



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0652

Introduced 1/25/2017, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

- 20 ILCS 663/5
- 20 ILCS 663/20
- 20 ILCS 663/25
- 20 ILCS 663/40
- 20 ILCS 663/43 new
- 20 ILCS 663/50
- 20 ILCS 663/55 new

Amends the New Markets Development Program Act. Provides that, to be considered a "qualified equity investment" under the Act, 100% (currently, 85%) of the cash purchase price of the investment must be used by the issuer to make qualified low-income community investments in the State of Illinois. Requires qualified community development entities to submit an annual job creation report. Provides that the application for certification as a qualified community development entity must include the amount of qualified equity investment authority the applicant agrees to designate as a federal qualified equity investment under Section 45D of the Internal Revenue Code. Provides that no qualified active low-income community business that receives a qualified low-income community investment from a qualified community development entity that issues qualified equity investments under the Act may directly or indirectly (i) own or have the right to acquire an ownership interest in a qualified community development entity or member or affiliate of a qualified community development entity or (ii) loan to or invest in a qualified community development entity or member or affiliate of a qualified community development entity. Provides that the annual cap on credits under the Act is \$50,000,000 (currently, \$20,000,000). Effective immediately.

LRB100 06360 HLH 16399 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The New Markets Development Program Act is
5 amended by changing Sections 5, 20, 25, 40, and 50 and by
6 adding Sections 43 and 55 as follows:

7 (20 ILCS 663/5)

8 Sec. 5. Definitions. As used in this Act:

9 "Applicable percentage" means 0% for each of the first 2
10 credit allowance dates, 7% for the third credit allowance date,
11 and 8% for the next 4 credit allowance dates.

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

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

16 (2) each of the 6 anniversary dates of that date
17 thereafter.

18 "Department" means the Department of Commerce and Economic
19 Opportunity.

20 "Long-term debt security" means any debt instrument issued
21 by a qualified community development entity, at par value or a
22 premium, with an original maturity date of at least 7 years
23 from the date of its issuance, with no acceleration of

1 repayment, amortization, or prepayment features prior to its
2 original maturity date. Cumulative cash payments of interest on
3 the qualified debt instrument during the period commencing with
4 the issuance of the qualified debt instrument and ending with
5 the seventh anniversary of its issuance shall not exceed the
6 sum of such cash interest payments and the cumulative net
7 income of the issuing community development entity for the same
8 period. This definition in no way limits the holder's ability
9 to accelerate payments on the debt instrument in situations
10 where the issuer has defaulted on covenants designed to ensure
11 compliance with this Act or Section 45D of the Internal Revenue
12 Code of 1986, as amended.

13 "Purchase price" means the amount paid to the issuer of a
14 qualified equity investment for that qualified equity
15 investment.

16 "Qualified active low-income community business" has the
17 meaning given to that term in Section 45D of the Internal
18 Revenue Code of 1986, as amended; except that any business that
19 derives or projects to derive 15% or more of its annual revenue
20 from the rental or sale of real estate is not considered to be
21 a qualified active low-income community business. This
22 exception does not apply to a business that is controlled by or
23 under common control with another business if the second
24 business (i) does not derive or project to derive 15% or more
25 of its annual revenue from the rental or sale of real estate
26 and (ii) is the primary tenant of the real estate leased from

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

9 "Qualified community development entity" has the meaning
10 given to that term in Section 45D of the Internal Revenue Code
11 of 1986, as amended; provided that such entity has entered
12 into, or is controlled by an entity that has entered into, an
13 allocation agreement with the Community Development Financial
14 Institutions Fund of the U.S. Treasury Department with respect
15 to credits authorized by Section 45D of the Internal Revenue
16 Code of 1986, as amended, that includes the State of Illinois
17 within the service area set forth in that allocation agreement.

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

21 (1) is acquired after the effective date of this Act at
22 its original issuance solely in exchange for cash;

23 (2) with respect to qualified equity investments made
24 before January 1, 2017, has at least 85% of its cash
25 purchase price used by the issuer to make qualified
26 low-income community investments in the State of Illinois.

1 and, with respect to qualified equity investments made
2 after on or after January 1, 2017, has 100% of the cash
3 purchase price used by the issuer to make qualified
4 low-income community investments in the State of Illinois;
5 and

6 (3) is designated by the issuer as a qualified equity
7 investment under this Act; with respect to qualified equity
8 investments made on or after January 1, 2017, is designated
9 by the issuer as a qualified equity investment under
10 Section 45D of the Internal Revenue Code of 1986, as
11 amended; and is certified by the Department as not
12 exceeding the limitation contained in Section 20.

13 This term includes any qualified equity investment that
14 does not meet the provisions of item (1) of this definition if
15 the investment was a qualified equity investment in the hands
16 of a prior holder.

17 "Qualified low-income community investment" means any
18 capital or equity investment in, or loan to, any qualified
19 active low-income community business. With respect to any one
20 qualified active low-income community business, the maximum
21 amount of qualified low-income community investments made in
22 that business, on a collective basis with all of its affiliates
23 that may be counted towards the satisfaction of paragraph (2)
24 of the definition of qualified equity investment, shall be
25 \$10,000,000 whether issued to one or several qualified
26 community development entities.

1 "Tax credit" means a credit against any income, franchise,
2 or insurance premium taxes, including insurance retaliatory
3 taxes, otherwise due under Illinois law.

4 "Taxpayer" means any individual or entity subject to any
5 income, franchise, or insurance premium tax under Illinois law.
6 (Source: P.A. 95-1024, eff. 12-31-08.)

7 (20 ILCS 663/20)

8 Sec. 20. Annual cap on credits. The Department shall limit
9 the monetary amount of qualified equity investments permitted
10 under this Act to a level necessary to limit tax credit use at
11 no more than \$50,000,000 ~~\$20,000,000~~ of tax credits in any
12 fiscal year. This limitation on qualified equity investments
13 shall be based on the anticipated use of credits without regard
14 to the potential for taxpayers to carry forward tax credits to
15 later tax years.

16 (Source: P.A. 95-1024, eff. 12-31-08; 96-939, eff. 7-1-10.)

17 (20 ILCS 663/25)

18 Sec. 25. Certification of qualified equity investments.

19 (a) A qualified community development entity that seeks to
20 have an equity investment or long-term debt security designated
21 as a qualified equity investment and eligible for tax credits
22 under this Section shall apply to the Department. The qualified
23 community development entity must submit an application on a
24 form that the Department provides that includes:

1 (1) The name, address, tax identification number of the
2 entity, and evidence of the entity's certification as a
3 qualified community development entity.

4 (2) A copy of the allocation agreement executed by the
5 entity, or its controlling entity, and the Community
6 Development Financial Institutions Fund.

7 (3) A certificate executed by an executive officer of
8 the entity attesting that the allocation agreement remains
9 in effect and has not been revoked or cancelled by the
10 Community Development Financial Institutions Fund.

11 (4) A description of the proposed amount, structure,
12 and purchaser of the equity investment or long-term debt
13 security.

14 (5) The name and tax identification number of any
15 taxpayer eligible to utilize tax credits earned as a result
16 of the issuance of the qualified equity investment.

17 (6) Information regarding the proposed use of proceeds
18 from the issuance of the qualified equity investment.

19 (7) A nonrefundable application fee of \$5,000. This fee
20 shall be paid to the Department and shall be required of
21 each application submitted.

22 (8) With respect to qualified equity investments made
23 on or after January 1, 2017, the amount of qualified equity
24 investment authority the applicant agrees to designate as a
25 federal qualified equity investment under Section 45D of
26 the Internal Revenue Code, including a copy of the screen

1 shot from the Community Development Financial Institutions
2 Fund's Allocation Tracking System of the applicant's
3 remaining federal qualified equity investment authority.

4 (b) Within 30 days after receipt of a completed application
5 containing the information necessary for the Department to
6 certify a potential qualified equity investment, including the
7 payment of the application fee, the Department shall grant or
8 deny the application in full or in part. If the Department
9 denies any part of the application, it shall inform the
10 qualified community development entity of the grounds for the
11 denial. If the qualified community development entity provides
12 any additional information required by the Department or
13 otherwise completes its application within 15 days of the
14 notice of denial, the application shall be considered completed
15 as of the original date of submission. If the qualified
16 community development entity fails to provide the information
17 or complete its application within the 15-day period, the
18 application remains denied and must be resubmitted in full with
19 a new submission date.

20 (c) If the application is deemed complete, the Department
21 shall certify the proposed equity investment or long-term debt
22 security as a qualified equity investment that is eligible for
23 tax credits under this Section, subject to the limitations
24 contained in Section 20. The Department shall provide written
25 notice of the certification to the qualified community
26 development entity. The notice shall include the names of those

1 taxpayers who are eligible to utilize the credits and their
2 respective credit amounts. If the names of the taxpayers who
3 are eligible to utilize the credits change due to a transfer of
4 a qualified equity investment or a change in an allocation
5 pursuant to Section 15, the qualified community development
6 entity shall notify the Department of such change.

7 (d) With respect to applications received before January 1,
8 2017, the ~~The~~ Department shall certify qualified equity
9 investments in the order applications are received by the
10 Department. Applications received on the same day shall be
11 deemed to have been received simultaneously. For applications
12 received on the same day and deemed complete, the Department
13 shall certify, consistent with remaining tax credit capacity,
14 qualified equity investments in proportionate percentages
15 based upon the ratio of the amount of qualified equity
16 investment requested in an application to the total amount of
17 qualified equity investments requested in all applications
18 received on the same day.

19 (d-5) With respect to applications received on or after
20 January 1, 2017, the Department shall certify applications by
21 applicants that agree to designate qualified equity
22 investments as federal qualified equity investments in
23 accordance with item (8) of subsection (a) of this Section in
24 proportionate percentages based upon the ratio of the amount of
25 qualified equity investments requested in an application to be
26 designated as federal qualified equity investments to the total

1 amount of qualified equity investments to be designated as
2 federal qualified equity investments requested in all
3 applications received on the same day.

4 (d-10) With respect to applications received on or after
5 January 1, 2017, after complying with subsection (d-5), the
6 Department shall certify the qualified equity investments of
7 all other applicants, including the remaining qualified equity
8 investment authority requested by applicants not designated as
9 federal qualified equity investments in accordance with item
10 (8) of subsection (a) of this Section, in proportionate
11 percentages based upon the ratio of the amount of qualified
12 equity investments requested in the applications to the total
13 amount of qualified equity investments requested in all
14 applications received on the same day.

15 (e) Once the Department has certified qualified equity
16 investments that, on a cumulative basis, are eligible for
17 \$20,000,000 in tax credits, the Department may not certify any
18 more qualified equity investments. If a pending request cannot
19 be fully certified, the Department shall certify the portion
20 that may be certified unless the qualified community
21 development entity elects to withdraw its request rather than
22 receive partial credit.

23 (f) Within 30 days after receiving notice of certification,
24 the qualified community development entity shall (i) issue the
25 qualified equity investment and receive cash in the amount of
26 the certified amount and (ii) with respect to qualified equity

1 investments made on or after January 1, 2017, if applicable,
2 designate the required amount of qualified equity investment
3 authority as a federal qualified equity investment. The
4 qualified community development entity must provide the
5 Department with evidence of the receipt of the cash investment
6 within 10 business days after receipt and, with respect to
7 qualified equity investments made on or after January 1, 2017,
8 if applicable, provide evidence that the required amount of
9 qualified equity investment authority was designated as a
10 federal qualified equity investment. If the qualified
11 community development entity does not receive the cash
12 investment and issue the qualified equity investment within 30
13 days following receipt of the certification notice, the
14 certification shall lapse and the entity may not issue the
15 qualified equity investment without reapplying to the
16 Department for certification. A certification that lapses
17 reverts back to the Department and may be reissued only in
18 accordance with the application process outline in this Section
19 25.

20 (Source: P.A. 95-1024, eff. 12-31-08; 96-939, eff. 7-1-10.)

21 (20 ILCS 663/40)

22 Sec. 40. Recapture. The Department of Revenue shall
23 recapture, from the taxpayer that claimed the credit on a
24 return, the tax credit allowed under this Act if:

25 (1) any amount of the federal tax credit available with

1 respect to a qualified equity investment that is eligible
2 for a tax credit under this Act is recaptured under Section
3 45D of the Internal Revenue Code of 1986, as amended. In
4 that case, the Department of Revenue's recapture shall be
5 proportionate to the federal recapture with respect to that
6 qualified equity investment;

7 (2) the issuer redeems or makes principal repayment
8 with respect to a qualified equity investment prior to the
9 7th anniversary of the issuance of the qualified equity
10 investment. In that case, the Department of Revenue's
11 recapture shall be proportionate to the amount of the
12 redemption or repayment with respect to the qualified
13 equity investment; ~~or~~

14 (3) the issuer fails to invest at least 85% of the cash
15 purchase price of the qualified equity investment with
16 respect to qualified equity investments made before
17 January 1, 2017 and 100% of the cash purchase price of the
18 qualified equity investment with respect to qualified
19 equity investments made on or after January 1, 2017 in
20 qualified low-income community investments in the State of
21 Illinois within 12 months of the issuance of the qualified
22 equity investment and maintain such level of investment in
23 qualified low-income community investments in Illinois
24 until the last credit allowance date for such qualified
25 equity investment; or ~~or~~

26 (4) with respect to qualified equity investments made

1 on or after January 1, 2017, the issuer violates Section 43
2 of this Act.

3 For purposes of this Section, an investment shall be
4 considered held by an issuer even if the investment has been
5 sold or repaid; provided that the issuer reinvests an amount
6 equal to the capital returned to or recovered by the issuer
7 from the original investment, exclusive of any profits
8 realized, in another qualified low-income community investment
9 in this State within 12 months after the receipt of that
10 capital. An issuer is not required to reinvest capital returned
11 from qualified low-income community investments after the 6th
12 anniversary of the issuance of the qualified equity investment,
13 the proceeds of which were used to make the qualified
14 low-income community investment, and the qualified low-income
15 community investment shall be considered held by the issuer
16 through the 7th anniversary of the qualified equity
17 investment's issuance.

18 The Department of Revenue shall provide notice to the
19 qualified community development entity of any proposed
20 recapture of tax credits pursuant to this Section. The entity
21 shall have 90 days to cure any deficiency indicated in the
22 Department of Revenue's original recapture notice and avoid
23 such recapture. If the entity fails or is unable to cure such
24 deficiency with the 90-day period, the Department of Revenue
25 shall provide the entity and the taxpayer from whom the credit
26 is to be recaptured with a final order of recapture. Any tax

1 credit for which a final recapture order has been issued shall
2 be recaptured by the Department of Revenue from the taxpayer
3 who claimed the tax credit on a tax return.

4 (Source: P.A. 95-1024, eff. 12-31-08.)

5 (20 ILCS 663/43 new)

6 Sec. 43. Prohibited activities and interests. For
7 qualified equity investments made on or after January 1, 2017,
8 no qualified active low-income community business that
9 receives a qualified low-income community investment from a
10 qualified community development entity that issues qualified
11 equity investments under this Act, or any affiliates of such a
12 qualified active low-income community business, may directly
13 or indirectly (i) own or have the right to acquire an ownership
14 interest in a qualified community development entity or member
15 or affiliate of a qualified community development entity,
16 including, but not limited to, a holder of a qualified equity
17 investment issued by the qualified community development
18 entity or (ii) loan to or invest in a qualified community
19 development entity or member or affiliate of a qualified
20 community development entity, including, but not limited to, a
21 holder of a qualified equity investment issued by a qualified
22 community development entity, where the proceeds of such loan
23 or investment are directly or indirectly used to fund or
24 refinance the purchase of a qualified equity investment under
25 this Act. For purposes of this Section, "affiliate" means an

1 entity that directly, or indirectly through one or more
2 intermediaries controls, is controlled by, or is under common
3 control with another entity. For purposes of this Section, an
4 entity is "controlled by" another entity if the controlling
5 person holds, directly or indirectly, the majority voting or
6 ownership interest in the controlled person or has control over
7 the day-to-day operations of the controlled person by contract
8 or law, provided that a qualified community development entity
9 shall not be considered an affiliate of a qualified active
10 low-income community business solely as a result of its
11 qualified low-income community investment in such business.

12 (20 ILCS 663/50)

13 Sec. 50. Sunset. For fiscal years following fiscal year
14 2021 ~~2017~~, qualified equity investments shall not be made under
15 this Act unless reauthorization is made pursuant to this
16 Section. For all fiscal years following fiscal year 2021 ~~2017~~,
17 unless the General Assembly adopts a joint resolution granting
18 authority to the Department to approve qualified equity
19 investments for the Illinois new markets development program
20 and clearly describing the amount of tax credits available for
21 the next fiscal year, or otherwise complies with the provisions
22 of this Section, no qualified equity investments may be
23 permitted to be made under this Act. The amount of available
24 tax credits contained in such a resolution shall not exceed the
25 limitation provided under Section 20. Nothing in this Section

1 precludes a taxpayer who makes a qualified equity investment
2 prior to the expiration of authority to make qualified equity
3 investments from claiming tax credits relating to that
4 qualified equity investment for each applicable credit
5 allowance date.

6 (Source: P.A. 97-636, eff. 6-1-12.)

7 (20 ILCS 663/55 new)

8 Sec. 55. Annual job creation report. Each qualified
9 community development entity shall submit an annual job
10 creation report to the Department within 45 days after the
11 beginning of the calendar year during the compliance period. No
12 annual report shall be due prior to the first anniversary of
13 the initial credit allowance date. The report shall include,
14 but is not limited to, the following:

15 (1) the number of employment positions created and
16 retained as a result of qualified low-income community
17 investments; and

18 (2) the average annual salary of positions described in
19 item (1).

20 The qualified community development entity is not required
21 to provide the annual report set forth in this Section for
22 qualified low-income community investments that have been
23 redeemed or repaid.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.