall not
8 exceed sixteen million dollars (\$16,000,000).

9 F. To claim the state new markets corporate income
10 tax credit, the taxpayer shall provide to the department a
11 certificate of eligibility issued by the New Mexico finance
12 authority to be applied against the taxpayer's corporate income
13 tax liability reported during the taxable year following the
14 date of maturity on the certificate.

15 G. The department shall coordinate with the
16 insurance division of the public regulation commission and the
17 New Mexico finance authority to maintain a record of the
18 cumulative amount of claims for the state new markets corporate
19 income tax credits and state new markets premium tax credits
20 that have been approved. When the department determines that
21 the aggregate amount of state new markets corporate income tax
22 credits and state new markets premium tax credits awarded to
23 all taxpayers in a calendar year has reached sixteen million
24 dollars (\$16,000,000), it shall cease approving any additional
25 claims for the state new markets corporate income tax credit

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 for the calendar year. To provide guidance to qualified
2 community development entities regarding the amount of credit
3 capacity remaining in a year, the department shall post monthly
4 on the department's web site the aggregate amount of state new
5 markets corporate income tax credits and state new markets
6 premium tax credits claimed and authorized for that year.

7 H. If the amount of the state new markets corporate
8 income tax credit stated on the individual certificate exceeds
9 the taxpayer's corporate income tax liability for the taxable
10 year in which the certificate matures, the excess credit may be
11 carried forward for up to five years from the date of maturity
12 of each certificate. The latest date of the carryforward is
13 twelve years after the first credit allowance date on which the
14 initial qualified equity investment was made.

15 I. The state new markets corporate income tax
16 credit and the certificate of eligibility may not be sold,
17 exchanged or otherwise transferred to another taxpayer. The
18 credit is not refundable.

19 J. The department shall recapture from the taxpayer
20 that claimed the state new markets corporate income tax credit
21 any portion of a tax credit claimed against tax liability
22 pursuant to this section when the New Mexico finance authority
23 provides to the department a notice of decertification of the
24 qualified equity investment. Decertification requires the
25 department to recapture any tax credit in the amount stated on

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 the notice of decertification and the forfeiture of any future
2 tax credits to be claimed for the qualified equity investment
3 that is decertified. A recapture shall create a first priority
4 lien on the assets and property of the taxpayer in favor of the
5 state and a recurring tax liability for the taxpayer until the
6 amount of all state new markets corporate income tax credits
7 received by the taxpayer are repaid.

8 K. Acceptance by a taxpayer of a state new markets
9 corporate income tax credit pursuant to this section is
10 authorization by the taxpayer receiving the credit for the
11 department to reveal information to the legislature necessary
12 to analyze the effectiveness of the state new markets corporate
13 income tax credit.

14 L. Notwithstanding any other section of law to the
15 contrary, the department may disclose the number of taxpayers
16 allowed to receive the state new markets corporate income tax
17 credit, the amount of each credit approved and any other
18 information required by the legislature, the New Mexico finance
19 authority or the department to aid in evaluating the
20 effectiveness of the state new markets corporate income tax
21 credit.

22 M. At four-year intervals beginning in calendar
23 year 2014, the New Mexico finance authority oversight committee
24 and the revenue stabilization and tax policy committee shall
25 review the state new markets corporate income and franchise tax

.188047.3

1 credit and the state new markets premium tax credit for their
2 effectiveness in achieving the goals and achieving the purposes
3 for which the credits were adopted. The review shall be
4 completed by October 31 of the calendar year.

5 N. As used in this section:

6 (1) "certificate of eligibility" means a
7 document issued by the New Mexico finance authority stating the
8 maximum amount of a tax credit allowed for a qualified
9 community development entity and for which a taxpayer may be
10 eligible for a calendar year;

11 (2) "credit allowance date" means, with
12 respect to any qualified equity investment:

13 (a) the date on which the qualified
14 equity investment is initially made; and

15 (b) each of the six anniversary dates
16 thereafter;

17 (3) "long-term debt security" means any debt
18 instrument issued by a qualified community development entity,
19 at par value or at a premium, with an original maturity date of
20 at least seven years from the date of its issuance, with no
21 acceleration of repayment, amortization or prepayment features
22 prior to its original maturity date. The qualified community
23 development entity that issues the debt instrument shall not
24 make cash interest payments on the debt instrument during the
25 period beginning on the date of issuance and ending on the

underscoring material = new
~~[bracketed material] = delete~~

1 final credit allowance date in an amount that exceeds the
2 cumulative operating income, as defined by regulations adopted
3 under Section 45D of the Internal Revenue Code, of the
4 qualified community development entity for that period prior to
5 giving effect to the expense of such cash interest payments.
6 The foregoing shall in no way limit the holder's ability to
7 accelerate payments on the debt instrument in situations where
8 the issuer has defaulted on covenants designed to ensure
9 compliance with this section or Section 45D of the Internal
10 Revenue Code;

11 (4) "purchase price" means the amount of cash
12 paid to the issuer of a qualified equity investment for the
13 qualified equity investment;

14 (5) "qualified active low-income community
15 business" has the same meaning given to that same term in
16 Section 45D of the Internal Revenue Code, except that any
17 business that derives or projects to derive fifteen percent or
18 more of its annual revenue from the rental or sale of real
19 estate shall not be considered a qualified active low-income
20 community business. This exclusion does not apply to a
21 business that is controlled by, or under common control with,
22 another business if the second business does not derive or
23 project to derive fifteen percent or more of its annual revenue
24 from the rental or sale of real estate and is the primary
25 tenant of the real estate leased from the first business. A

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 business shall be considered a qualified active low-income
2 community business for the duration of the qualified community
3 development entity's investment in, or loan to, the business if
4 the qualified community development entity reasonably expects,
5 at the time it makes the investment or loan, that the business
6 will continue to satisfy the requirements for being a qualified
7 active low-income community business throughout the entire
8 period of the investment or loan;

9 (6) "qualified community development entity"
10 has the same meaning given to that same term in Section 45D of
11 the Internal Revenue Code; provided that the qualified
12 community development entity has entered into an allocation
13 agreement with the community development financial institutions
14 fund of the United States department of treasury, with respect
15 to credits authorized by Section 45D of the Internal Revenue
16 Code, that includes the state within the service area set forth
17 in the allocation agreement. "Qualified community development
18 entity" includes a subordinate community development entity
19 established by a qualified community development entity;

20 (7) "qualified equity investment" means any
21 equity investment in, or long-term debt security issued by, a
22 qualified community development entity that:

23 (a) is acquired after the effective date
24 of this 2012 act, at its original issuance, solely in exchange
25 for cash, or that was constituted a qualified equity investment

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 in the hands of a prior holder;

2 (b) has at least eighty-five percent of
3 its cash purchase price used by the qualified community
4 development entity to make qualified low-income community
5 investments in qualified active low-income community businesses
6 located in the state; and

7 (c) is certified by the New Mexico
8 finance authority as a qualified equity investment not
9 exceeding the annual cap;

10 (8) "qualified low-income community
11 investment" means any capital or equity investment in, or loan
12 to, any qualified active low-income community business by the
13 qualified community development entity. With respect to any
14 one qualified active low-income community business, the maximum
15 amount of qualified low-income community investments made in
16 the qualified active low-income community business, on a
17 collective basis with all of the affiliates of the qualified
18 active low-income community business, that may be counted
19 toward the satisfaction of the definition of a qualified equity
20 investment shall be ten million dollars (\$10,000,000) for
21 purposes of calculating the amount of the state new markets
22 corporate income tax credit, whether issued to one or several
23 qualified community development entities;

24 (9) "tax credit" means a credit against the
25 corporate and franchise income tax liability otherwise due

.188047.3

underscored material = new
[bracketed material] = delete

1 under state law; and

2 (10) "taxpayer" means any investor in a
3 qualified community development entity subject to corporate
4 taxes imposed under the Corporate Income and Franchise Tax
5 Act."

6 SECTION 3. A new section of the New Mexico Insurance Code
7 is enacted to read:

8 "[NEW MATERIAL] PREMIUM TAX CREDIT--QUALIFIED EQUITY
9 INVESTMENT.--

10 A. A taxpayer that files a report or return for
11 premium taxes due to the state may claim, and the division may
12 allow, a tax credit against the premium tax liability equal to
13 thirty-nine percent of the purchase price of a qualified equity
14 investment, subject to the limitations in this section and the
15 Statewide Economic Development Finance Act. The tax credit
16 that may be claimed pursuant to this section may be referred to
17 as the "state new markets premium tax credit".

18 B. The purposes of the state new markets premium
19 tax credit are:

20 (1) to provide a thirty-nine-percent state tax
21 credit for taxpayers that qualify to receive the federal new
22 markets tax credit for the same qualified equity investment in
23 a qualified active low-income community business;

24 (2) to promote long-term job creation and
25 investment in new, viable businesses; and

.188047.3

underscoring material = new
[bracketed material] = delete

1 (3) to fulfill the goals adopted by the New
2 Mexico finance authority in its federal new markets tax credit
3 program economic impact policies.

4 C. For any calendar year, the amount of the tax
5 credit claimed by a taxpayer shall not exceed the amount of the
6 taxpayer's state premium tax liability for that year.

7 D. A taxpayer claiming a state new markets premium
8 tax credit shall not claim any other state tax credit,
9 deduction or exemption for the same qualified equity investment
10 that the taxpayer used to qualify for the state new markets
11 premium tax credit.

12 E. The total aggregate amount of state new markets
13 premium tax credits and state new markets corporate income tax
14 credits awarded to all taxpayers in a calendar year shall not
15 exceed sixteen million dollars (\$16,000,000).

16 F. To claim the state new markets premium tax
17 credit, the taxpayer shall provide to the division a
18 certificate of eligibility issued by the New Mexico finance
19 authority to be applied against the taxpayer's premium tax
20 liability reported during the calendar year following the date
21 of maturity on the certificate.

22 G. The division shall coordinate with the
23 department and the New Mexico finance authority to maintain a
24 record of the cumulative amount of claims for the state new
25 markets premium tax credits and state new markets corporate

.188047.3

underscored material = new
~~[bracketed material] = delete~~

1 income tax credits that have been approved. When the division
2 determines that the aggregate amount of state new markets
3 premium tax credits and state new markets corporate income tax
4 credits awarded to all taxpayers in a calendar year has reached
5 sixteen million dollars (\$16,000,000), it shall cease approving
6 any additional claims for the state new markets premium tax
7 credit for the calendar year. To provide guidance to qualified
8 community development entities regarding the amount of credit
9 capacity remaining in a year, the division shall post monthly
10 on the division's web site the aggregate amount of state new
11 markets premium tax credits and state new markets corporate
12 income tax credits claimed and authorized for that year.

13 H. If the amount of the state new markets premium
14 tax credit stated on the individual certificate exceeds the
15 taxpayer's premium tax liability for the calendar year in which
16 the certificate matures, the excess credit may be carried
17 forward for up to five years from the date of maturity of each
18 certificate. The latest date of the carryforward is twelve
19 years after the first credit allowance date on which the
20 initial qualified equity investment was made.

21 I. The state new markets premium tax credit and the
22 certificate of eligibility may not be sold, exchanged or
23 otherwise transferred to another taxpayer. The credit is not
24 refundable.

25 J. The division shall recapture from the taxpayer

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 that claimed the state new markets premium tax credit any
2 portion of a tax credit claimed against tax liability pursuant
3 to this section when the New Mexico finance authority provides
4 to the division a notice of decertification of the qualified
5 equity investment. Decertification requires the division to
6 recapture any tax credit in the amount stated on the notice of
7 decertification and the forfeiture of any future tax credits to
8 be claimed on the qualified equity investment that is
9 decertified. A recapture shall create a first priority lien on
10 the assets and property of the taxpayer in favor of the state
11 and a recurring tax liability for the taxpayer until the amount
12 of all state new markets premium tax credits received by the
13 taxpayer are repaid.

14 K. Acceptance by a taxpayer of a state new markets
15 premium tax credit pursuant to this section is authorization by
16 the taxpayer receiving the credit for the department to reveal
17 information to the legislature necessary to analyze the
18 effectiveness of the state new markets premium tax credit.

19 L. Notwithstanding any other section of law to the
20 contrary, the division may disclose the number of taxpayers
21 allowed to receive the state new markets premium tax credit,
22 the amount of each credit approved and any other information
23 required by the legislature, the New Mexico finance authority
24 or the division to aid in evaluating the effectiveness of the
25 state new markets premium tax credit.

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 M. At four-year intervals beginning in calendar
2 year 2014, the New Mexico finance authority oversight committee
3 and the revenue stabilization and tax policy committee shall
4 review the state new markets premium tax credit and state new
5 markets corporate income tax credit for their effectiveness in
6 achieving the goals and meeting the purposes for which the
7 credits were adopted. The review shall be completed by October
8 31 of the calendar year.

9 N. As used in this section:

10 (1) "certificate of eligibility" means the
11 document issued by the New Mexico finance authority stating the
12 maximum amount of a tax credit allowed for a qualified
13 community development entity and for which a taxpayer may be
14 eligible for a calendar year;

15 (2) "credit allowance date" means, with
16 respect to any qualified equity investment:

17 (a) the date on which the qualified
18 equity investment is initially made; and

19 (b) each of the six anniversary dates
20 thereafter;

21 (3) "long-term debt security" means any debt
22 instrument issued by a qualified community development entity,
23 at par value or at a premium, with an original maturity date of
24 at least seven years from the date of its issuance, with no
25 acceleration of repayment, amortization or prepayment features

.188047.3

underscored material = new
~~[bracketed material] = delete~~

1 prior to its original maturity date. The qualified community
2 development entity that issues the debt instrument may not make
3 cash interest payments on the debt instrument during the period
4 beginning on the date of issuance and ending on the final
5 credit allowance date in an amount that exceeds the cumulative
6 operating income, as defined by regulations adopted under
7 Section 45D of the Internal Revenue Code of 1986, of the
8 qualified community development entity for that period prior to
9 giving effect to the expense of the cash interest payments.
10 The foregoing shall in no way limit the holder's ability to
11 accelerate payments on the debt instrument in situations where
12 the issuer has defaulted on covenants designed to ensure
13 compliance with this section or Section 45D of the Internal
14 Revenue Code of 1986;

15 (4) "purchase price" means the amount of cash
16 paid to the issuer of a qualified equity investment for the
17 qualified equity investment;

18 (5) "qualified active low-income community
19 business" has the same meaning given to that same term in
20 Section 45D of the Internal Revenue Code of 1986, except that
21 any business that derives or projects to derive fifteen percent
22 or more of its annual revenue from the rental or sale of real
23 estate shall not be considered a qualified active low-income
24 community business. This exclusion does not apply to a
25 business that is controlled by, or under common control with,

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 another business if the second business does not derive or
2 project to derive fifteen percent or more of its annual revenue
3 from the rental or sale of real estate and is the primary
4 tenant of the real estate leased from the first business. A
5 business will be considered a qualified active low-income
6 community business for the duration of the qualified community
7 development entity's investment in, or loan to, the business if
8 the entity reasonably expects, at the time it makes the
9 investment or loan, that the business will continue to satisfy
10 the requirements for being a qualified active low-income
11 community business throughout the entire period of the
12 investment or loan;

13 (6) "qualified community development entity"
14 has the same meaning given to that same term in Section 45D of
15 the Internal Revenue Code of 1986; provided that the qualified
16 community development entity has entered into an allocation
17 agreement with the community development financial institutions
18 fund of the United States department of treasury, with respect
19 to credits authorized by Section 45D of the Internal Revenue
20 Code of 1986 that includes the state within the service area
21 set forth in the allocation agreement. "Qualified community
22 development entity" includes a subordinate community
23 development entity established by a qualified community
24 development entity;

25 (7) "qualified equity investment" means any

.188047.3

underscoring material = new
~~[bracketed material] = delete~~

1 equity investment in, or long-term debt security issued by, a
2 qualified community development entity that:

3 (a) is acquired after the effective date
4 of this 2012 act, at its original issuance, solely in exchange
5 for cash, or that was constituted a qualified equity investment
6 in the hands of a prior holder;

7 (b) has at least eighty-five percent of
8 its cash purchase price used by the qualified community
9 development entity to make qualified low-income community
10 investments in qualified active low-income community businesses
11 located in the state; and

12 (c) is designated by the New Mexico
13 finance authority as a qualified equity investment not
14 exceeding the annual cap;

15 (8) "qualified low-income community
16 investment" means any capital or equity investment in, or loan
17 to, any qualified active low-income community business by the
18 qualified community development entity. With respect to any
19 one qualified active low-income community business, the maximum
20 amount of qualified low-income community investments made in
21 the qualified active low-income community business, on a
22 collective basis with all of the affiliates of the qualified
23 active low-income community business, that may be counted
24 toward the satisfaction of the definition of a qualified equity
25 investment shall be ten million dollars (\$10,000,000) for

.188047.3

underscoring material = new
~~[bracketed material]~~ = delete

1 purposes of calculating the amount of the state new markets
2 premium tax credit, whether issued to one or several qualified
3 community development entities;

4 (9) "tax credit" means a credit against the
5 tax liability otherwise due under state law; and

6 (10) "taxpayer" means any investor in a
7 qualified community development entity subject to the premium
8 tax and health insurance premium surtax imposed pursuant to
9 Section 59A-6-2 NMSA 1978."

10 SECTION 4. DELAYED REPEAL.--The provisions of this act
11 are repealed on July 1, 2019.

12 SECTION 5. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2012.