

1 HB804
2 121106-1
3 By Representative Lindsey
4 RFD: Education Appropriations
5 First Read: 01-APR-10

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8 SYNOPSIS: This bill would establish the Alabama New
9 Markets Development Program. The bill would allow
10 an income tax credit for certain qualified active
11 low-income community businesses for a certain
12 period of time. The bill would provide that the
13 program would be implemented and administered by
14 the Alabama Development Office.

15
16 A BILL
17 TO BE ENTITLED
18 AN ACT

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20 To establish the Alabama New Markets Development
21 Program, to allow an income tax credit for certain qualified
22 active low-income community businesses for a certain period of
23 time, and to provide that the program would be implemented and
24 administered by the Alabama Development Office.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Short Title. This act shall be known and
27 may be cited as the Alabama New Markets Development Act.

1 Section 2. Definitions. As used in this act, the
2 following terms shall have the following meanings:

3 (1) APPLICABLE PERCENTAGE. Eight percent for each of
4 the first four credit allowance dates, seven percent for the
5 fifth credit allowance date, and six percent for the sixth
6 credit allowance date, and five percent for the seventh credit
7 allowance date.

8 (2) CREDIT ALLOWANCE DATE. With respect to any
9 qualified equity investment, the date on which such investment
10 is initially made and each of the six anniversary dates of
11 that date thereafter.

12 (3) DEPARTMENT. The Alabama Development Office.

13 (4) LONG-TERM DEBT SECURITY. Any debt instrument
14 issued by a qualified community development entity, at par
15 value or a premium, with an original maturity date of at least
16 seven years from the date of its issuance, with no
17 acceleration of repayment, amortization, or prepayment
18 features prior to its original maturity date. Cumulative cash
19 payments of interest on the qualified debt instrument during
20 the period commencing with the issuance of the qualified debt
21 instrument and ending with the seventh anniversary of its
22 issuance shall not exceed the sum of such cash interest
23 payments and the cumulative net income of the issuing
24 community development entity for the same period. The
25 foregoing shall in no way limit the holder's ability to
26 accelerate payments on the debt instrument in situations where
27 the issuer has defaulted on covenants designed to ensure

1 compliance with this act or Section 45D of the Internal
2 Revenue Code of 1986, as amended.

3 (5) PURCHASE PRICE. The amount paid to the issuer of
4 a qualified equity investment for that qualified equity
5 investment.

6 (6) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.
7 The same meaning given that term in Section 45D of the
8 Internal Revenue Code of 1986, as amended. A business shall be
9 considered a qualified active low-income community business
10 for the duration of the qualified community development
11 entity's investment in or loan to the business if the entity
12 reasonably expects, at the time it makes the investment or
13 loan, that the business will continue to satisfy the
14 requirements for being a qualified active low-income community
15 business throughout the entire period of the investment or
16 loan. The term excludes any business that derives or projects
17 to derive 15 percent or more of its annual revenue from the
18 rental or sale of real estate. This exclusion does not apply
19 to a business that is controlled by or under common control
20 with another business if the second business does not derive
21 or project to derive 15 percent or more of its annual revenue
22 from the rental or sale of real estate and is the primary
23 tenant of the real estate leased from the initial business.

24 (7) QUALIFIED COMMUNITY DEVELOPMENT ENTITY. The same
25 meaning given that term in Section 45D of the Internal Revenue
26 Code of 1986, as amended; provided that such entity has
27 entered into, or is controlled by an entity that has entered

1 into, an allocation agreement with the Community Development
2 Financial Institutions Fund of the U.S. Treasury Department
3 with respect to credits authorized by Section 45D of the
4 Internal Revenue Code of 1986, as amended, which includes the
5 State of Alabama within the service area set forth in that
6 allocation agreement.

7 (8) QUALIFIED ENTITY INVESTMENT. Any equity
8 investment in, or long-term debt security issued by, a
9 qualified community development entity that does the
10 following:

11 a. Is acquired after the effective date of this act
12 at its original issuance solely in exchange for cash.

13 b. Has at least 85 percent of its cash purchase
14 price used by the issuer to make qualified low-income
15 community investments in the State of Alabama by the first
16 anniversary of the issuance of the qualified equity
17 investment.

18 c. Is designed by the issuer as a qualified equity
19 investment under this act and is certified by the department
20 as not exceeding the limitation contained in Section 5. This
21 term includes any qualified equity investment that does not
22 meet the provisions of paragraph a. if the investment was a
23 qualified equity investment in the hands of a prior holder.

24 (9) QUALIFIED LOW-INCOME COMMUNITY INVESTMENT. Any
25 capital or equity investment in, or loan to, any qualified
26 active low-income community business. With respect to any one
27 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 subdivision (8), shall be ten million dollars (\$10,000,000)
5 whether issued by one or several qualified community
6 development entities.

7 (10) TAX CREDIT. A credit against the tax otherwise
8 due under Sections 40-18-5 and 40-18-31, Code of Alabama 1975.

9 (11) TAXPAYER. Any individual or entity subject to
10 the tax imposed in Section 40-18-5 or 40-18-31, Code of
11 Alabama 1975.

12 Section 3. Credit Established. Subject only to the
13 recapture and forfeiture provisions of Sections 7 and 8, a
14 taxpayer that makes a qualified equity investment earns a
15 vested right to tax credits under this section. The purchaser
16 of the qualified equity investment, or subsequent holder of
17 the qualified equity investment, shall be entitled to utilize
18 a tax credit during the taxable year including that credit
19 allowance date equal to the applicable percentage for such
20 credit allowance date multiplied by the purchase price paid to
21 the issuer of the qualified equity investment. The amount of
22 the tax credit claimed shall not exceed the amount of the
23 taxpayer's state tax liability for the tax year for which the
24 tax credit is claimed.

25 Section 4. Transferability. No tax credit claimed
26 under this act shall be refundable or saleable on the open
27 market. Tax credits earned by a partnership, limited liability

1 company, S corporation, or other "pass-through" entity may be
2 allocated to the partners, members, or shareholders of that
3 entity for their direct use in accordance with the provisions
4 of any agreement among the partners, members, or shareholders.
5 Any amount of tax credit that the taxpayer, or partner,
6 member, or shareholder thereof, is prohibited from claiming in
7 a taxable year may be carried forward to any of the taxpayer's
8 subsequent taxable years.

9 Section 5. Annual Cap on Credits. The department
10 shall limit the monetary amount of qualified equity
11 investments permitted under this act to a level necessary to
12 limit tax credit utilization at no more than 12 million
13 dollars (\$12,000,000) of tax credits in any fiscal year. This
14 limitation on qualified equity investments shall be based on
15 the anticipated utilization of credits without regard to the
16 potential for taxpayers to carry forward tax credits to later
17 tax years.

18 Section 6. Certification of Qualified Equity
19 Investments. (a) A qualified community development entity that
20 seeks to have an equity investment or long-term debt security
21 designated as a qualified equity investment and eligible for
22 tax credits under this act shall apply to the department. The
23 qualified community development entity must submit an
24 application on a form that the department provides that
25 includes:

1 (1) The name, address, tax identification number of
2 the 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
5 the entity, or its controlling entity, and the Community
6 Development Financial Institutions Fund.

7 (3) A certificate executed by an executive officer
8 of 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 of
16 the issuance of the qualified equity investment.

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

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

22 (b) The department shall review the application and
23 shall independently set standards for job and payroll
24 creation, taking into account, among other factors, the
25 information set forth in the application, and the entity shall
26 acknowledge its agreement to such job and payroll creation
27 standards in the form that the department provides.

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

19 (d) If the application is deemed complete, the
20 department shall certify the proposed equity investment or
21 long-term debt security as a qualified equity investment that
22 is eligible for tax credits under this section, subject to the
23 limitations contained in Section 5. The department shall
24 provide written notice of the certification to the qualified
25 community development entity. The notice shall include the
26 names of those taxpayers who are eligible to utilize the
27 credits and their respective credit amounts. If the names of

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

6 (e) 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 (f) Once the department has certified qualified
18 equity investments that, on a cumulative basis, are eligible
19 for tax credits in accordance with the cap in Section 5, the
20 department may not certify any more qualified equity
21 investments. If a pending request cannot be fully certified,
22 the department shall certify the portion that may be certified
23 unless the qualified community development entity elects to
24 withdraw its request rather than receive partial credit.

25 (g) Within 30 days after receiving notice of
26 certification, the qualified community development entity
27 shall issue the qualified equity investment and receive cash

1 in the amount of the certified amount. The qualified community
2 development entity must provide the department with evidence
3 of the receipt of the cash investment within 10 business days
4 after receipt. If the qualified community development entity
5 does not receive the cash investment and issue the qualified
6 equity investment within 30 days following receipt of the
7 certification notice, the certification shall lapse and the
8 entity may not issue the qualified equity investment without
9 reapplying to the department for certification. A
10 certification that lapses reverts to the department and may be
11 reissued only accordance with the application process outlined
12 in this section.

13 Section 7. Recapture. (a) The Department of Revenue
14 shall recapture, from the taxpayer that claimed or is entitled
15 to claim the credit on a return, the tax credit allowed under
16 this act if any of the following occur:

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

24 (2) The issuer redeems or makes principal repayment
25 with respect to a qualified equity investment prior to the
26 seventh anniversary of the issuance of the qualified equity
27 investment. In that case, the Department of Revenue's

1 recapture shall be proportionate to the amount of the
2 redemption or repayment with respect to such qualified equity
3 investment.

4 (3) The issuer fails to invest at least 85 percent
5 of the purchase price of the qualified equity investment in
6 qualified low-income community investments in the State of
7 Alabama within 12 months of the issuance of the qualified
8 equity investment and maintain such level of investment in
9 qualified low-income community investments in Alabama until
10 the last credit allowance date for the qualified equity
11 investment. An investment shall be considered held by an
12 issuer even if the investment has been sold or repaid;
13 provided that the issuer reinvests an amount equal to the
14 capital returned to or recovered by the issuer from the
15 original investment, exclusive of any profits realized, in
16 another qualified low-income community investment in this
17 state within 12 months of the receipt of that capital. An
18 issuer shall not be required to reinvest capital returned from
19 low-income community investments after the sixth anniversary
20 of the issuance of the qualified equity investment, the
21 proceeds of which were used to make the qualified low-income
22 community investment, and the qualified low-income community
23 investment shall be considered held by the issuer through the
24 seventh anniversary of the qualified equity investment's
25 issuance.

26 (b) The Department of Revenue shall provide notice
27 to the qualified community development entity of any proposed

1 recapture of tax credits pursuant to this act. The entity
2 shall have 90 days to cure any deficiency indicated in the
3 Department of Revenue's original recapture notice and avoid
4 recapture. If the entity fails or is unable to cure the
5 deficiency within the 90-day period, the Department of Revenue
6 shall provide the entity and the taxpayer from whom the credit
7 is to be recaptured with a final order of recapture. Any tax
8 credit for which a final recapture order has been issued shall
9 be recaptured by the Department of Revenue from the taxpayer
10 who claimed the tax credit on a tax return.

11 Section 8. Forfeiture. (a) On or before the
12 thirtieth day prior to the fifth anniversary of the issuance
13 of each qualified equity investment, the issuer of such
14 qualified equity investment shall submit a report on a form
15 that the department provides that includes:

16 (1) The name, address, and tax identification number
17 of the issuer.

18 (2) The name, address, and tax identification number
19 of the qualified active low-income community business for
20 which job and payroll compliance is sought.

21 (3) A certificate executed by an executive officer
22 of the issuer attesting to the number of qualified jobs and
23 corresponding payroll created at the qualified active
24 low-income community business, the average of the salaries of
25 such jobs, and the date each job was created and, if
26 applicable, terminated, and including a computation
27 demonstrating compliance with the job and payroll creation

1 standards set by the department for the qualified equity
2 investment pursuant to this act.

3 (4) Further information supporting the creation of
4 such jobs as the department shall request.

5 (b) The department shall review the report and
6 conduct other investigations as it deems necessary or
7 appropriate to determine if standards have been met on or
8 prior to the fifth anniversary of the issuance of the
9 qualified equity investment. If the standards are deemed not
10 to have been met, the tax credits allowed on the sixth and the
11 seventh credit allowance date for each qualified equity
12 investment will be forfeited from the taxpayer that claimed or
13 is entitled to claim the credit on a return.

14 Section 9. Examination and Rulemaking. (a) The
15 department may conduct examinations to verify that the tax
16 credits under this act have been received and applied
17 according to the requirements of this act and to verify that
18 no event has occurred that would result in a recapture or
19 forfeiture of tax credits under Section 7 or 8.

20 (b) The department and the Department of Revenue
21 shall promulgate rules under this act and issue advisory
22 letters to individual qualified community development entities
23 and their investors that are limited to the specific facts
24 outlined in an advisory letter request from a qualified
25 community development entity. The rulings cannot be relied
26 upon by any person or entity other than the qualified
27 community development entity that requested the letter and the

1 taxpayers that are entitled to any tax credits generated from
2 investments in the entity.

3 (c) In rendering advisory letters and making other
4 determinations under this act, to the extent applicable, the
5 department and the Department of Revenue shall look for
6 guidance to Section 45D of the Internal Revenue Code of 1986,
7 as amended, and the rules and regulations issued thereunder.

8 Section 10. This act shall become effective
9 immediately following its passage and approval by the
10 Governor, or its otherwise becoming law.