**South Carolina General Assembly**

120th Session, 2013-2014

**H. 4778**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. J.E. Smith, Cobb‑Hunter, Herbkersman and G.M. Smith

Document Path: l:\council\bills\bbm\9025htc14.docx

Companion/Similar bill(s): 892

Introduced in the House on February 25, 2014

Currently residing in the House Committee on **Ways and Means**

Summary: New Market Jobs Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/25/2014 House Introduced and read first time ([House Journal‑page 29](file:///H:\HJ%20Archive\2014\02-25-14.docx))

2/25/2014 House Referred to Committee on **Ways and Means** ([House Journal‑page 29](file:///H:\HJ%20Archive\2014\02-25-14.docx))

**VERSIONS OF THIS BILL**

[2/25/2014](file:///p:\pprever\2013-14\4778_20140225.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 TO TITLE 38 SO AS TO ENACT THE “SOUTH CAROLINA NEW MARKET JOBS ACT” TO PROVIDE A CREDIT AGAINST INSURANCE PREMIUM TAXES AND POSSIBLE OTHER STATES TAXES MADE IN CERTAIN INVESTMENTS BY COMMUNITY DEVELOPMENT ENTITIES, PROVIDING INVESTMENT CAPITAL FOR A QUALIFIED ACTIVE LOW INCOME COMMUNITY SMALL BUSINESS LOCATED IN THIS STATE, TO MODEL THIS STATE INSURANCE PREMIUM TAX CREDIT ON THE FEDERAL NEW MARKETS TAX CREDIT PROGRAM PROVIDING FEDERAL INCOME TAX CREDITS FOR SUCH INVESTMENTS BUT LIMITED TO INVESTMENTS IN THIS STATE, TO ADOPT FEDERAL DEFINITIONS AS APPLICABLE FOR THE CREDIT BUT MODIFIED TO REFLECT THE PARTICULAR SOUTH CAROLINA APPLICATION OF THE CREDITS, TO PROVIDE A MAXIMUM INITIAL INDIVIDUAL INVESTMENT, A MAXIMUM OVERALL LIMIT FOR ALL SUCH INVESTMENTS ELIGIBLE FOR THE CREDIT, AND AN ANNUAL MAXIMUM AMOUNT OF CREDIT THAT MAY BE CLAIMED, TO PROVIDE THAT THESE CREDITS APPLY OVER SEVEN YEARS AND ARE NONREFUNDABLE AND NOT SALEABLE, TO REQUIRE FEES FOR PROCESSING APPLICATIONS FOR SUCH CREDITS AND FOR RECAPTURE OF THE CREDITS IF QUALIFICATIONS ARE NOT MAINTAINED, TO PROVIDE FOR LETTER RULINGS BY THE DEPARTMENT OF REVENUE WHEN FEDERAL REGULATIONS DO NOT PROVIDE SPECIFIC GUIDANCE, AND TO PROVIDE OTHER LIMITATIONS AND RESTRICTIONS AND REPORTING REQUIREMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 38 of the 1976 Code is amended by adding:

“CHAPTER 8

South Carolina New Market Jobs Act

Section 38‑8‑10. This chapter may be cited as the ‘South Carolina New Market Jobs Act’.

Section 38‑8‑20. As used in this chapter:

(1) ‘Affiliate’ means an entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the entity specified.

(2) ‘Applicable percentage’ means zero percent for the first credit allowance date, twelve percent for the next four credit allowance dates, ten percent for the next credit allowance date and zero percent for the final credit allowance date.

(3) ‘Credit allowance date’ means with respect to any qualified equity investment:

(a) the date on which the investment is initially made; and

(b) each of the six anniversary dates of that date thereafter.

(4) ‘Department’ means the South Carolina Department of Revenue.

(5) ‘Long‑term debt security’ means any debt instrument issued by a qualified community development entity with an original maturity date of at least seven years from the date of its issuance, with no repayment, amortization, or prepayment features before its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as defined by regulations promulgated pursuant to Internal Revenue Code Section 45D of the qualified community development entity for that period before giving effect to the interest expense of the long‑term debt security. The foregoing in no way limits the holder’s ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with this chapter or Internal Revenue Code Section 45D.

(6) ‘Internal Revenue Code’ has the meaning of that term provided pursuant to Section 12‑6‑40.

(7) ‘Purchase price’ the amount paid to the qualified community development entity that issues a qualified equity investment for the qualified equity investment which may not exceed the amount of qualified equity investment authority certified pursuant to Section 38‑8‑50.

(8) ‘Qualified active low‑income community business’ has the meaning given that term provided pursuant to Internal Revenue Code Section 45D, and 26 C.F.R. Sec. 1.45D‑1, but limited to those businesses meeting the SBA size eligibility standards established in 13 C.F.R. 121.101‑201 at the time the qualified low‑income community investment is made. Any business that derives or projects to derive fifteen percent or more of its annual revenue from the rental or sale of real estate is not considered to be a qualified active low‑income community business. This exception does not apply to a business that is controlled by or under common control with another business if the second business (a) does not derive or project to derive fifteen percent or more of its annual revenue from the rental or sale of real estate and (b) is the primary tenant of the real estate leased from the initial business. A business is considered a qualified active low‑income community business for the duration of the qualified community development entity’s investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low‑income community business, other than the SBA size standards, throughout the entire period of the investment or loan.

(9) ‘Qualified community development entity’ has the meaning given that term in Internal Revenue Code Section 45D if the entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department with respect to credits authorized by Internal Revenue Code Section 45D which includes the State of South Carolina within the service area set forth in the allocation agreement. The term includes subsidiary community development entities of any such qualified community development entity.

(10) ‘Qualified Equity Investment’ means any equity investment in, or long‑term debt security issued by, a qualified community development entity that:

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

(b) has at least eighty‑five percent of its cash purchase price used by the qualified community development entity to make qualified low‑income community investments in qualified active low‑income community businesses located in this State by the first anniversary of the initial credit allowance date; and

(c) is designated by the qualified community development entity as a qualified equity investment hereunder and is certified by the department pursuant to Section 38‑8‑50. This term includes any qualified equity investment that does not meet the provisions of subitem (a) of this item if the investment was a qualified equity investment in the hands of a prior holder.

(11) ‘Qualified low‑income community investment’ means any capital or equity investment in, or loan to, any qualified active low‑income community business; but, with respect to any one qualified active low‑income community business, the maximum amount of qualified low‑income community investments made in the business, on a collective basis with all of the businesses’ affiliates, with the proceeds of qualified equity investments certified pursuant to Section 38‑8‑50 is four million dollars, exclusive of qualified low‑income community investments made with repaid or redeemed qualified low‑income community investments or interest or profits realized thereon.

(12) ‘SBA’ means the United States Small Business Administration.

(13) ‘State premium tax liability’ means any liability incurred by any entity pursuant to Sections 38‑7‑20, 38‑7‑30, 38‑7‑40, 38‑7‑50, and 38‑7‑90. If the tax liability arising pursuant to those sections is eliminated or reduced, the term also includes any state tax liability imposed on an insurance company or other person that had premium tax liability under the laws of this State.

Section 38‑8‑30. An entity that makes a qualified equity investment earns a vested right to credit against the entity’s state premium tax liability on a premium tax return filed under this title that may be utilized as follows:

(1) on each credit allowance date of the qualified equity investment the entity, or subsequent holder of the qualified equity investment, is entitled to utilize a portion of the credit during the taxable year including the credit allowance date;

(2) the credit amount is equal to the applicable percentage for the credit allowance date multiplied by the purchase price paid to the qualified community development entity for the qualified equity investment; and

(3) the amount of the credit claimed by an entity may not exceed the amount of the entity’s state premium tax liability for the tax year for which the credit is claimed. Any amount of tax credit that the entity is prohibited from claiming in a taxable year as a result of this chapter may be carried forward for use in any subsequent taxable year.

Section 38‑8‑40. A tax credit claimed pursuant to this chapter is not refundable or saleable on the open market. Tax credits earned by a partnership, limited liability company, or S corporation may be allocated to the partners, members, or shareholders of the entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders. This allocation is not considered a sale for purposes of this chapter.

Section 38‑8‑50. (A) A qualified community development entity that seeks to have an equity investment or long‑term debt security designated as a qualified equity investment and eligible for tax credits pursuant to this chapter shall apply to the department. The department shall begin accepting applications August 1, 2014. The qualified community development entity shall include the following:

(1) evidence of the applicant’s certification as a qualified community development entity, including evidence of the service area of the entity that includes this State;

(2) a copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;

(3) a certificate executed by an executive officer of the applicant attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;

(4) a description of the proposed amount, structure, and purchaser of the qualified equity investment;

(5) examples of the types of qualified active low‑income businesses in which the applicant, its controlling entity or affiliates of its controlling entity have invested under the Federal New Market Tax Credit Program. Applicants are not required to identify qualified active low‑income community businesses in which they will invest when submitting an application;

(6) a nonrefundable application fee of five thousand dollars. This fee must be paid to the department and is required for each application submitted; and

(7) if applicable, the refundable performance deposit required pursuant to Section 38‑8‑80(A).

(B) Within thirty days after receipt of a completed application containing the information set forth in subsection (A), including the payment of the application fee and, if applicable, the refundable performance deposit, 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 or otherwise completes its application within fifteen days of the notice of denial, the application must 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 fifteen‑day period, the application remains denied, must be resubmitted in full with a new submission date, and the department shall return any refundable performance deposit pursuant to Section 38‑8‑80(A).

(C) If the application is 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 pursuant to this chapter, subject to the limitations contained in subsection (F), but the department may not certify qualified equity investments for any applicant, on a combined basis with all of its affiliates, in excess of sixty million dollars unless the applicant has:

(1) already had qualified equity investments certified pursuant to this section;

(2) satisfied the requirements of Section 38‑8‑80 with respect to the qualified equity investments; and

(3) filed a new application after satisfying the requirements of items (1) and (2). The department shall provide written notice of the certification to the qualified community development entity. The notice must include the names of those entities who will earn the credits and their respective credit amounts.

(D) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day are deemed to have been received simultaneously.

(E) For applications that are completed and received on the same day, the department first shall certify, consistent with remaining qualified equity investment capacity, the qualified equity investments of applicants in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(F) The department shall certify two hundred fifty million dollars in qualified equity investments pursuant to this section. If a pending request cannot be fully certified due to this limit, the department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification. Upon withdrawal the department shall return any refundable performance deposit required pursuant to Section 38‑8‑80(A). A partial certification does not decrease the amount of the refundable performance deposit required pursuant to Section 38‑8‑80(A).

(G) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity if the applicant and the transferee notify the department of the transfer with the notice provided pursuant to subsection (H) and include the information required in the application with respect to the transferee with the notice.

(H) Within forty‑five days of the applicant receiving notice of certification, the qualified community development entity or any transferee pursuant to subsection (G) shall issue the qualified equity investment and receive cash in the certified amount. The qualified community development entity or transferee pursuant to subsection (G) shall provide the department with evidence of the receipt of the cash investment within fifty days of the applicant receiving notice of certification. If the qualified community development entity or any transferee pursuant to subsection (G) does not receive the cash investment and issue the qualified equity investment within forty‑five days following receipt of the certification notice, the certification lapses and the entity may not issue the qualified equity investment without reapplying to the department for certification. Lapsed certifications revert to the department and must be reissued:

(1) first, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subsection (E); and

(2) thereafter, in accordance with the application process.

(I) A qualified community development entity that issues qualified equity investments shall notify the department of the names of the entities that are eligible to utilize tax credits or change in allocation of tax credits allowed pursuant to Section 38‑8‑40 based on an allocation of tax credits or due to a transfer of a qualified equity investment.

Section 38‑8‑60. (A) The department, from the entity that claimed the credit on a return, may recapture the tax credit allowed pursuant to this chapter if:

(1) any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a credit pursuant to this chapter is recaptured pursuant to Internal Revenue Code Section 45D. In this case, the department’s recapture must be proportionate to the federal recapture with respect to the qualified equity investment;

(2) the qualified community development entity redeems or makes principal repayment with respect to a qualified equity investment before the seventh anniversary of the issuance of the qualified equity investment. In this case, the department’s recapture must be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment;

(3) the qualified community development entity fails to invest an amount equal to eighty‑five percent of the purchase price of the qualified equity investment in qualified low‑income community investments in South Carolina within twelve months of the issuance of the qualified equity investment and maintain at least eighty‑five percent of the level of investment in qualified low‑income community investments in South Carolina until the last credit allowance date for the qualified equity investment. For purposes of this chapter, an investment is considered held by a qualified community development entity even if the investment has been sold or repaid if the qualified community development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low‑income community investment within twelve months of the receipt of the capital. Periodic amounts received as repayment of principal pursuant to regularly scheduled amortization payments on a loan that is a qualified low‑income community investment must be treated as continuously invested in a qualified low‑income community investment if the amounts are reinvested in one or more qualified low‑income community investments by the end of the following calendar year. A qualified community development entity is not required to reinvest capital returned from qualified low‑income community investments after the sixth anniversary of the issuance of the qualified equity investment, and the qualified low‑income community investment is considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment’s issuance;

(4) a distribution or debt payment in violation of Section 38‑8‑110(A); or

(5) any violation of Section 38‑8‑130.

(B) Recaptured tax credits and the related qualified equity investment authority revert to the department and must be reissued:

(1) first, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to Section 38‑8‑50(E); and

(2) thereafter, in accordance with the application process.

Section 38‑8‑70. Enforcement of each of the recapture provisions is subject to a six‑month cure period. A recapture may not occur until the qualified community development entity has been given notice of noncompliance and afforded six months from the date of the notice to cure the noncompliance.

Section 38‑8‑80. (A) A qualified community development entity seeking to have an equity investment or long‑term debt security designated as a qualified equity investment and eligible for tax credits pursuant to this chapter shall pay a deposit in the amount of one half of one percent of the amount of the equity investment or long‑term debt security requested in an application to be designated as a qualified equity investment to the department for deposit in the New Market Performance Guarantee Account (account), which is hereby established in the State Treasury separate and distinct from the general fund of the State and all other funds. Funds in this account at the end of a fiscal year carry forward to the succeeding fiscal year. Revenue in the fund must be used for the purposes of this chapter. The entity forfeits the deposit in its entirety if:

(1) the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified equity investments certified by the department and receive cash in the total amount certified pursuant Section 38‑8‑50; or

(2) the qualified community development entity or any subsidiary qualified community development entity that issues a qualified equity investment certified pursuant to this section fails to make qualified low‑income community investments in qualified active low‑income community businesses in this State equal to at least eighty‑five percent of the purchase price of the qualified equity investment by the second credit allowance date of the qualified equity investment. The six month cure period allowed pursuant to Section 38‑8‑70 is not applicable to the forfeiture of deposits pursuant to this item.

(B) The deposit required pursuant to subsection (A) must be paid to the department and held in the account until the time compliance with the provisions of this subsection has been established. The qualified community development entity may request a refund of the deposit from the department no sooner than thirty days after the qualified community development entity and all transferees pursuant to Section 38‑8‑50(G) have invested eighty‑five percent of the purchase price of the qualified equity investment authority certified by the department pursuant to Section 38‑8‑50(C). The department has thirty days to comply with the request or give notice of noncompliance.

(C) A deposit is not required from applicants that:

(1) have had proposed qualified equity investments certified pursuant to Section 38‑8‑50; and

(2) have not forfeited a deposit made pursuant to this section.

Section 38‑8‑90. (A) The department shall issue letter rulings regarding the tax credit program authorized pursuant this chapter, subject to the terms and conditions set forth in this section. For the purposes of this chapter, the term ‘letter ruling’ means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

(B) The department shall respond to a request for a letter ruling within sixty days of receipt of the request. The applicant may provide a draft letter ruling for the department’s consideration. The applicant may withdraw the request for a letter ruling, in writing, before the issuance of the letter ruling. The department may refuse to issue a letter ruling for good cause, but must list the specific reasons for refusing to issue the letter ruling. Good cause includes, but is not limited to:

(1) the applicant requests the department to determine whether a statute is constitutional or a regulation is lawful;

(2) the request involves a hypothetical situation or alternative plans;

(3) the facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling; and

(4) the issue is currently being considered in a rulemaking procedure, contested case, or other agency or judicial proceeding that may definitely resolve the issue.

(C) Letter rulings bind the department, the South Carolina Department of Insurance, and the agents and their successors of these departments until the time the applicant or its shareholders, members, or partners, as applicable, claim all of the credits on a South Carolina tax return or report, subject to the terms and conditions set forth in properly published regulations. The letter ruling applies only to the applicant.

(D) In rendering letter rulings and making other determinations pursuant to this chapter, to the extent applicable, the department shall look for guidance to Internal Revenue Code Section 45D and the rules and regulations issued thereunder.

Section 38‑8‑100. (A) An entity claiming a credit pursuant to this chapter is not required to pay any additional retaliatory tax levied pursuant to Section 38‑8‑90 as a result of claiming that credit.

(B) In addition to the exclusion in subsection (A), it is the intent of this chapter that an entity claiming a credit pursuant to this chapter is not required to pay any additional tax that may arise as a result of claiming that credit.

Section 38‑8‑110. (A) Once certified pursuant to Section 38‑8‑50, a qualified equity investment remains under certification until all of the requirements of subsection (B) have been met. Until the time all qualified equity investments issued by a qualified community development entity are no longer under certification pursuant to this section, the qualified community development entity is not entitled to distribute to its equity holders or make cash payments on long‑term debt securities that have been designated as qualified equity investments in an amount that exceeds the sum of: (1) the cumulative operating income, as defined by regulations promulgated pursuant to Internal Revenue Code Section 45D earned by the qualified community development entity since issuance of the qualified equity investment, before giving effect to any interest expense from long‑term debt securities designated as qualified equity investments; and (2) fifty percent of the purchase price of the qualified equity investments issued by the qualified community development entity.

(B) A qualified equity investment ceases to be under certification when:

(1) it is beyond its seventh credit allowance date;

(2) the qualified community development entity issuing the qualified equity investment has been in compliance with Section 38‑8‑60 through its seventh credit allowance date, including any cures allowed pursuant to Section 38‑8‑70; and

(3) the qualified community development entity issuing the qualified equity investment has used the cash purchase of the qualified equity investment, together with capital returned, repaid or redeemed or profits realized with qualified low‑income community investments, to invest in qualified active low‑income community businesses such that the total qualified low‑income community investments made, cumulatively including reinvestments, exceeds one hundred fifty percent of the qualified equity investment. For purposes of making this calculation, qualified low‑income community investments to any one qualified active low‑income community business, on a collective basis with its affiliates, in excess of four million dollars is not included unless the investments are made with capital returned or repaid from qualified low‑income community investments made by the qualified community development entity in other qualified active low‑income community businesses or interest earned on or profits realized from any qualified low‑income community investments.

(C) A community development entity that has met the requirements of subsection (B) shall send notice to the department of its satisfaction of these requirements along with evidence supporting the request. The provisions of subsection (B)(2) are deemed to be met if no recapture action has been commenced by the department as of the seventh credit allowance date. This request must not be unreasonably denied and must be responded to within thirty days of receiving the request. When the request is granted, the qualified community development entity is no longer subject to Section 38‑8‑140. If the request is denied for any reason, the burden of proof is on the department in any administrative or legal proceeding that follows.

Section 38‑8‑120. A qualified community development entity or purchaser of a qualified equity investment may not pay to any qualified community development entity or affiliate thereof any fees in connection with any activity pursuant to this section before meeting the requirements of Section 38‑8‑110(B) with respect to all qualified equity investments issued by the qualified community development entity and its affiliates. The foregoing does not prohibit the allocation or distribution of income earned by a qualified community development entity or purchaser of a qualified equity investment to their equity owners or the payment of reasonable interest on amounts lent to a qualified community development entity or purchaser of a qualified equity investment.

Section 38‑8‑130. A qualified active low‑income community business that receives a qualified low‑income community investment from a qualified community development entity that issues qualified equity investments pursuant to this chapter, or any affiliates of such a qualified active low‑income community business, may not directly or indirectly:

(1) own or have the right to acquire an ownership interest in a qualified community development entity or member or affiliate of a qualified community development entity including, but not limited to, a holder of a qualified equity investment issued by the qualified community development entity; or

(2) lend to or invest in a qualified community development entity or member or affiliate of a qualified community development entity including, but not limited to, a holder of a qualified equity investment issued by a qualified community development entity where the proceeds of the loan or investment are directly or indirectly used to fund or refinance the purchase of a qualified equity investment hereunder.

For purposes of this section, a qualified community development entity is not considered an affiliate of a qualified active low‑income community business solely as a result of its qualified low‑income community investment in the business.

Section 38‑8‑140. (A) Qualified community development entities issuing qualified equity investments shall submit a report to the department within the first five business days after the first anniversary of the initial credit allowance date that provides documentation as to the investment of eighty‑five percent of the purchase price in qualified low‑income community investments in qualified active low‑income community businesses located in this State. The report must include:

(1) a bank statement of the qualified community development entity evidencing each qualified low‑income community investment; and

(2) evidence that the business was a qualified active low‑income community business at the time of the qualified low‑income community investment.

(B) After the reporting required pursuant to subsection (A), the qualified community development entity shall submit an annual report to the department within forty‑five days of the beginning of the calendar year during the compliance period. An annual report is not due before the first anniversary of the initial credit allowance date. The report must include, but is not limited to, the following:

(1) number of employment positions created and retained as a result of qualified low‑income community investments; and

(2) average annual salary of positions described in item (1).

Section 38‑8‑150. The amount of insurance premium taxes to be transferred to the South Carolina Forestry Commission pursuant to Section 38‑7‑20 take priority over all tax credits claimed pursuant to this chapter and must be calculated based upon gross insurance premium tax liability before the application of tax credits pursuant to this chapter.”

SECTION 2. This act takes effect August 1, 2014, and applies with respect to returns and returns originally due on or after that date.

‑‑‑‑XX‑‑‑‑