

HB4793



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB4793

by Rep. Arthur L. Turner

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.

LRB095 17254 BDD 43314 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning economic development.

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

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

6 Section 5. Definitions. As used in this Act:

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

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

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

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

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

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

21 "Long-term debt security" means any debt instrument issued
22 by a qualified community development entity, at par value or a
23 premium, with an original maturity date of at least 7 years

1 from the date of its issuance, with no acceleration of
2 repayment, amortization, or prepayment features prior to its
3 original maturity date, and with no distribution, payment, or
4 interest features related to the profitability of the qualified
5 community development entity or the performance of the
6 qualified community development entity's investment portfolio.
7 This definition in no way limits the holder's ability to
8 accelerate payments on the debt instrument in situations where
9 the issuer has defaulted on covenants designed to ensure
10 compliance with this Act or Section 45D of the Internal Revenue
11 Code of 1986, as amended.

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

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

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

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

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

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

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

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

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

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

1 several qualified community development entities.

2 "Tax credit" means a credit against any income, franchise,
3 or insurance premium 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 Section 10. Credit established. A taxpayer that makes a
7 qualified equity investment earns a vested right to tax credits
8 as follows:

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

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

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

20 Section 15. Transferability. No tax credit claimed under
21 this Act shall be refundable or saleable on the open market.
22 Tax credits earned by a partnership, limited liability company,
23 S-corporation, or other "pass-through" entity may be allocated
24 to the partners, members, or shareholders of that entity for

1 their direct use in accordance with the provisions of any
2 agreement among the partners, members, or shareholders. Any
3 amount of tax credit that the taxpayer is prohibited from
4 claiming in a taxable year may be carried forward to any of the
5 taxpayer's 5 subsequent taxable years.

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

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

23 Section 30. Direct tracing.

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

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

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

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

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

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

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

1 held by the issuer through the 7th anniversary of the qualified
2 equity investment's issuance.

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

8 Section 50. Sunset. For fiscal years following fiscal year
9 2012, qualified equity investments shall not be made under this
10 Act unless reauthorization is made pursuant to this Section.
11 For all fiscal years following fiscal year 2012, unless the
12 General Assembly adopts a joint resolution granting authority
13 to the Department to approve qualified equity investments for
14 the Illinois new markets development program and clearly
15 describing the amount of tax credits available for the next
16 fiscal year, or otherwise complies with the provisions of this
17 Section, no qualified equity investments may be permitted to be
18 made under this Act. The amount of available tax credits
19 contained in such a resolution shall not exceed the limitation
20 provided under Section 20. Nothing in this Section precludes a
21 taxpayer who makes a qualified equity investment prior to the
22 expiration of authority to make qualified equity investments
23 from claiming tax credits relating to that qualified equity
24 investment for each applicable credit allowance date.

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