**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 TO TITLE 38 TO ENACT THE “SOUTH CAROLINA NEW MARKET JOBS ACT” SO AS TO PROVIDE A CREDIT AGAINST INSURANCE PREMIUM TAXES AND POSSIBLE OTHER STATES’ TAXES MADE IN CERTAIN INVESTMENTS BY QUALIFIED 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 must be known and may be cited as the ‘South Carolina New Market Jobs Act’.

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

(1) ‘Account’ means the New Market Performance Guarantee Account.

(2) ‘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.

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

(4) ‘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.

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

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

(7) ‘Letter ruling’ means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

(8) ‘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 after 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 provisions of this item do not limit the holder’s ability to accelerate payments on the debt instrument when the qualified community development entity has defaulted on covenants designed to ensure compliance with this chapter or Internal Revenue Code Section 45D.

(9) ‘Purchase price’ means 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.

(10) ‘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 that have fewer then two hundred fifty employees and not more than ten million dollars in net income in the previous year at the time the qualified low‑income community investment is made, provided that the employees and the net income of affiliates of the business are not aggregated for purposes of satisfying this requirement if the affiliate business is classified under a different North American Industry Classification System code. A 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 does not derive or project to derive fifteen percent or more of its annual revenue from the rental or sale of real estate and 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 United States Small Business Administration size standards, throughout the entire period of the investment or loan.

(11) ‘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. An entity may not be considered to be controlled by another entity solely as a result of such entity having made a direct or indirect equity investment in the other entity that earns tax credits under Internal Revenue Code Section 45D or a similar state program. The term includes subsidiary community development entities of any such qualified community development entity.

(12) ‘Qualified equity investment’ means an 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) if the investment was a qualified equity investment in the hands of a prior holder.

(13) ‘Qualified low‑income community investment’ means a capital or equity investment in, or loan to, a 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.

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

(15) ‘State premium tax liability’ means any liability incurred by an entity pursuant to Sections 38‑7‑20, 38‑7‑30, 38‑7‑40, 38‑7‑50, and 38‑7‑90. If this tax liability 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 used as follows:

(1) the entity, or subsequent holder of the qualified equity investment, is entitled to use a portion of the credit during the taxable year that includes a 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 a 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 or allocated to a partnership, limited liability company, S corporation may be allocated to the partners, members, or shareholders of the entity for their use pursuant to the provisions of an agreement among the partners, members, or shareholders. These allocations are 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 for this designation. The department shall begin accepting applications on September 1, 2015. The application of the qualified community development entity must 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 dated after January 1, 2014;

(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, which must be paid to the department for each application submitted;

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

(8) a copy of at least two certificates of qualified equity investment authority under at least two different state new markets tax credit programs; and

(9) evidence that the applicant, its controlling entity, and subsidiary qualified community development entities of the controlling entity have made at least forty million dollars in qualified low‑income community investments under Internal Revenue Code Section 45D and other state new markets tax credit programs with a maximum qualified low‑income community investment size of four million dollars for each qualified active low‑income community business. No qualified active low‑income community business included may have received in excess of four million dollars in qualified low‑income community investments, cumulatively, from the applicant, its controlling entity, and subsidiary qualified community entities of the controlling entity.

(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 pursuant to Section 38‑8‑80(A), 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 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 which may be further allocated pursuant to Section 38‑8‑40.

(D) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day are considered 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 deposit required pursuant to Section 38‑8‑80(A). A partial certification does not decrease the amount of the deposit required pursuant to Section 38‑8‑80(A).

(G) An approved applicant may transfer all or a portion of its qualified equity investment authority to its controlling entity or a 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 amount of 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, pursuant to 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 use tax credits allowed pursuant to Section 38‑8‑40 based on an allocation of tax credits or change in allocation of tax credits or due to a transfer of a qualified equity investment.

Section 38‑8‑60. (A) The department may recapture, from the entity that claimed the credit on a return, 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 this State 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 this State 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);

(5) a violation of Section 38‑8‑120; or

(6) a violation of 38‑8‑130.

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

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

(2) thereafter, pursuant to 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. This cure period is not available for any forfeiture of the deposit required pursuant to Section 38‑8‑80(A).

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.

(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 under 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) No deposit may be received from an applicant who has:

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

(2) 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.

(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, when:

(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; or

(3) 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 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 under it.

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 38‑7‑90 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 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 qualified 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 qualified 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 considered 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 an 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 a qualified community development entity or affiliate a fee in connection with an 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 provisions of this section do 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) 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.

(B) 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) A qualified community development entity that issues a qualified equity investment 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 investment in a qualified active low‑income community business 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 annually shall submit a report to the department within sixty days of the beginning of the calendar year during the compliance period. The annual report is not due before the first anniversary of the initial credit allowance date. The report must include, but is not limited to:

(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 2. This act takes effect August 1, 2015, and applies with respect to returns and returns originally due on or after that date.

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