

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 373

3 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR A NEW MARKET PREMIUM TAX
12 CREDIT; PROHIBITING THE IMPOSITION OF ANY ADDITIONAL TAX
13 PURSUANT TO SECTION 59A-5-33 NMSA 1978 (BEING LAWS 1984,
14 CHAPTER 127, SECTION 100) WITH RESPECT TO ANY NEW MARKET
15 PREMIUM TAX CREDIT ALLOWED.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of the Economic Development
19 Department Act is enacted to read:

20 "[NEW MATERIAL] NEW MARKET PERFORMANCE GUARANTEE FUND.--
21 The "new market performance guarantee fund" is created in the
22 state treasury. The fund consists of performance fees held
23 pursuant to Section 3 of this 2013 act. The department shall
24 administer the fund, and money in the fund is appropriated to
25 the department to make refunds of performance fees pursuant to

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1 Section 3 of this 2013 act. Interest earned on balances in the
2 fund shall be credited to the fund. Only performance fees that
3 are forfeited and interest earned on those fees shall revert to
4 the general fund. All other balances remaining in the fund at
5 the end of a fiscal year shall not revert to the general fund.
6 Disbursements from the fund shall be made by warrant of the
7 secretary of finance and administration pursuant to vouchers
8 signed by the secretary of economic development."

9 SECTION 2. Section 59A-5-33 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 100) is amended to read:

11 "59A-5-33. RECIPROCITY PROVISION.--

12 A. When by or pursuant to the laws of any other
13 state or foreign country or province, any taxes, licenses and
14 other fees, in the aggregate, and any fines, penalties, deposit
15 requirements or other material requirements, obligations,
16 prohibitions or restrictions are or would be imposed upon New
17 Mexico insurers doing business or that might seek to do
18 business in such state, country or province, or upon the agents
19 or representatives of such insurers or upon brokers or
20 adjusters, which are in excess of such taxes, licenses and
21 other fees, in the aggregate, or which are in excess of the
22 fines, penalties, deposit or other requirements, obligations,
23 prohibitions or restrictions directly imposed upon similar
24 insurers, or upon the agents or representatives of such
25 insurers, or upon brokers, or upon adjusters, of such other

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1 state, country or province under the statutes of this state, so
 2 long as such laws of such other state, country or province
 3 continue in force or are so applied, the same taxes, licenses
 4 and other fees, in the aggregate, or fines, penalties or
 5 deposit requirements or other material requirements,
 6 obligations, prohibitions or restrictions of whatever kind may
 7 be imposed by the superintendent upon the insurers, or upon the
 8 agents or representatives of such insurers, or upon brokers of
 9 such other state, country or province, doing business or
 10 seeking to do business in New Mexico. Any tax, license or
 11 other fee or obligation imposed by any city, county or other
 12 political subdivision or agency of such other state, country or
 13 province on New Mexico insurers or their agents,
 14 representatives, brokers or adjusters shall be deemed to be
 15 imposed by such state, country or province within the meaning
 16 of this section.

17 B. A person to whom a premium tax credit is allowed
 18 pursuant to the Insurance Code shall not be required to pay any
 19 additional amount pursuant to Subsection A of this section,
 20 with respect to the amount of that credit allowed.

21 [~~B.~~] C. This section does not apply as to:
 22 (1) personal income taxes; [~~or~~]
 23 (2) ad valorem taxes on real or personal
 24 property; or
 25 (3) special purpose obligations or

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1 assessments, or assessments under insurance guaranty fund laws,
2 imposed by another state in connection with particular kinds of
3 insurance, except that assessment of insurers for financing of
4 public safety, health and protection purposes is not exempt
5 under this subsection. Except, that deductions from premium
6 taxes or other taxes otherwise payable, allowed on account of
7 real or personal property taxes paid, shall be taken into
8 consideration by the superintendent in determining propriety
9 and extent of reciprocity action under this section.

10 ~~[G.]~~ D. For purposes of this section domicile of an
11 alien insurer, other than Canadian insurer, shall be that state
12 designated by the insurer in writing filed with the
13 superintendent at time of authorization in this state or within
14 six ~~[+6]~~ months after the effective date of the Insurance
15 Code, whichever date is the later, and may be any one of the
16 following states:

- 17 (1) that in which the insurer was first
18 authorized to transact insurance; ~~[or]~~
19 (2) that in which is located the insurer's
20 principal place of business in the United States; or
21 (3) that in which is held the largest deposit
22 of trusted assets of the insurer for protection of its
23 policyholders in the United States.

24 If the insurer makes no such designation, its domicile
25 shall be deemed to be that state in which is located its

1 principal place of business in the United States.

2 ~~[D.]~~ E. The domicile of a Canadian insurer shall be
 3 Canada and the province of Canada in which its head office is
 4 located."

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

7 "[NEW MATERIAL] NEW MARKET PREMIUM TAX CREDIT.--

8 A. A taxpayer who makes a qualified equity
 9 investment in a qualified community development entity on or
 10 after July 1, 2013 and prior to January 1, 2017 may claim and
 11 the division may allow a tax credit against the taxpayer's
 12 premium tax liability in an amount equal to fifty-eight percent
 13 of the qualified equity investment applied in the corresponding
 14 seven consecutive calendar years as specified pursuant to
 15 Subsection B of this section. The tax credit provided in this
 16 section may be referred to as the "new market premium tax
 17 credit". A taxpayer earns a new market premium tax credit and
 18 that credit is vested at the time the taxpayer makes a
 19 qualified equity investment in accordance with the provisions
 20 of this section.

21 B. A taxpayer may claim a new market premium tax
 22 credit in an amount equal to:

23 (1) zero percent of the qualified equity
 24 investment in calendar years in which the first and second
 25 credit allowance date occurs;

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1 (2) twelve percent of the qualified equity
2 investment in calendar years in which the third, fourth and
3 fifth credit allowance date occurs; and

4 (3) eleven percent of the qualified equity
5 investment in calendar years in which the sixth and seventh
6 credit allowance date occurs.

7 C. The purpose of the new market premium tax credit
8 is to attract affordable capital to small businesses in low-
9 income communities, to create private-sector jobs and to expand
10 businesses.

11 D. The maximum aggregate amount of qualified equity
12 investments that may be made on or after July 1, 2013 and prior
13 to January 1, 2017 for the purposes of obtaining a new market
14 premium tax credit provided by this section shall be one
15 hundred twenty-five million dollars (\$125,000,000). The
16 maximum aggregate amount of total new market premium tax
17 credits that may be allowed for total qualified equity
18 investments made on or after July 1, 2013 and prior to January
19 1, 2017 shall be seventy-two million five hundred thousand
20 dollars (\$72,500,000). The division may allow a maximum
21 aggregate of fifteen million dollars (\$15,000,000) for total
22 new market premium tax credits provided by this section in one
23 calendar year, exclusive of any amounts carried forward
24 pursuant to Subsection E of this section. The economic
25 development department shall ensure that the application

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1 process, as provided pursuant to Subsection H of this section,
2 shall not allow the maximum aggregate amount of qualified
3 equity investments made on or after July 1, 2013 and prior to
4 January 1, 2017 for the purposes of obtaining a new market
5 premium tax credit to be exceeded.

6 E. The new market premium tax credit shall only be
7 applied to a taxpayer's premium tax liability. That portion of
8 the new market premium tax credit approved by the division that
9 exceeds the taxpayer's premium tax liability in the calendar
10 year in which the credit is claimed shall not be refunded to
11 the taxpayer. The credit may be carried forward for five
12 consecutive years. The credit shall not be transferred to any
13 other taxpayer.

14 F. A taxpayer that is a partnership, limited
15 liability company, S corporation or other entity that may
16 allocate tax credits to the partners, members or shareholders
17 of that entity for their direct use on a tax return may
18 allocate the new market premium tax credit to that entity's
19 partners, members or shareholders in accordance with the
20 provisions of a written agreement entered into by the partners,
21 members or shareholders of that entity. The allocation
22 provided pursuant to this subsection shall not be construed as
23 a transfer to another taxpayer. The total credit claimed by
24 all partners, members or shareholders shall not exceed the
25 allowable credit amount provided pursuant to Subsections A and

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1 B of this section.

2 G. To be eligible for the new market premium tax
3 credit, the taxpayer shall submit an application on or after
4 July 1, 2013 to the economic development department on a form
5 prescribed by the economic development department. A taxpayer
6 shall submit an application prior to making a qualified equity
7 investment in a qualified community development entity for a
8 determination of eligibility. In connection with the
9 application, a taxpayer shall provide:

10 (1) the name, address, tax identification
11 number and certification as a federally qualified community
12 development entity, including evidence that the service area of
13 the qualified community development entity in which the
14 taxpayer made a qualified equity investment includes New
15 Mexico;

16 (2) a copy of the allocation agreement
17 executed by the qualified community development entity and the
18 federal community development financial institutions fund;

19 (3) a certificate executed by an officer of
20 the qualified community development entity:

21 (a) attesting that the allocation
22 agreement remains in effect and has not been revoked or
23 canceled by the federal community development financial
24 institutions fund; and

25 (b) stating the cumulative amount of

1 allocations awarded to the taxpayer by the federal community
2 development financial institutions fund;

3 (4) a description of the amount and structure
4 of the qualified equity investment;

5 (5) a nonrefundable application fee of five
6 thousand dollars (\$5,000), which shall be paid to the economic
7 development department and required of each application
8 submitted;

9 (6) the refundable performance fee of five
10 hundred thousand dollars (\$500,000) provided by the qualified
11 community development entity pursuant to Subsection 0 of this
12 section;

13 (7) examples of the types of qualified low-
14 income community investments made by the qualified community
15 development entity or its controlling entity with its federal
16 allocation; provided that the taxpayer shall not be required to
17 identify qualified low-income community investments that will
18 be made by the qualified community development entity; and

19 (8) any other information or documentation
20 required by the economic development department to determine
21 the taxpayer's eligibility for a new market premium tax credit.

22 H. The economic development department shall grant
23 or deny the application within thirty days after receiving a
24 completed application containing the information, payment of
25 the application fee and the refundable performance fee required

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1 pursuant to this section. If any part of the application is
2 incomplete, the economic development department shall inform
3 the taxpayer and qualified community development entity of the
4 deficiency or grounds upon which a denial may be based. The
5 economic development department shall provide the taxpayer
6 fifteen days to submit the required additional information. If
7 the taxpayer provides the economic development department with
8 a completed application or otherwise cures the deficiency
9 within fifteen days of the notice of deficiency, the
10 application shall be considered completed as of the original
11 date of submission. If the taxpayer fails to provide a
12 completed application or cure the deficiency within fifteen
13 days of the notice of deficiency, the application shall be
14 denied. A taxpayer whose application is denied may resubmit an
15 application; provided that a new submission date shall be given
16 to the application.

17 I. If the taxpayer and qualified community
18 development entity meet the requirements of this section, the
19 economic development department shall certify the proposed
20 taxpayer's investment in the qualified community development
21 entity as a qualified equity investment that is eligible for
22 new market premium tax credits. The economic development
23 department shall issue a dated certificate of eligibility
24 containing the taxpayer's identifying information, the amount
25 of the qualified equity investment, the identifying information

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1 of the qualified community development entity, the amount of
2 credit the taxpayer is eligible for, the corresponding year
3 following the calendar year in which the qualified equity
4 investment was made and any other information that the economic
5 development department may require. All certificates of
6 eligibility issued pursuant to this subsection shall be
7 sequentially numbered, and an account of all certificates
8 issued or destroyed shall be maintained by the economic
9 development department. The state auditor shall audit the
10 records of the new market premium tax credit maintained by the
11 economic development department and the division on a periodic
12 basis to ensure effective administration of the new market
13 premium tax credit and compliance with this section.

14 J. If the name of a taxpayer that is eligible to
15 use the new market premium tax credit changes due to a transfer
16 of a qualified equity investment or an allocation pursuant to
17 Subsection F of this section, the qualified community
18 development entity shall notify the economic development
19 department of such change or allocation, and the economic
20 development department shall notify the division.

21 K. A taxpayer may make a qualified equity
22 investment in one or more qualified community development
23 entities other than the qualified community development entity
24 identified in its application, provided that:

25 (1) the qualified community development entity

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1 is the controlling entity of the qualified community
2 development entity identified in the application or is a
3 subsidiary community development entity of the controlling
4 entity; and

5 (2) the taxpayer provides the information
6 required in the application with respect to the different
7 qualified community development entity and the applicant
8 notifies the economic development department of the transfer
9 with the evidence of the receipt of cash set forth in
10 Subsection M of this section.

11 L. A taxpayer may transfer all or a portion of its
12 allocated certified qualified equity investment authority
13 allocated to it to one or more affiliate taxpayers provided
14 that the taxpayer provides the information required in the
15 application with respect to such affiliate taxpayer and the
16 affiliate taxpayer notifies the economic development department
17 of such transfer with the evidence of the receipt of cash set
18 forth in Subsection M of this section.

19 M. Within thirty days of the taxpayer receiving
20 notice of certification, the taxpayer or any transferee
21 pursuant to Subsection L of this section shall make the
22 qualified equity investment. The qualified community
23 development entity or transferee shall receive an amount of
24 cash equal to the certified amount. The qualified community
25 development entity or transferee shall provide the economic

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1 development department with evidence of the receipt of the cash
2 investment within five business days after receipt. If the
3 qualified community development entity or any transferee does
4 not receive the cash investment and issue the qualified equity
5 investment within thirty days following receipt of the
6 certification notice, the certification shall lapse and the
7 entity shall not issue the qualified equity investment without
8 the taxpayer reapplying to the economic development department
9 for certification. Lapsed certifications shall revert to the
10 economic development department and shall be reissued, first,
11 pro rata to other taxpayers whose proposed qualified equity
12 investments were reduced in the application process.

13 N. The economic development department shall
14 certify qualified equity investments in the order applications
15 are received by the department. Applications received on the
16 same day shall be deemed to have been received simultaneously.
17 If applications received on the same day would result in the
18 maximum aggregate of qualified equity investments pursuant to
19 Subsection D of this section being exceeded, the economic
20 development department shall certify the qualified equity
21 investments in proportionate percentages based upon the ratio
22 of the amount of qualified equity investment requested in an
23 application to the total amount of qualified equity investments
24 requested in all applications received on the same day.

25 O. To claim a new market premium tax credit, the

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1 taxpayer shall provide to the division the certificate of
2 eligibility issued by the economic development department
3 pursuant to this section to the taxpayer for the calendar year
4 for which a tax credit is allowed. If the requirements of this
5 section have been complied with, the division shall approve the
6 claim for the credit.

7 P. A qualified community development entity that
8 receives a qualified equity investment shall provide, within
9 one year from the initial credit allowance date, the economic
10 development department with:

11 (1) sufficiently detailed records with respect
12 to qualified low-income community investments made with the
13 proceeds of qualified equity investments in qualified active
14 low-income community businesses in New Mexico; and

15 (2) information about each qualified active
16 low-income community business, including a description of:

17 (a) the type of business that received
18 the qualified low-income community investment;

19 (b) the location of the business that
20 received the qualified low-income community investment;

21 (c) the physical infrastructure that was
22 created or preserved;

23 (d) the number of new jobs created;

24 (e) the number of New Mexico residents
25 employed by the qualified active low-income community business

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1 and the aggregate wages paid to residents;

2 (f) the number of nonresidents employed
3 by the qualified active low-income community business and the
4 aggregate wages paid to nonresidents; and

5 (g) any other information required by
6 the economic development department to assess objectively the
7 effectiveness of the new market premium tax credit.

8 Q. After the initial submission of the information
9 required pursuant to Subsection P of this section, the
10 qualified community development entity shall continue to submit
11 that information to the economic development department on
12 December 31 of each year for seven consecutive years after the
13 initial credit allowance date. The qualified community
14 development entity shall not be required to provide that annual
15 report for qualified low-income community investments that have
16 been redeemed or repaid to the qualified community development
17 entity by a qualified active low-income community business.

18 R. The division shall recapture a new market
19 premium tax credit allowed from a taxpayer if:

20 (1) any amount of a federal tax credit
21 available with respect to a qualified equity investment is
22 recaptured under Section 45D of the Internal Revenue Code;
23 provided that the recapture amount shall be proportionate to
24 the federal recapture with respect to that qualified equity
25 investment;

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1 (2) the qualified community development entity
2 redeems or makes principal repayment of a qualified equity
3 investment prior to the seventh calendar year following the
4 calendar year in which the investment is made; provided that
5 the recapture amount shall be proportionate to the amount of
6 the redemption or repayment of that qualified equity
7 investment;

8 (3) the qualified community development
9 entity:

10 (a) fails to invest an amount equal to
11 at least eighty-five percent of the cash purchase price of the
12 qualified equity investment in qualified low-income community
13 investments in New Mexico within twelve months of the date that
14 the qualified equity investment is made; or

15 (b) fails to maintain an amount equal to
16 at least eighty-five percent of the qualified equity investment
17 in qualified low-income community investments in New Mexico
18 through the seventh calendar year following the calendar year
19 in which the qualified equity investment is made; provided
20 that: 1) a qualified equity investment shall be deemed held by
21 a qualified community development entity, even if that
22 investment is sold or repaid, if an amount equal to the capital
23 returned or recovered from the original investment, exclusive
24 of any profits realized, is invested in another qualified
25 low-income community investment within twelve months of the

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1 receipt of that capital; and 2) periodic amounts received
2 during a calendar year as repayment of principal on a loan that
3 is a qualified low-income community investment shall be treated
4 as continuously invested in a qualified low-income community
5 investment if the amounts are reinvested in another qualified
6 low-income community investment by the end of the following
7 calendar year; and provided further that a qualified community
8 development entity shall not be required to reinvest capital
9 returned from qualified low-income community investments after
10 the sixth anniversary of the issuance of the qualified equity
11 investment, the proceeds of which were used to make the
12 qualified low-income community investment, and the qualified
13 low-income community investment shall be considered held by the
14 issuer through the seventh anniversary of the qualified equity
15 investment's issuance; or

16 (4) at any time prior to the seventh calendar
17 year following the calendar year in which the qualified equity
18 investment is made, uses the qualified equity investment to
19 make qualified low-income community investments in any one
20 qualified active low-income community business, including
21 affiliated qualified active low-income community businesses,
22 exclusive of reinvestments of capital returned or repaid with
23 respect to earlier investments in that qualified active
24 low-income community business and its affiliates, in excess of
25 twenty-five percent of the cash proceeds of all such qualified

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1 equity investments.

2 S. The division shall not recapture a new market
3 premium tax credit from a taxpayer pursuant to Subsection R of
4 this section until it provides the taxpayer with a notice of
5 noncompliance and an opportunity to cure that noncompliance for
6 a period of six months from the date of the notice.

7 T. A qualified community development entity that
8 proposes to receive a qualified equity investment from a
9 taxpayer with respect to an application made pursuant to
10 Subsection G of this section shall pay a performance fee in the
11 amount of five hundred thousand dollars (\$500,000) to the
12 economic development department for deposit in the new market
13 performance guarantee fund. A qualified community development
14 entity, its controlling entity and any subsidiary qualified
15 community development entities of the controlling entity are
16 not required to collectively pay a performance fee of more than
17 five hundred thousand dollars (\$500,000). The performance fee
18 shall be held in the new market performance guarantee fund
19 until all qualified community development entities with the
20 same controlling entity comply with the provisions of this
21 section as determined by the economic development department.
22 The qualified community development entity may request a refund
23 of the performance fee thirty days after the economic
24 development department determines that the qualified community
25 development entity has complied with the requirements of this

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1 section. The qualified community development entity shall
 2 forfeit the performance fee, in its entirety, if the qualified
 3 community development entity or any other qualified community
 4 development entity with the same controlling entity fails to:

5 (1) issue the total amount of qualified equity
 6 investments certified by the economic development department
 7 pursuant to Subsection I of this section; or

8 (2) meet the investment requirement pursuant
 9 to Subparagraph (b) of Paragraph (3) of Subsection R of this
 10 section by the second credit allowance date.

11 U. Forfeiture of the performance fee pursuant to
 12 Paragraph (2) of Subsection T of this section may be reversed
 13 by curing the noncompliance resulting in the forfeiture within
 14 the six-month period specified in Subsection S of this section.

15 V. A qualified community development entity that
 16 receives a qualified equity investment shall not distribute any
 17 of the cash proceeds of its qualified equity investment or
 18 proceeds of its qualified low-income community investments
 19 until the qualified equity investment:

20 (1) is beyond the seventh credit allowance
 21 date;

22 (2) has been in compliance with the provisions
 23 of Subsection Q of this section through the seventh credit
 24 allowance date; and

25 (3) has been invested in qualified active low-

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1 income community investments so that the total qualified active
2 low-income community investments, cumulatively including
3 reinvestments, equal or exceed one hundred twenty-five percent
4 of the qualified equity investment.

5 W. Before a qualified community development entity
6 may distribute any of the cash proceeds of its qualified equity
7 investment or proceeds of its qualified low-income community
8 investments, the economic development department shall approve
9 that distribution. The qualified community development entity
10 shall send a request for approval to the economic development
11 department along with any information or documentation required
12 by the economic development department to determine that the
13 qualified community development entity has complied with the
14 provisions of Subsection V of this section. The provisions of
15 Paragraph (2) of Subsection V of this section shall be deemed
16 to be met if the division fails to take action to recapture a
17 tax credit by the seventh credit allowance date. The economic
18 development department shall not unreasonably deny a request
19 for approval pursuant to this subsection and shall provide a
20 response to the requestor within thirty days of receipt of the
21 request.

22 X. The division, with the cooperation of the
23 economic development department, shall issue a letter ruling to
24 a question regarding the new market premium tax credit provided
25 pursuant to this section to a taxpayer within sixty days of the

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1 taxpayer's request. A taxpayer may provide a draft letter
2 ruling for the consideration of the division. The taxpayer may
3 withdraw the request for a letter ruling, in writing, prior to
4 the issuance of the letter ruling. The division may refuse to
5 issue a letter ruling for good cause, but must list the
6 specific reasons for refusing to issue the letter ruling. A
7 letter ruling shall bind the division until that taxpayer
8 claims the new market premium tax credit with the division. A
9 letter ruling shall apply only to the taxpayer that requested
10 that letter ruling. To the extent applicable, the division
11 shall take into consideration Section 45D of the Internal
12 Revenue Code, and the resulting rules and regulations when
13 issuing a letter ruling or making a determination pursuant to
14 this section.

15 Y. A qualified community development entity shall
16 not earn or collect a fee in connection with any activity
17 related to a new market premium tax credit prior to the eighth
18 anniversary of the initial credit allowance date; provided that
19 a qualified community development entity may earn a fee equal
20 to not more than five-tenths percent of the amount of the
21 qualified equity investment upon the initial closing and not
22 more than twenty-five hundredths percent of the amount of the
23 qualified equity investment each calendar year for not more
24 than six calendar years.

25 Z. The economic development department and the

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1 division shall create an annual report that provides an
2 objective assessment of the effectiveness of the new market
3 premium tax credit for annual presentation to the revenue
4 stabilization and tax policy committee and any other
5 appropriate legislative committees. For the purpose of
6 assessing the effectiveness of the new market premium tax
7 credit, the inability of the division to aggregate data due to
8 sample size shall not relieve the economic development
9 department of the requirement to report all relevant data to
10 the legislature. The economic development department shall
11 provide notice to taxpayers and qualified community development
12 entities that receive qualified equity investments that
13 information provided to the economic development department may
14 be revealed in reports to the legislature.

15 AA. As used in this section:

16 (1) "affiliate" means a business entity that
17 directly or indirectly through one or more intermediaries
18 controls, is controlled by or is under common control with
19 another business entity;

20 (2) "credit allowance date" means the date:

21 (a) on which a qualified equity
22 investment is made to a qualified community development entity;
23 and

24 (b) of each of the six anniversary dates
25 of the date on which a qualified equity investment is made to a

1 qualified community development entity;

2 (3) "good cause" includes refusing to issue a
3 letter ruling because:

4 (a) a taxpayer requests a letter ruling
5 to determine whether a statute is constitutional or a rule is
6 lawful;

7 (b) a letter ruling request involves a
8 hypothetical situation or alternative plans;

9 (c) the facts or issues presented in the
10 request are unclear, overbroad, insufficient or otherwise
11 inappropriate as a basis upon which to issue a letter ruling;
12 or

13 (d) the issue is currently being
14 considered in a rulemaking procedure, contested case or other
15 agency or judicial proceeding that may definitely resolve the
16 issue;

17 (4) "Internal Revenue Code" means the Internal
18 Revenue Code of 1986, as that code may be amended or its
19 sections renumbered;

20 (5) "letter ruling" means a written
21 interpretation of law to a specific set of facts provided by
22 the taxpayer requesting a letter ruling;

23 (6) "long-term debt security" means any debt
24 instrument issued by a qualified community development entity,
25 at par value or a premium, with an original maturity date of at

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1 least seven years from the date of its issuance, with no
2 acceleration of repayment, amortization or prepayment features
3 prior to its original maturity date, without cash interest
4 payments on the debt instrument during the period beginning on
5 the date of issuance and ending on the seventh year after
6 issuance in an amount that exceeds the cumulative operating
7 income, as defined by regulations adopted under Section 45D of
8 the Internal Revenue Code, of the qualified community
9 development entity for that period prior to giving effect to
10 the expense of such cash interest payments; provided, however,
11 that the holder of the debt instrument may accelerate payments
12 on the debt instrument in situations where the qualified
13 community development entity has defaulted on covenants
14 designed to ensure compliance with this section or Section 45D
15 of the Internal Revenue Code;

16 (7) "low-income community" means "low-income
17 community" as defined in Section 45D of the Internal Revenue
18 Code and the resulting promulgated rules and regulations;

19 (8) "premium tax" means the premium tax and
20 the premium surtax imposed pursuant to Section 59A-6-2 NMSA
21 1978;

22 (9) "qualified active low-income community
23 business" means "qualified active low-income community
24 business" as defined in Section 45D of the Internal Revenue
25 Code and the resulting promulgated rules and regulations,

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1 except that any business that derives or projects to derive
2 fifteen percent or more of its annual revenue from the rental
3 or sale of real estate shall not be considered a qualified
4 active low-income community business; but the exclusion does
5 not apply to a business that is controlled by, or under the
6 common control with, another business if the second business
7 does not derive or project to derive fifteen percent or more of
8 its annual revenue from the rental or sale of real estate and
9 is the primary tenant of the real estate leased from the first
10 business; provided that a business shall be considered a
11 qualified active low-income community business for the duration
12 of the qualified community development entity's investment in,
13 or loan to, the business if the qualified community development
14 entity reasonably expects, at the time it makes the investment
15 or loan, that the business will continue to satisfy the
16 requirements for being a qualified active low-income community
17 business throughout the entire period of the investment or
18 loan;

19 (10) "qualified community development entity"
20 means "qualified community development entity" as defined in
21 Section 45D of the Internal Revenue Code and resulting
22 promulgated rules and regulations; provided that the qualified
23 community development entity has entered into an allocation
24 agreement with the community development financial institutions
25 fund of the United States department of treasury, with respect

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1 to credits authorized by Section 45D of the Internal Revenue
2 Code, that includes New Mexico within the service areas set
3 forth in the allocation agreement and includes a subordinate
4 community development entity that also is a qualified community
5 development entity under Section 45D of the Internal Revenue
6 Code and is controlled by or under the common control with the
7 qualified community development entity;

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

11 (a) is acquired on or after July 1, 2013
12 and prior to January 1, 2017, at its original issuance, solely
13 in exchange for cash or that was constituted a qualified equity
14 investment in the hands of a prior holder;

15 (b) has at least eighty-five percent of
16 the investment used by the qualified community development
17 entity to make qualified low-income community investments in
18 qualified active low-income community businesses located in New
19 Mexico by the second credit allowance date; and

20 (c) is designated by the qualified
21 community development entity as a qualified equity investment
22 pursuant to this section and is certified by the economic
23 development department as not exceeding the limitations on the
24 aggregate amounts of the qualified equity investments that may
25 be certified pursuant to this section;

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1 (12) "qualified low-income community
2 investment" means any capital or equity investment in, or loan
3 to, any qualified active low-income community business by the
4 qualified community development entity; and

5 (13) "taxpayer" means a person or entity
6 liable for payment of the premium tax."

7 **SECTION 4. EFFECTIVE DATE.**--The effective date of the
8 provisions of this act is July 1, 2013.

underscored material = new
[bracketed material] = delete

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