

1 HB257  
2 135791-1  
3 By Representatives Ison, Barton, Fincher, Buskey, Kennedy and  
4 Davis  
5 RFD: Economic Development and Tourism  
6 First Read: 09-FEB-12

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8 SYNOPSIS: Under existing law, there is no state income  
9 tax credit in Alabama for investments in businesses  
10 in impoverished and low income communities.

11 This bill would allow a state income tax  
12 credit for certain qualified community businesses  
13 in the downtown core area or central business  
14 district in any Class 1, Class 2, or Class 3  
15 municipality.

16  
17 A BILL

18 TO BE ENTITLED

19 AN ACT

20  
21 Relating to Class 1, Class 2, and Class 3  
22 municipalities; to establish a state income tax credit for  
23 investments in businesses in impoverished and low income  
24 communities within a downtown core area or central business  
25 district.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall only apply to those areas within the downtown core area or central business district in any Class 1, Class 2, or Class 3 municipality which qualifies as a "low income community" pursuant to Section 45D of the Internal Revenue Code.

Section 2. This act shall be known as the Alabama New Markets Development Act.

Section 3. As used in this act, the following terms shall have the following meanings:

(1) APPLICABLE PERCENTAGE. Eight percent for each of the first four credit allowance dates, seven percent for the fifth credit allowance date, six percent for the sixth credit allowance date, and five percent for the seventh credit allowance date for the total of 50 percent.

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

(3) DEPARTMENT. The Alabama Development Office.

(4) DOWNTOWN CORE AREA or CENTRAL BUSINESS DISTRICT.  
The designation by a municipal corporation in the municipal zoning ordinance for the geographical area of the city center.

(5) LONG-TERM DEBT SECURITY. Any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment

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

13 (6) PURCHASE PRICE. The amount paid to the issuer of  
14 a qualified equity investment for that qualified equity  
15 investment.

16 (7) QUALIFIED ACTIVE LOW-INCOME COMMUNITY BUSINESS.  
17 The same meaning given that term in Section 45D(d) (2) of the  
18 Internal Revenue Code of 1986, as amended. A business shall be  
19 considered a qualified active low-income community business  
20 for the duration of the qualified community development  
21 entity's investment in, or loan to, the business if the entity  
22 reasonably expects, at the time the qualified community  
23 development entity makes the investment or loan, that the  
24 business may continue to satisfy the requirements for being a  
25 qualified active low-income community business throughout the  
26 entire period of the investment or loan.

(8) QUALIFIED COMMUNITY DEVELOPMENT ENTITY. The same meaning given that term in Section 45D of the Internal Revenue Code of 1986, as amended; provided, that the entity has entered into, or is controlled by an entity that 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, which includes the State of Alabama within the service area set forth in that allocation agreement.

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

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

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

c. 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 5. This term includes any qualified equity investment that does not meet the provisions of paragraph a., if the investment was a qualified equity investment in the hands of a prior holder.

(10) QUALIFIED LOW-INCOME COMMUNITY INVESTMENT. 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 that may be counted towards the satisfaction of subdivision (8), shall be five million dollars (\$5,000,000) whether issued by one or several qualified community development entities.

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

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

Section 4. Subject only to the recapture and forfeiture provisions of Sections 7 and 8, a taxpayer that makes a qualified equity investment is eligible to apply for approval of a tax credit under this section. If approved, the purchaser of the qualified equity investment, or subsequent holder of the qualified equity investment, shall be entitled to utilize a tax credit during the taxable year including that credit allowance date equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment. The amount of the tax credit claimed shall not exceed the amount

1 of the taxpayer's state tax liability for the tax year for  
2 which the tax credit is claimed. The basis of any qualified  
3 equity investment shall be reduced by the amount of any credit  
4 determined under this section with respect to such investment.

5 Section 5. Tax credits claimed under this act shall  
6 be transferable on the open market. Tax credits earned by a  
7 partnership, limited liability company, S corporation, or  
8 other "pass-through" entity may be allocated to the partners,  
9 members, or shareholders of that entity for their direct use  
10 in accordance with the provisions of any agreement among the  
11 partners, members, or shareholders. Any amount of tax credit  
12 that the taxpayer, or partner, member, or shareholder thereof,  
13 is prohibited from claiming in a taxable year may be carried  
14 forward to any of the taxpayer's subsequent taxable years.

15 Section 6. Once the department has certified a  
16 cumulative amount of qualified equity investments that can  
17 result in the utilization of twenty million dollars  
18 (\$20,000,000) of tax credits in any tax year, the department  
19 may not certify any more qualified equity investments under  
20 Section 7. This limitation shall be based on the scheduled  
21 utilization of tax credits without regard to the potential for  
22 taxpayers to carry forward tax credits to later tax years.

23 Section 7. (a) A qualified community development  
24 entity that seeks to have an equity investment or long-term  
25 debt security designated as a qualified equity investment and  
26 eligible for tax credits under this act shall apply to the  
27 department. The qualified community development entity shall

1 submit an application on a form that the department provides  
2 that includes all of the following:

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

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

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

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

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

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

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

24 (b) The department shall review the application and  
25 shall independently verify that the above requirements in  
26 subsection (a) have been met.

(c) Within 60 days after receipt of a completed application containing the information necessary for the department to certify a potential qualified equity investment, including payment of the application fee, the department shall grant or deny the application in full or in part. If the department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the department and otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application shall remain denied and shall be resubmitted in full with a new submission date.

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

1 in an allocation pursuant to Section 4, the qualified  
2 community development entity shall notify the department of  
3 the change.

4 (e) The department shall certify qualified equity  
5 investments no earlier than 30 days following the U.S.  
6 Department of Community Development Financial Institutions  
7 (CDFI) Fund announcement of its annual awarding of tax credit  
8 allocation authority under the Federal New Markets Tax Credit  
9 program 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 (f) Once the department has certified qualified  
20 equity investments that, on a cumulative basis, equal the  
21 total allowable tax credits under Section 6, the department  
22 may not certify any more qualified equity investments. If a  
23 pending request cannot be fully certified, the department  
24 shall certify the portion that may be certified unless the  
25 qualified community development entity elects to withdraw its  
26 request rather than receive partial credit.

(g) Within 180 days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment in the amount of the certified amount. The qualified community development entity shall provide the department with evidence of the receipt or issuance of the qualified equity investment, or both, within 30 business days after receipt or issuance, or both. If the qualified community development entity does not issue the qualified equity investment within 30 days following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the department for certification. A certification that lapses shall revert to the department and may be reissued only in accordance with the application process outlined in this section.

Section 8. (a) The Department of Revenue shall recapture, from the taxpayer that claimed or is entitled to claim the credit on a return, the tax credit allowed under this act if, at any time during the seven-year period beginning on the date of the original issue to the qualified equity investment in a qualified community development entity, there is a recapture event, as that term is defined in Section 45D(g)(3) of the Internal Revenue Code.

(1) Where 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

1 amended, the Department of Revenue's recapture shall be  
2 proportionate to the federal recapture with respect to that  
3 qualified equity investment.

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

(b) The Department of Revenue shall provide notice in accordance with the procedures outlined in Section 40-2A-7 of the Code of Alabama 1975, to the qualified community development entity of any proposed preliminary assessment of recapture of tax credits pursuant to this act. The entity shall have 90 days to cure any deficiency indicated in the Department of Revenue's preliminary assessment and avoid recapture. If the entity fails or is unable to cure the deficiency within the 90-day period, the Department of Revenue shall provide the entity and the taxpayer from whom the credit is to be recaptured with a final assessment of recapture in accordance with the procedures stated in Section 40-2A-7 of the Code of Alabama 1975. Any tax credit for which a final assessment has been issued may be recaptured by the Department of Revenue from the taxpayer who claimed the tax credit on a tax return in accordance with the Taxpayers' Bill of Rights and the Uniform Revenue Procedures contained in Chapter 2A of Title 40 of the Code of Alabama 1975.

Section 9. (a) On or before the 30th day prior to the third anniversary of the issuance of each qualified equity investment, the issuer of such qualified equity investment shall submit a report on a form that the department provides that includes all of the following:

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

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

(3) A certificate executed by an executive officer of the issuer attesting to the number of qualified jobs and corresponding payroll created at the qualified active low-income community business, the average of the salaries of such jobs, and the date each job was created and, if applicable, terminated, and including a computation demonstrating compliance with the job and payroll creation standards set by the department for the qualified equity investment pursuant to this act.

(4) A certificate executed by an executive officer of the issuer attesting to all of the following:

a. The value of buildings and commercial real estate, as recorded in the balance sheet of the qualified active low-income community business.

b. State, county, and municipal sales, use, income, and property taxes paid, as recorded in the financial statement of the qualified active low-income community business.

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

(b) The department shall review the report and conduct other investigations as it deems necessary or appropriate to determine if standards have been met on or prior to the third anniversary of the issuance of the

1 qualified equity investment. If the standards are deemed not  
2 to have been met, the tax credits allowed for any remaining  
3 credit allowance dates for each qualified equity investment  
4 shall be forfeited from the taxpayer that claimed, or is  
5 entitled to claim, the credit on a return.

6 Section 10. (a) The department may conduct  
7 examinations to verify that the tax credits under this act  
8 have been received and applied according to the requirements  
9 of this act and to verify that no event has occurred that  
10 would result in a recapture or forfeiture of tax credits under  
11 Section 7 or 8.

12 (b) The department and the Department of Revenue  
13 shall prescribe such rules as may be appropriate to carry out  
14 their respective duties under this section and may issue  
15 advisory letters to individual qualified community development  
16 entities and their investors that are limited to the specific  
17 facts outlined in an advisory letter request from a qualified  
18 community development entity. The rulings cannot be relied  
19 upon by any person or entity other than the qualified  
20 community development entity that requested the letter and the  
21 taxpayers that are entitled to any tax credits generated from  
22 investments in the entity.

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

(d) If the qualified equity investment in the qualified active low-income community business is used for the development of real estate in the taxable year in which a tax credit has been allocated to a taxpayer and the real estate is placed in service, the qualified community development entity shall deliver to the department an appraisal prepared by an independent MAI designated and licensed real estate appraiser that includes a valuation and description of the improvements. The department shall provide a copy of the appraisal to the taxing authority responsible for the assessment of ad valorem taxes. Upon notification, the taxing authority responsible for the assessment of ad valorem taxes shall complete a new assessment for the real estate to be used in the assessment of ad valorem taxes for the tax year in which the real estate was placed in service.

Section 11. This act shall become effective for the taxable year beginning January 1, 2013, and continuing thereafter, following its passage and approval by the Governor, or its otherwise becoming law.