

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 522

Short Title: New Markets Jobs Act. (Public)

Sponsors: Senator Gunn (Primary Sponsor).

Referred to: Finance.

April 1, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT NEW MARKETS JOBS INITIATIVE.

3 The General Assembly of North Carolina enacts:

4 SECTION 1. Chapter 105 of the General Statutes is amended by adding a new  
5 Article to read:

6 "Article 3L.

7 "North Carolina New Markets Jobs Initiative.

8 "§ 105-129.100. Short title.

9 The provisions of this section shall be known as and may be cited as the "North Carolina  
10 New Markets Jobs Initiative."

11 "§ 105-129.101. Definitions.

12 The following definitions apply in this Article:

- 13 (1) Applicable percentage. – Zero percent (0%) for the first two credit allowance  
14 dates, twelve percent (12%) for the next three credit allowance dates, and  
15 eleven percent (11%) for the following two credit allowance dates.
- 16 (2) Credit allowance date. – With respect to any qualified equity investment, the  
17 date on which the investment is initially made and each of the six  
18 anniversary dates thereafter.
- 19 (3) Department. – The Department of Commerce.
- 20 (4) Long-term debt security. – Any debt instrument issued by a qualified  
21 community development entity, at par value or a premium, with an original  
22 maturity date of at least seven years from the date of its issuance, with no  
23 acceleration of repayment, amortization, or prepayment features prior to its  
24 original maturity date. The qualified community development entity that  
25 issues the debt instrument may not make cash interest payments on the debt  
26 instrument during the period beginning on the date of issuance and ending  
27 on the final credit allowance date in an amount that exceeds the cumulative  
28 operating income, as defined by regulations adopted under section 45D of  
29 the Internal Revenue Code of 1986, as amended, of the qualified community  
30 development entity for that period prior to giving effect to the expense of  
31 such cash interest payments. The foregoing shall in no way limit the holder's  
32 ability to accelerate payments on the debt instrument in situations where the  
33 issuer has defaulted on covenants designed to ensure compliance with this  
34 section or section 45D of the Internal Revenue Code of 1986, as amended.
- 35 (5) Purchase price. – The amount paid to the issuer of a qualified equity  
36 investment for such qualified equity investment.



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- 1           (6)   Qualified active low-income community business. – Defined in section 45D  
2           of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. §  
3           1.45D-1. A business shall be considered a qualified active low-income  
4           community business for the duration of the qualified community  
5           development entity's investment in or loan to the business if the entity  
6           reasonably expects, at the time it makes the investment or loan, that the  
7           business will continue to satisfy the requirements for being a qualified active  
8           low-income community business throughout the entire period of the  
9           investment or loan. The term excludes any business that derives or projects  
10          to derive fifteen percent (15%) or more of its annual revenue from the rental  
11          or sale of real estate. This exclusion does not apply to a business that is  
12          controlled by or under common control with another business if the second  
13          business (i) does not derive or project to derive fifteen percent (15%) or  
14          more of its annual revenue from the rental or sale of real estate and (ii) is the  
15          primary tenant of the real estate leased from the first business.
- 16          (7)   Qualified community development entity. – The meaning given such term in  
17          section 45D of the Internal Revenue Code of 1986, as amended, and 26  
18          C.F.R. § 1.45D-1 but limited to those businesses meeting the SBA size  
19          eligibility standards established in 13 C.F.R. § 121.101-201 at the time the  
20          qualified low-income community investment is made. A business shall be  
21          considered a qualified active low-income community business for the  
22          duration of the qualified community development entity's investment in or  
23          loan to the business if the entity reasonably expects, at the time it makes the  
24          investment or loan, that the business will continue to satisfy the requirements  
25          for being a qualified active low-income community business, other than the  
26          SBA size standards, throughout the entire period of the investment or loan.  
27          The term excludes any business that derives or projects to derive fifteen  
28          percent (15%) or more of its annual revenue from the rental or sale of real  
29          estate. This exclusion does not apply to a business that is controlled by or  
30          under common control with another business if the second business (i) does  
31          not derive or project to derive fifteen percent (15%) or more of its annual  
32          revenue from the rental or sale of real estate and (ii) is the primary tenant of  
33          the real estate leased from the first business.
- 34          (8)   Qualified community development entity. – The meaning given such term in  
35          section 45D of the Internal Revenue Code of 1986, as amended; provided  
36          that such entity has entered into, for the current year or any prior year, an  
37          allocation agreement with the Community Development Financial  
38          Institutions Fund of the U.S. Treasury Department with respect to credits  
39          authorized by section 45D of the Internal Revenue Code of 1986, as  
40          amended, which includes the State of North Carolina within the service area  
41          set forth in the allocation agreement. The term shall include subsidiary  
42          community development entities of any qualified community development  
43          entity.
- 44          (9)   Qualified equity investment. – Any equity investment in or long-term debt  
45          security issued by a qualified community development entity that meets each  
46          of the following requirements:
- 47              a.   Is acquired after the effective date of this act at its original issuance  
48              solely in exchange for cash.
- 49              b.   Has at least eighty-five percent (85%) of its cash purchase price used  
50              by the issuer to make qualified low-income community investments

1 in qualified active low-income community businesses located in this  
2 State by the first anniversary of the initial credit allowance date.

3 c. Is designated by the issuer as a qualified equity investment under this  
4 subdivision and is certified by the Department as not exceeding the  
5 limitation contained in subdivision (5) of this section. This term shall  
6 include any qualified equity investment that does not meet the  
7 provisions of sub-subdivision a. of this subdivision if such  
8 investment was a qualified equity investment in the hands of a prior  
9 holder.

10 (10) Qualified low-income community investment. – Any capital or equity  
11 investment in or loan to any qualified active low-income community  
12 business.

13 (11) Secretary. – The Secretary of Commerce.

14 (12) State premium tax liability. – Any liability incurred by any entity under the  
15 gross premiums tax or the retaliatory premium tax levied in Article 8B of  
16 this Chapter, or, if the tax liability under the gross premiums tax or the  
17 retaliatory premium tax levied in Article 8B of this Chapter is eliminated or  
18 reduced, the term shall also mean any tax liability imposed on an insurance  
19 company or other person that had premium tax liability under the laws of  
20 this State.

21 **"§ 105-129.102. Credit for qualified equity investment.**

22 (a) Credit Established. – A person that makes a qualified equity investment earns a  
23 vested right to a tax credit against the person's State premium tax liability on a premium tax  
24 report filed under this Article. On each credit allowance date of the qualified equity investment,  
25 the taxpayer or subsequent holder of the qualified equity investment may utilize a portion of the  
26 tax credit during the taxable year including the credit allowance date. The tax credit amount is  
27 equal to the applicable percentage for the credit allowance date multiplied by the purchase price  
28 paid to the issuer of the qualified equity investment. The amount of the tax credit claimed by a  
29 taxpayer shall not exceed the amount of such taxpayer's State tax liability for the tax year for  
30 which the tax credit is claimed. Any amount of tax credit that the taxpayer is prohibited from  
31 claiming in a taxable year as a result of this section may be carried forward for use in any  
32 subsequent taxable year.

33 (b) Transferability. – Tax credits earned by a partnership, limited liability company,  
34 S-corporation, or other "pass-through" entity may be allocated to the partners, members, or  
35 shareholders of such entity for their direct use in accordance with the provisions of any  
36 agreement among such partners, members, or shareholders. Such allocation shall be not  
37 considered a sale for purposes of this section.

38 (c) Certification of qualified equity investments. – A qualified community development  
39 entity that seeks to have an equity investment or long-term debt security designated as a  
40 qualified equity investment and eligible for tax credits under this section shall apply to the  
41 Department. The qualified community development entity must submit an application on a  
42 form that the Department provides that includes each of the following:

43 (1) Evidence of the entity's certification as a qualified community development  
44 entity, including evidence of the service area of the entity that includes this  
45 State.

46 (2) A copy of the allocation agreement executed by the entity or its controlling  
47 entity and the Community Development Financial Institutions Fund.

48 (3) A certificate executed by an executive officer of the entity (i) attesting that  
49 the allocation agreement remains in effect and has not been revoked or  
50 cancelled by the Community Development Financial Institutions Fund and

1 (ii) stating the cumulative amount of allocations awarded to the entity by the  
2 Community Development Financial Institutions Fund.

3 (4) A description of the proposed amount, structure, and purchaser of the  
4 qualified equity investment.

5 (5) Identifying information for any known taxpayer eligible to utilize tax credits  
6 earned as a result of the issuance of the qualified equity investment.

7 (6) Examples of the types of qualified active low-income businesses in which  
8 the applicant, its controlling entity, or affiliates of its controlling entity have  
9 invested under the Federal New Markets Tax Credit Program. Applications  
10 are not required to identify qualified active low-income community  
11 businesses in which they will invest when submitting an application.

12 (7) A nonrefundable application fee of five thousand dollars (\$5,000).

13 (8) The refundable performance fee required by G.S. 105-129.104.

14 (d) A qualified community development entity, on an aggregate basis with all of its  
15 subsidiary qualified community development entities, may not apply to have equity investment  
16 or long-term debt instruments designated as qualified equity investments under this section in  
17 excess of the total amount of allocations awarded to the application and its subsidiary qualified  
18 community development entities by the Community Development Financial Institutions Fund  
19 under section 45D of the Internal Revenue Code.

20 Within 30 days after receipt of a completed application containing the information  
21 necessary for the Department to certify a potential qualified equity investment, including the  
22 payment of the application fee, the Department shall grant or deny the application in full or in  
23 part. If the Department denies any part of the application, it shall inform the qualified  
24 community development entity of the grounds for the denial. If the qualified community  
25 development entity provides any additional information required by the Department or  
26 otherwise completes its application within 15 days of the notice of denial, the application shall  
27 be considered completed as of the original date of submission. If the qualified community  
28 development entity fails to provide the information or complete its application within the  
29 15-day period, the application is denied and must be resubmitted in full with a new submission  
30 date.

31 If the application is deemed complete, the Department shall certify the proposed equity  
32 investment or long-term debt security as a qualified equity investment that is eligible for tax  
33 credits under this section, subject to the limitations contained in this subsection. The  
34 Department shall provide written notice of the certification to the qualified community  
35 development entity. The notice shall include the names of those taxpayers who are eligible to  
36 utilize the credits and their respective credit amounts. If the names of the taxpayers who are  
37 eligible to utilize the credits change due to a transfer of a qualified equity investment or a  
38 change in an allocation pursuant to this section, the qualified community development entity  
39 shall notify the Department of such change.

40 Once the Department has certified a qualified equity investment, the qualified community  
41 development entity may suballocate all or any portion of the amount of the certified equity  
42 investment to one or more qualified community development entities with the same controlling  
43 entity as the applicant qualified community development entity, provided that the applicant  
44 qualified community development entity files a notice of such suballocation with the  
45 Department and the recipient of the suballocation meets all the requirements of a qualified  
46 community development entity under this section. The notice of suballocation shall include the  
47 information required in the application for all suballocates.

48 The Department shall certify qualified equity investments in the order applications are  
49 received by the Department. Applications received on the same day shall be deemed to have  
50 been received simultaneously. For applications received on the same day and deemed complete,  
51 the Department shall certify, consistent with remaining tax credit capacity, qualified equity

1 investments in proportionate percentages based upon the ratio of the amount of qualified equity  
2 investment requested in an application to the total amount of qualified equity investments  
3 requested in all applications received on the same day.

4 The Department shall certify five hundred million dollars (\$500,000,000) in qualified  
5 equity investment. If a pending request cannot be fully certified due to this limit, the  
6 Department shall certify the portion that may be certified unless the qualified community  
7 development entity elects to withdraw its request rather than receive partial certification.

8 Within 30 days after receiving notice of certification, the qualified community development  
9 entity or any transferee under this section shall issue the qualified equity investment and  
10 receive cash in the amount of the certified amount. The qualified community development  
11 entity or transferee must provide the Department with evidence of the receipt of the cash  
12 investment within 10 business days after receipt. If the qualified community development  
13 entity or transferee does not receive the cash investment and issue the qualified equity  
14 investment within 30 days following receipt of the certification notice, the certification shall  
15 lapse and the entity may not issue the qualified equity investment without reapplying to the  
16 Department for certification. A certification that lapses reverts back to the Department and may  
17 be reissued pro rata to other applicants whose qualified equity investment allocations were  
18 reduced under this section and thereafter in accordance with the application process.

19 (e) Recapture. – The Department shall recapture from the taxpayer that claimed the  
20 credit on a return the tax credit allowed under this section if any of the following occurs:

21 (1) Any amount of the federal tax credit available with respect to a qualified  
22 equity investment that is eligible for a tax credit under this section is  
23 recaptured under section 45D of the Internal Revenue Code of 1986, as  
24 amended. In such case, the Department's recapture shall be proportionate to  
25 the federal recapture with respect to such qualified equity investment.

26 (2) The issuer redeems or makes principal repayment with respect to a qualified  
27 equity investment prior to the seventh anniversary of the issuance of such  
28 qualified equity investment. In such case, the Department's recapture shall be  
29 proportionate to the amount of the redemption or repayment with respect to  
30 such qualified equity investment.

31 (3) The issuer fails to invest at least eighty-five percent (85%) of the purchase  
32 price of the qualified equity investment in qualified low-income investments  
33 in the State within 12 months of the issuance of the qualified equity  
34 investment and maintain such level of investment in qualified low-income  
35 community investments in the State until the last credit allowance date for  
36 the qualified equity investment. For purposes of this section, an investment  
37 shall be considered held by an issuer even if the investment has been sold or  
38 repaid if the issuer reinvests an amount equal to the capital returned to or  
39 recovered by the issuer from the original investment, exclusive of any profits  
40 realized, in another qualified low-income community investment within 12  
41 months of the receipt of such capital. An issuer shall not be required to  
42 reinvest capital returned from qualified low-income community investments  
43 after the earlier of (i) the sixth anniversary of the issuance of the qualified  
44 equity investment or (ii) the date by which a qualified community  
45 development entity has made qualified low-income community investment  
46 with the proceeds of the qualified equity investment on a cumulative basis  
47 equal to at least one hundred fifty percent (150%) of the proceeds, and the  
48 qualified low-income community investment shall be considered held by the  
49 issuer through the seventh anniversary of the qualified equity investment's  
50 issuance.

1           (4) At any time prior to the final credit allowance date of a qualified equity  
2 investment, the proceeds were used to make qualified low-income equity  
3 investments in any one qualified active low-income community businesses,  
4 including affiliated qualified active low-income community businesses,  
5 exclusive of reinvestments of capital returned or repaid with respect to  
6 earlier investments in the qualified active low-income community business  
7 and its affiliates, in excess of twenty-five percent (25%) of the cash  
8 proceeds.

9 **"§ 105-129.103. Notice of noncompliance.**

10 Enforcement of the recapture under this Article shall not occur until the qualified  
11 community development entity shall have been given notice of noncompliance and afforded six  
12 months from the date of such notice to cure the noncompliance.

13 **"§ 105-129.104. Refundable performance fee.**

14       (a) A qualified community development entity that seeks to have an equity investment  
15 or long-term debt security designated as a qualified equity investment and eligible for tax  
16 credits under this Article shall pay a fee in the amount of one-half of one percent (.5%) of the  
17 amount of the equity investment or long-term debt security requested to be designated as a  
18 qualified equity investment to the Department for deposit in the New Markets performance  
19 guarantee account, which is hereby established. The entity shall forfeit the fee if (i) the  
20 qualified community development entity and its subsidiary qualified community development  
21 entities, if any, fail to issue the total amount of qualified equity investments certified by the  
22 Administrator and receive cash in the total amount certified under G.S. 105-129.102 or (ii) the  
23 qualified community development entity or any subsidiary qualified community development  
24 entity that issues a qualified equity investment certified under this Article fails to meet the  
25 investment requirement under this Article; provided that forfeiture for this failure is subject to  
26 the cure period established in G.S. 105-129.103.

27       (b) The fee required under this section shall be paid to the Department and held in the  
28 New Markets performance guarantee account until such time as compliance with the provisions  
29 of this section have been established. The qualified community development entity may request  
30 a refund of the fee from the Department no sooner than 30 days after having met all the  
31 requirements of this section. The State Treasurer shall have 30 days to comply with the request  
32 or give notice of noncompliance.

33 **"§ 105-129.105. Letter rulings.**

34       (a) The Secretary shall issue letter rulings regarding the tax credit program authorized  
35 under this Article, subject to the terms and conditions set forth in this section. For the purposes  
36 of this Article, the term "letter ruling" means a written interpretation of law to a specific set of  
37 facts provided by the applicant requesting a letter ruling.

38       (b) The Secretary shall respond to a request for a letter ruling within 60 days of receipt  
39 of such request. The applicant may provide a draft letter ruling for the Secretary's  
40 consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the  
41 issuance of the letter ruling. The Secretary may refuse to issue a letter ruling for good cause but  
42 must list the specific reasons for refusing to issue the letter ruling. Good cause includes any of  
43 the following:

- 44           (1) The applicant requests the director to determine whether a statute is  
45 constitutional or a regulation is lawful.  
46           (2) The request involves a hypothetical situation or alternative plans.  
47           (3) The facts or issues presented in the request are unclear, overbroad,  
48 insufficient, or otherwise inappropriate as a basis upon which to issue a letter  
49 ruling.

1           (4) The issue is currently being considered in a rule-making procedure,  
2           contested case, or other agency or judicial proceeding that may definitely  
3           resolve the issue.

4           (c) Letter rulings shall bind the Secretary and the Secretary's agents and their successors  
5           until such time as the entity or its shareholders, members, or partners, as applicable, claim all of  
6           the credits on a North Carolina tax return or report, subject to the terms and conditions set forth  
7           in properly published regulations. The letter ruling shall apply only to the applicant.

8           (d) In rendering letter rulings and making other determinations under this Article, to the  
9           extent applicable, the Department and the Department of Revenue shall look for guidance to  
10           section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations  
11           issued thereunder.

12 **"§ 105-129.106. Retaliatory tax.**

13           An entity claiming a credit under this Article is not required to pay any additional  
14           retaliatory tax levied under this Chapter as a result of claiming the credit. It is the intent of the  
15           General Assembly that an entity claiming a credit under this Article is not required to pay any  
16           additional tax that may arise as a result of claiming that credit.

17 **"§ 105-129.107. Decertification.**

18           (a) Once certified under this Article, a qualified equity investment may not be  
19           decertified unless all of the requirements of this section have been met. Until all qualified  
20           equity investments issued by a qualified community development entity are decertified under  
21           this section, the qualified community development entity shall not be entitled to distribute to its  
22           equity holders or make cash payments on long-term debt securities that have been designated as  
23           qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating  
24           income, as defined by regulations adopted under section 45D of the Internal Revenue Code of  
25           1986, as amended, earned by the qualified community development entity since issuance of the  
26           qualified equity investment, prior to giving effect to any expense from the payment of interest  
27           on long-term debt securities designated as qualified equity investments and (ii) fifty percent  
28           (50%) of the purchase price of the qualified equity investments issued by the qualified  
29           community development entity.

30           (b) To be decertified, all of the following conditions must be met:

31           (1) The qualified equity investment is beyond its seventh credit allowance date.

32           (2) The qualified equity investment was in compliance with the requirements of  
33           this Article through its seventh credit allowance date, including any cures.

34           (3) The qualified equity investment has its proceeds invested in qualified active  
35           low-income community investments such that the total qualified active  
36           low-income community investments made, cumulatively including  
37           reinvestments, exceeds one hundred fifty percent (150%) of its qualified  
38           equity investment.

39           (c) A community development entity that seeks to have a qualified equity investment  
40           decertified under this section shall send notice to the Department of its request for  
41           decertification along with evidence supporting the request. The provisions of subdivision (2) of  
42           subsection (b) of this section are met if no recapture action has been commenced by the  
43           Department as of the seventh credit allowance date. A request under this section shall not be  
44           unreasonably denied and shall be responded to within 30 days of receiving the request. If the  
45           request is denied for any reason, the burden of proof shall be on the Department in any  
46           administrative or legal proceeding that follows.

47 **"§ 105-129.111. Limitation on fees.**

48           No qualified community development entity shall be entitled to pay any affiliate of such  
49           qualified community development entity any fees in connection with any activity under this  
50           Article prior to decertification under G.S. 105-129.107 of all qualified equity investment issued  
51           by the qualified community development entity. The foregoing shall not prohibit a qualified

1 community development entity from allocating or distributing income earned by it to the  
2 affiliates or paying reasonable interest on amounts lent to the qualified community  
3 development entity by such affiliates."

4           **SECTION 2.** This act is effective for taxable years beginning on or after January 1,  
5 2013, and applies to qualified equity investments made on or after November 1, 2013.