SB2015

LRB095 17253 BDD 43313 b

95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2015

Introduced 2/7/2008, by Sen. James F. Clayborne, Jr.

SYNOPSIS AS INTRODUCED:

New Act

Creates the New Markets Development Program Act. Defines terms. Provides that taxpayers that make a qualified equity investment earn a vested right to certain tax credits against income, franchise, and insurance premium taxes. Credits are not transferable. Sets annual caps on credits. Provides for recapture. Authorizes the Department of Commerce and Economic Opportunity to promulgate rules. Sunsets after fiscal year 2012 unless reauthorized by the General Assembly. Contains other provisions. Effective immediately.

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FISCAL NOTE ACT
MAY APPLY

A BILL FOR

AN ACT concerning economic development.

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

Section 1. Short title. This Act may be cited as the New Markets Development Program Act.

Section 5. Definitions. As used in this Act:

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

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

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

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

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

"Direct tracing" means the tracking, by accepted accounting methods, of the proceeds of qualified equity investments into qualified low-income community investments.

"Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least 7 years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date, and with no distribution, payment, or interest features related to the profitability of the qualified community development entity or the performance of the qualified community development entity's investment portfolio. This definition in no way limits the holder's ability to accelerate payments on the debt instrument in situations where the issuer has defaulted on covenants designed to ensure compliance with this Act or Section 45D of the Internal Revenue Code of 1986, as amended.

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

"Qualified active low-income community business" has the meaning given to that term in Section 45D of the Internal Revenue Code of 1986, as amended; except that any business that derives or projects to derive 15% or more of its annual revenue from the rental or sale of real estate is not considered to be a qualified active low-income community business.

"Qualified community development entity" has the meaning given to that term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Treasury Department with respect to credits authorized by Section 45D of the

Internal Revenue Code of 1986, as amended, that includes the State of Illinois within the service area set forth in that allocation agreement.

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

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

(2) has at least 85% of its cash purchase price used by the issuer to make qualified low-income community investments; and

(3) is designated by the issuer as a qualified equity investment under this Act and is certified by the Department as not exceeding the limitation contained in Section 20.

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

"Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in that business, on a collective basis with all of its affiliates, shall be $10,000,000 whether issued to one or several qualified community development entities.

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

"Taxpayer" means any individual or entity subject to any income, franchise, or insurance premium tax under Illinois law.

Section 10. Credit established. A taxpayer that makes a qualified equity investment earns a vested right to tax credits as follows:

(1) on each credit allowance date of the qualified equity investment, the taxpayer, or subsequent holder of the qualified equity investment, is entitled to a tax credit during the taxable year including that credit allowance date;

(2) the tax credit amount shall be equal to the applicable percentage multiplied by the purchase price paid to the issuer of the qualified equity investment; and

(3) the amount of the tax credit claimed shall not exceed the amount of the taxpayer's State tax liability for the tax year for which the tax credit is claimed.

Section 15. Transferability. No tax credit claimed under this Act shall be refundable or saleable on the open market. Tax credits earned by a partnership, limited liability company, S-corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of that entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders. Any amount of tax credit that the taxpayer is prohibited from claiming in a taxable year may be carried forward to any of the taxpayer's 5 subsequent taxable years.

Section 20. Annual cap on credits. The Department shall limit the monetary amount of qualified equity investments permitted under this Act to a level necessary to limit tax credit use at no more than $40,000,000 of tax credits in any fiscal year. This limitation on qualified equity investments shall be based on the anticipated use of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

Section 25. Twelve-month investment window. The issuer of the qualified equity investment shall certify to the Department the anticipated dollar amount of those investments to be made in this State during the first 12-month period following the initial credit allowance date. If, on the second credit allowance date, the actual dollar amount of those investments is different than the amount estimated, the Department shall adjust the credits arising on the second allowance date to account for that difference.

Section 30. Direct tracing.

(1) Provided that the proceeds of a qualified equity investment are invested completely in qualified low-income community investments in Illinois, the purchase price, for the purpose of calculating the credit created by this Act, shall equal 100% of the qualified equity investment, regardless of the location of investments made with the proceeds of other qualified equity investments issued by the same community development entity.

(2) To the extent a portion of a qualified equity investment is not invested in Illinois, the purchase price shall be reduced by the same ratio, independently of the location of investments made with proceeds of other qualified equity investments issued by the same community development entity. In that case, the burden is on the community development entity to establish the extent to which the qualified equity investments are fully invested in Illinois, either by establishing that the community development entity itself invests exclusively in Illinois, or otherwise establishing, through direct tracing, the portion of a qualified equity investment invested solely in Illinois.

Section 35. Recapture. The Department shall recapture, from the taxpayer that claimed the credit on a return, the tax credit allowed under this Act if:

(1) any amount of the federal tax credit available with respect to a qualified equity investment that is eligible

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

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

Section 40. Recapture avoided for re-investment. An exception to the provisions of item (2) of Section 35 shall exist wherein an investment shall be considered held by an issuer even if the investment has been sold or repaid; provided that the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months after the receipt of that capital. An issuer is not required to reinvest capital returned from qualified low-income community investments after the 6th anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the 7th anniversary of the qualified equity investment's issuance.

Section 45. Rules. The Department may promulgate rules to implement the provisions of this Act and to administer the allocation of tax credits issued for qualified equity investments, which shall be conducted on a first-come, first-serve basis.

Section 50. Sunset. For fiscal years following fiscal year 2012, qualified equity investments shall not be made under this Act unless reauthorization is made pursuant to this Section. For all fiscal years following fiscal year 2012, unless the General Assembly adopts a joint resolution granting authority to the Department to approve qualified equity investments for the Illinois new markets development program and clearly describing the amount of tax credits available for the next fiscal year, or otherwise complies with the provisions of this Section, no qualified equity investments may be permitted to be made under this Act. The amount of available tax credits contained in such a resolution shall not exceed the limitation provided under Section 20. Nothing in this Section precludes a taxpayer who makes a qualified equity investment prior to the expiration of authority to make qualified equity investments from claiming tax credits relating to that qualified equity investment for each applicable credit allowance date.

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