

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:

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

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

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

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

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

19 (3) DEPARTMENT. The Alabama Development Office.

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

23 (5) LONG-TERM DEBT SECURITY. Any debt instrument
24 issued by a qualified community development entity, at par
25 value or a premium, with an original maturity date of at least
26 seven years from the date of its issuance, with no
27 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.

1 (8) QUALIFIED COMMUNITY DEVELOPMENT ENTITY. The same
2 meaning given that term in Section 45D of the Internal Revenue
3 Code of 1986, as amended; provided, that the entity has
4 entered into, or is controlled by an entity that has entered
5 into, an allocation agreement with the Community Development
6 Financial Institutions Fund of the U.S. Treasury Department
7 with respect to credits authorized by Section 45D of the
8 Internal Revenue Code of 1986, as amended, which includes the
9 State of Alabama within the service area set forth in that
10 allocation agreement.

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

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

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

22 c. Is designated by the issuer as a qualified equity
23 investment under this act and is certified by the department
24 as not exceeding the limitation contained in Section 5. This
25 term includes any qualified equity investment that does not
26 meet the provisions of paragraph a., if the investment was a
27 qualified equity investment in the hands of a prior holder.

1 (10) QUALIFIED LOW-INCOME COMMUNITY INVESTMENT. Any
2 capital or equity investment in, or loan to, any qualified
3 active low-income community business. With respect to any one
4 qualified active low-income community business, the maximum
5 amount of qualified low-income community investments made in
6 that business, on a collective basis with all of its
7 affiliates that may be counted towards the satisfaction of
8 subdivision (8), shall be five million dollars (\$5,000,000)
9 whether issued by one or several qualified community
10 development entities.

11 (11) TAX CREDIT. A credit against the tax otherwise
12 due under Sections 40-18-5 and 40-18-31 of the Code of Alabama
13 1975.

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

17 Section 4. Subject only to the recapture and
18 forfeiture provisions of Sections 7 and 8, a taxpayer that
19 makes a qualified equity investment is eligible to apply for
20 approval of a tax credit under this section. If approved, the
21 purchaser of the qualified equity investment, or subsequent
22 holder of the qualified equity investment, shall be entitled
23 to utilize a tax credit during the taxable year including that
24 credit allowance date equal to the applicable percentage for
25 such credit allowance date multiplied by the purchase price
26 paid to the issuer of the qualified equity investment. The
27 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.

1 (c) Within 60 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 payment of the application fee, the department shall
5 grant or deny the application in full or in part. If the
6 department denies any part of the application, it shall inform
7 the qualified community development entity of the grounds for
8 the denial. If the qualified community development entity
9 provides any additional information required by the department
10 and otherwise completes its application within 15 days of the
11 notice of denial, the application shall be considered
12 completed as of the original date of submission. If the
13 qualified community development entity fails to provide the
14 information or complete its application within the 15-day
15 period, the application shall remain denied and shall be
16 resubmitted in full with a new submission date.

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

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

16 Section 8. (a) The Department of Revenue shall
17 recapture, from the taxpayer that claimed or is entitled to
18 claim the credit on a return, the tax credit allowed under
19 this act if, at any time during the seven-year period
20 beginning on the date of the original issue to the qualified
21 equity investment in a qualified community development entity,
22 there is a recapture event, as that term is defined in Section
23 45D(g) (3) of the Internal Revenue Code.

24 (1) Where any amount of the federal tax credit
25 available with respect to a qualified equity investment that
26 is eligible for a tax credit under this act is recaptured
27 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.

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

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

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

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

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

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

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

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

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

24 (b) The department shall review the report and
25 conduct other investigations as it deems necessary or
26 appropriate to determine if standards have been met on or
27 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.

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

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