



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1755

Introduced 2/9/2023, by Sen. Christopher Belt

SYNOPSIS AS INTRODUCED:

20 ILCS 663/5
20 ILCS 663/20
20 ILCS 663/25
20 ILCS 663/40
20 ILCS 663/45
20 ILCS 663/55

Amends the New Markets Development Program Act. Provides that the Department of Commerce and Economic Opportunity shall limit the monetary amount of qualified equity investments at no more than \$20,000,000 of tax credits for the primary allocation and no more than \$12,000,000 of tax credits for the targeted allocation. Provides that, on or after January 1, 2024, but not more than 120 days after the Community Development Financial Institutions Fund of the United States Department of the Treasury announces allocation awards under a Notice of Funding Availability that was published in the Federal Register on November 22, 2022, \$250,000,000 of qualified equity investments for the primary allocation and \$150,000,000 of qualified equity investments for the targeted allocation shall be allocated by the Department. Makes other changes. Defines terms. Effective immediately.

LRB103 06012 HLH 51037 b

1 AN ACT concerning State government.

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, 45, and 55 as
6 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
11 date, and 8% for the next 4 credit allowance dates.

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

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

13 "Primary allocation" means \$250,000,000 in qualified
14 equity investment authority to be awarded on or after January
15 1, 2024 for investment in qualified active low-income
16 community businesses.

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

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

1 controlled by or under common control with another business if
2 the second business (i) does not derive or project to derive
3 15% or more of its annual revenue from the rental or sale of
4 real estate and (ii) is the primary tenant of the real estate
5 leased from the initial business. A business shall be
6 considered a qualified active low-income community business
7 for the duration of the qualified community development
8 entity's investment in or loan to the business if the entity
9 reasonably expects, at the time it makes the investment or
10 loan, that the business will continue to satisfy the
11 requirements for being a qualified active low-income community
12 business throughout the entire period of the investment or
13 loan.

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

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

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

3 (2) with respect to qualified equity investments made
4 before January 1, 2024 ~~2017~~, has at least 85% of its cash
5 purchase price used by the issuer to make qualified
6 low-income community investments in the State of Illinois,
7 and, with respect to qualified equity investments made on
8 or after January 1, 2024 ~~2017~~, has 100% of the cash
9 purchase price used by the issuer to make qualified
10 low-income community investments in the State of Illinois;
11 and

12 (3) is designated by the issuer as a qualified equity
13 investment under this Act; with respect to qualified
14 equity investments made on or after January 1, 2024 ~~2017~~,
15 is designated by the issuer as a qualified equity
16 investment under Section 45D of the Internal Revenue Code
17 of 1986, as amended; and is certified by the Department as
18 not exceeding the limitation contained in Section 20.

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

23 "Qualified low-income community investment" means any
24 capital or equity investment in, or loan to, any qualified
25 active low-income community business. With respect to any one
26 qualified active low-income community business, the maximum

1 amount of qualified low-income community investments made in
2 that business, on a collective basis with all of its
3 affiliates that may be counted towards the satisfaction of
4 paragraph (2) of the definition of qualified equity
5 investment, shall be \$10,000,000 whether issued to one or
6 several qualified community development entities.

7 "Targeted allocation" means \$150,000,000 in qualified
8 equity investment authority to be awarded for investment in
9 qualified active low-income community businesses engaged in
10 targeted industries.

11 "Targeted industries" means any business engaged in an
12 activity classified by the North American Industry
13 Classification System (NAICS) as Sector 11, 31-33, or 2211.

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

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

20 (Source: P.A. 100-408, eff. 8-25-17.)

21 (20 ILCS 663/20)

22 Sec. 20. Annual cap on credits. The Department shall limit
23 the monetary amount of qualified equity investments permitted
24 under this Act to a level necessary to limit tax credit use at
25 no more than \$20,000,000 of tax credits for the primary

1 allocation and no more than \$12,000,000 of tax credits for the
2 targeted allocation in any fiscal year. This limitation on
3 qualified equity investments shall be based on the anticipated
4 use of credits without regard to the potential for taxpayers
5 to carry forward tax credits to later tax years.

6 (Source: P.A. 100-408, eff. 8-25-17.)

7 (20 ILCS 663/25)

8 Sec. 25. Certification of qualified equity investments.

9 (a) A qualified community development entity that seeks to
10 have an equity investment or long-term debt security
11 designated as a qualified equity investment and eligible for
12 tax credits under this Section shall apply to the Department.
13 The qualified community development entity must submit an
14 application on a form that the Department provides that
15 includes:

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

19 (2) A copy of the allocation agreement executed by the
20 entity, or its controlling entity, and the Community
21 Development Financial Institutions Fund.

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

1 (4) A description of the proposed amount, structure,
2 and purchaser of the equity investment or long-term debt
3 security and, for applications submitted after January 1,
4 2024, whether qualified equity investment authority is
5 sought under the primary allocation or the targeted
6 allocation.

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

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

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

15 (7.5) For applications submitted after January 1,
16 2024, a description of whether a qualified community
17 development entity is applying for the primary allocation
18 or the targeted allocation.

19 (8) With respect to qualified equity investments made
20 on or after January 1, 2017, the amount of qualified
21 equity investment authority the applicant agrees to
22 designate as a federal qualified equity investment under
23 Section 45D of the Internal Revenue Code, including a copy
24 of the screen shot from the Community Development
25 Financial Institutions Fund's Allocation Tracking System
26 of the applicant's remaining federal qualified equity

1 investment authority.

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

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

1 who are eligible to utilize the credits change due to a
2 transfer of a qualified equity investment or a change in an
3 allocation pursuant to Section 15, the qualified community
4 development entity shall notify the Department of such change.

5 (d) With respect to applications received before January
6 1, 2017, the Department shall certify qualified equity
7 investments in the order applications are received by the
8 Department. Applications received on the same day shall be
9 deemed to have been received simultaneously. For applications
10 received on the same day and deemed complete, the Department
11 shall certify, consistent with remaining tax credit capacity,
12 qualified equity investments in proportionate percentages
13 based upon the ratio of the amount of qualified equity
14 investment requested in an application to the total amount of
15 qualified equity investments requested in all applications
16 received on the same day.

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

1 applications received on the same day.

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

13 (e) Once the Department has certified qualified equity
14 investments that, on a cumulative basis, are eligible for
15 \$20,000,000 in tax credits for the primary allocation and
16 \$12,000,000 in tax credits for the targeted allocation, the
17 Department may not certify any more qualified equity
18 investments. If a pending request cannot be fully certified,
19 the Department shall certify the portion that may be certified
20 unless the qualified community development entity elects to
21 withdraw its request rather than receive partial credit.

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

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

19 (g) Allocation rounds enabled by this Act shall be applied
20 for according to the following schedule:

21 (1) on January 2, 2019, \$125,000,000 of qualified
22 equity investments; and

23 (2) not less than 45 days after but not more than 90
24 days after the Community Development Financial
25 Institutions Fund of the United States Department of the
26 Treasury announces allocation awards under a Notice of

1 Funding Availability that is published in the Federal
2 Register after September 6, 2019, \$125,000,000 of
3 qualified equity investments.

4 (3) on or after January 1, 2024, but not more than 120
5 days after the Community Development Financial
6 Institutions Fund of the United States Department of the
7 Treasury announces allocation awards under a Notice of
8 Funding Availability that was published in the Federal
9 Register on November 22, 2022, \$250,000,000 of qualified
10 equity investments for the primary allocation and
11 \$150,000,000 of qualified equity investments for the
12 targeted allocation.

13 (Source: P.A. 100-408, eff. 8-25-17; 101-604, eff. 12-13-19.)

14 (20 ILCS 663/40)

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

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

25 (2) the issuer redeems or makes principal repayment

1 with respect to a qualified equity investment prior to the
2 7th anniversary of the issuance of the qualified equity
3 investment. In that case, the Department of Revenue's
4 recapture shall be proportionate to the amount of the
5 redemption or repayment with respect to the qualified
6 equity investment;

7 (3) the issuer fails to invest at least 85% of the cash
8 purchase price of the qualified equity investment with
9 respect to qualified equity investments made before
10 January 1, 2017 and 100% of the cash purchase price of the
11 qualified equity investment with respect to qualified
12 equity investments made on or after January 1, 2017 in
13 qualified low-income community investments in the State of
14 Illinois within 12 months of the issuance of the qualified
15 equity investment and maintain such level of investment in
16 qualified low-income community investments in Illinois
17 until the last credit allowance date for such qualified
18 equity investment, provided that with respect to qualified
19 equity investments made after January 1, 2024 pursuant to
20 the targeted allocation, the issuer must invest 100% of
21 the cash purchase price of the qualified equity investment
22 in qualified low-income community investments in the State
23 of Illinois in qualified active low-income community
24 businesses engaged in a targeted industry within 12 months
25 of the issuance of the qualified equity investment and
26 maintain such level of investment in qualified low-income

1 community investments in such targeted industries until
2 the last credit allowance date; or

3 (4) with respect to qualified equity investments made
4 on or after January 1, 2017, the issuer violates Section
5 43 of this Act.

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

21 The Department of Revenue shall provide notice to the
22 qualified community development entity of any proposed
23 recapture of tax credits pursuant to this Section. The entity
24 shall have 90 days to cure any deficiency indicated in the
25 Department of Revenue's original recapture notice and avoid
26 such recapture. If the entity fails or is unable to cure such

1 deficiency with the 90-day period, the Department of Revenue
2 shall provide the entity and the taxpayer from whom the credit
3 is to be recaptured with a final order of recapture. Any tax
4 credit for which a final recapture order has been issued shall
5 be recaptured by the Department of Revenue from the taxpayer
6 who claimed the tax credit on a tax return.

7 (Source: P.A. 100-408, eff. 8-25-17.)

8 (20 ILCS 663/45)

9 Sec. 45. Examination and Rulemaking.

10 (a) The Department may conduct examinations to verify that
11 the tax credits under this Act have been received and applied
12 according to the requirements of this Act and to verify that no
13 event has occurred that would result in a recapture of tax
14 credits under Section 40.

15 (b) Neither the Department nor the Department of Revenue
16 shall have the authority to promulgate rules under the Act,
17 but, with respect to qualified equity investments issued
18 before January 1, 2024, the Department and the Department of
19 Revenue shall have the authority to issue advisory letters to
20 individual qualified community development entities and their
21 investors that are limited to the specific facts outlined in
22 an advisory letter request from a qualified community
23 development entity. Such rulings cannot be relied upon by any
24 person or entity other than the qualified community
25 development entity that requested the letter and the taxpayers

1 that are entitled to any tax credits generated from
2 investments in such entity. For purposes of this subsection,
3 "rules" is given the meaning contained in Section 1-70 of the
4 Illinois Administrative Procedure Act.

5 (c) In rendering advisory letters and making other
6 determinations under this Act prior to January 1, 2024, to the
7 extent applicable, the Department and the Department of
8 Revenue shall look for guidance to Section 45D of the Internal
9 Revenue Code of 1986, as amended, and the rules and
10 regulations issued thereunder.

11 (d) It is the intent of the General Assembly that
12 qualified equity investment structures allowed pursuant to
13 advisory letters and other determinations by the Department
14 and the Department of Revenue prior to January 1, 2024 shall be
15 allowed under the primary allocation and the targeted
16 allocation and that qualified community development entities
17 may rely on the rules and regulations issued under Section 45D
18 of the Internal Revenue Code of 1986, as amended, where
19 applicable.

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

21 (20 ILCS 663/55)

22 Sec. 55. Annual report. Each qualified community
23 development entity shall submit an annual report to the
24 Department within 45 days after the beginning of each calendar
25 year during the compliance period. No annual report shall be

1 due prior to the first anniversary of the initial credit
2 allowance date. The report shall include, but is not limited
3 to, the following:

4 (1) an attestation from an authorized officer of the
5 qualified community development entity that the entity has
6 not been the subject of any investigation by a government
7 agency relating to tax credits or financial services
8 during the preceding calendar year;

9 (2) information with respect to all qualified
10 low-income community investments made by the qualified
11 community development entity, including:

12 (A) the date and amount of, and bank statements or
13 wire transfer reports documenting, such qualified
14 low-income community investments;

15 (B) the name, address, ~~and~~ EIN, and the North
16 American Industry Classification System (NAICS) code
17 for the targeted allocation, of each qualified active
18 low-income community business funded by the qualified
19 community development entity, the number of persons
20 employed by such business at the time of the initial
21 investment, and a brief description of the business,
22 the financing, and community benefits of the
23 financing; and

24 (C) the number of employment positions maintained
25 by each qualified active low-income community business
26 as of the date of report or the end of the preceding

1 calendar year and the average annual salaries of such
2 positions; and

3 (D) the total number of employment positions
4 created and retained as a result of qualified
5 low-income community investments and the average
6 annual salaries of those positions; and

7 (3) any changes with respect to the taxpayers entitled
8 to claim tax credits with respect to qualified equity
9 investments issued by the qualified community development
10 entity since its last report pursuant to this Section.

11 The qualified community development entity is not required
12 to provide the annual report set forth in this Section for
13 qualified low-income community investments that have been
14 redeemed or repaid.

15 (Source: P.A. 100-408, eff. 8-25-17.)

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