OLR Bill Analysis

SB 382

AN ACT CONCERNING A CONNECTICUT NEW MARKET TAX CREDIT PROGRAM.

SUMMARY

This bill establishes a Connecticut New Markets Tax Credit (NMTC) program, administered by the Connecticut Health and Educational Facilities Authority (CHEFA) Community Development Corporation (CDC), to stimulate economic development in low-income communities. Under the program, private investors making qualified equity investments (QEI) through a qualified community development entity (CDE) may receive state business tax credits equal to 39% of their investment, subject to the bill's conditions. The credits may be claimed over a seven-year period.

The bill requires these qualified CDEs to use these private investments to invest in or provide loans to eligible nonprofits (i.e., community businesses), which the bill refers to as qualified low-income community investments (QLICIs). The community businesses must, in turn, use the QLICIs for activities that address a low-income community's needs and social and economic priorities. This may include (1) capitalizing a program that benefits the community, (2) financing the costs of certain capital projects, and (3) providing working capital.

Under the bill, the credit-eligible investments must be made for the 2023 and 2024 calendar years. The bill caps the total amount of QEIs that the CHEFA CDC may designate for tax credits at $25 million in each of these years.

The CHEFA CDC must adopt written procedures to implement the program and set any requirements, in accordance with the law governing the adoption of procedures by quasi-public agencies.

EFFECTIVE DATE: July 1, 2022

COMMUNITY DEVELOPMENT ENTITIES

Under this program, CDEs are the intermediaries between investors and the community businesses serving low-income communities. A "CDE" is a corporation or limited liability company (LLC) that (1) has a primary mission of serving or providing capital for low-income communities, as described below, or their residents and (2) maintains accountability to the communities' residents through their representation on its advisory or governing board. Under the bill, the CHEFA CDC must certify that a CDE satisfies these criteria and is thus eligible to receive equity investments under the program (i.e., "qualified CDEs").

The bill authorizes the CHEFA CDC to form one or more subsidiaries, organized as an LLC or stock or nonstock corporation, to serve as a qualified CDE. The CHEFA CDC must adopt a resolution prescribing the purposes for which the subsidiary is formed and the powers of the CHEFA CDC that the subsidiary has and can exercise.

QUALIFYING LOW-INCOME COMMUNITIES

Under the bill, a "low-income community" is a census tract that meets at least one of the following criteria:

1. a poverty rate of at least 20%;
2. is located in a metropolitan area and has a median family income of 80% or less of either the statewide or metropolitan area median family income, whichever is greater; or
3. is located outside a metropolitan area and has a median family income of 80% or less of the statewide median family income.

These same criteria apply when determining the eligible low-income communities under the federal NMTC program (see BACKGROUND).

QUALIFIED INVESTMENTS

For the 2023 and 2024 calendar years, the bill allows any taxpayer to make an equity investment in a CDE. For those years, the CHEFA CDC may designate an equity investment in a qualified CDE as a QEI. A "QEI" is an equity investment made on or after July 1, 2022, solely in exchange for cash, in a qualified CDE. (Although the bill specifies that these investments are made on or after July 1, 2022, the credit-eligible investments must be made in the 2023 and 2024 calendar years.) The bill caps at $25 million the aggregate amount of QEIs the CHEFA CDC may designate in each of these years.

Qualified CDEs must use substantially all of the QEI's cash purchase price, within 12 months after the investment's issuance, to make QLICIs (i.e., equity investments or loans in a community business or businesses; see below). Thereafter, each qualified CDE must maintain at least 85% of the QEI's cash purchase price in QLICIs for the QEI's term.

COMMUNITY BUSINESSES

Under the bill, a "community business" is a 501(c)(3) federally tax-exempt organization located in Connecticut (1) that has a substantial portion of its tangible personal property (owned or leased) in a low-income community and (2) whose employees perform a substantial portion of services in a low-income community. It includes any subsidiary of the organization that (1) is located in Connecticut, (2) meets these criteria, and (3) has a purpose to further the organization's charitable mission.

Application

Community businesses may apply to the CHEFA CDC for approval as a business eligible to receive QLICIs. The application must include:

1. the business's name and a copy of its organizational documents,

2. a description of the community benefit (as described below) the business provides or seeks to provide,

3. the expected amount and description of the eligible costs for which the business will use the QLICI proceeds, and

4. any other information the CHEFA CDC requires.

Eligible Costs. Community businesses receiving a QLICI must use the proceeds for eligible costs. The total amount of QLICIs a community business can receive is limited to the lesser of 40% of the expected eligible costs or $5 million.

"Eligible costs" are the following:

1. capitalization required for a program a community business develops, sponsors, or manages and that benefits a low-income community;

2. the costs of constructing and acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interest necessary for a project (as described below), including demolishing or removing any buildings or structures on acquired land and acquiring land to which they may be moved;

3. the costs for (a) acquiring machinery and equipment; (b) providing working capital; (c) enlargements, additions, extensions, replacements, renovations, and improvements; and (d) engineering, financial, and legal services for plans, specifications, studies, surveys, and estimates of costs and revenues; and

4. administrative expenses, expenses necessary or incident to determining a project's feasibility or practicability, and any other expenses necessary or incident to project (a) construction and acquisition, (b) financing, and (c) operations.

Project

The bill defines "project" as a building or structure owned by a community business or suitable for use according to its charitable mission. It includes machinery, equipment, and other similar items necessary or convenient for operating the building, structure, or community business.

Community Benefits

Under the bill, the eligible costs for which community businesses may use QLICIs must provide a "community benefit." These are activities that address a low-income community's needs and social and economic priorities, primarily through the following:

1. creating or retaining quality and accessible jobs in the community, as determined by the CHEFA CDC;

2. increasing access to high-quality goods or services or healthy food for the community's residents; or

3. making or facilitating environmental improvements to the community.

TAX CREDITS

Credit Claims and Allowance

Under the bill, QEI holders are eligible for a credit against the following business taxes: insurance premiums tax; corporation business tax; unrelated business income tax; air carriers tax; railroad companies tax; cable, satellite, and video companies tax; public service companies tax; and surplus lines brokers tax. Taxpayers may claim the credits over a seven-year period in an amount equal to (1) 5% of the QEI for the income year in which the investment is made and for the following two income years and (2) 6% of the QEI for the next four income years (i.e., 39% total).

Taxpayers may carry forward unused credits for up to five succeeding income years, until fully used, and transfer the credits, in whole or part, to other taxpayers up to three times.

Credit Administration

Within 45 days after designating a QEI, the CHEFA CDC must submit a form to the Department of Revenue Services (DRS) providing (1) the investment's amount and issuance date, (2) the identity of the taxpayer holding the investment, and (3) any other information DRS deems necessary. The DRS commissioner must prescribe the form and manner for this submission.

Credit Recapture

The credits are subject to recapture under the following conditions:

1. the CDE ceases to be a qualified CDE,
2. the QLICI ceases to be used to provide a community benefit,
3. a QLICI is repaid or returned to a qualified CDE, or
4. a QEI is repaid or returned to the investment's holder.

If the CHEFA CDC or DRS commissioner determines that a recapture of all or part of a credit is warranted, it must notify the affected taxpayer. If the taxpayer cannot or does not correct the deficiency within 90 days after receiving this notice, the DRS commissioner must issue a final recapture order that includes the amount, including any penalty and interest, to be recaptured on the taxpayer's next required tax return filing. He must provide a copy of this final order to the CHEFA CDC.

Quarterly Report

The bill requires the CHEFA CDC to submit quarterly reports to DRS beginning after it designates its first QEI. The reports must include (1) the amount and date of each QLICI made and (2) verification that these investments were made and continue to be invested in eligible community businesses.

BACKGROUND

Federal NMTC Program

The federal NMTC program uses federal income tax credits to attract private capital for projects in low-income communities. Under this program, qualified investment groups, known as CDEs, apply to the U.S. Department of Treasury's Community Development Financial Institutions Fund (CDFI) for an allocation of the NMTCs. The CDEs seek taxpayers to make QEIs in the CDEs. The CDE then makes equity investments in qualified low-income communities and low-income community businesses. The tax credit's value is 39% of the cost of the QEI and is claimed over a seven-year period. Investors must retain their interest in a QEI throughout this period.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable				
Yea	51	Nay	0	(04/05/2022)