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SENATE BILL 198

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO TAXATION; PROVIDING CORPORATE INCOME TAX OR PREMIUM  
TAX CREDITS FOR TAXPAYERS WHO PROVIDE CAPITAL TO QUALIFIED  
COMMUNITY DEVELOPMENT ENTITIES THAT INVEST IN LOANS AND OTHER  
FINANCING FOR BUSINESSES IN CERTAIN LOW-INCOME AREAS; PROVIDING  
FOR TAX CREDIT CERTIFICATES TO BE TIERED OVER SEVEN YEARS WITH  
FIVE YEARS OF ALLOWABLE CARRYOVER; PROVIDING THAT TAXPAYER  
ELIGIBILITY BE DETERMINED AND TAX CREDIT CERTIFICATES BE ISSUED  
BY THE ECONOMIC DEVELOPMENT DEPARTMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** A new section of the Statewide Economic  
Development Finance Act is enacted to read:

"[NEW MATERIAL] ADMINISTRATION OF STATE NEW MARKETS TAX  
CREDITS BY THE ECONOMIC DEVELOPMENT DEPARTMENT.--

A. The department shall receive applications for

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1 and determine the eligibility of qualified community  
2 development entities and certify qualified equity investments.  
3 The department may certify qualified equity investments and  
4 issue certificates of eligibility subject to the following  
5 limitations:

6 (1) the maximum amount of qualified equity  
7 investments that may be certified and upon which the  
8 thirty-nine-percent state new markets corporate income tax  
9 credits and thirty-nine-percent state new markets premium tax  
10 credits may be calculated shall be two hundred million dollars  
11 (\$200,000,000);

12 (2) the maximum amount of state new markets  
13 corporate income tax credits and state new markets premium tax  
14 credits that may be issued in certificates of eligibility shall  
15 be seventy-eight million dollars (\$78,000,000);

16 (3) the department shall issue certificates of  
17 eligibility amounting to no more than sixteen million dollars  
18 (\$16,000,000) of aggregate state new markets corporate income  
19 tax credits and state new markets premium tax credits for any  
20 one calendar year; and

21 (4) the maximum amount of a qualified  
22 low-income community investment in any one qualified active  
23 low-income community business, on a collective basis with all  
24 of the affiliates of that qualified active low-income community  
25 business, that may be counted toward the certification of a

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1 qualified equity investment, whether issued to one or several  
2 qualified community development entities, shall be ten million  
3 dollars (\$10,000,000).

4 B. The department shall review certifications on an  
5 annual basis. The department shall notify the taxation and  
6 revenue department or the insurance division of the public  
7 regulation commission when a qualified equity investment loses  
8 its certification by providing a final notice of  
9 decertification to the taxation and revenue department, the  
10 insurance division of the public regulation commission, the  
11 qualified community development entity and known purchasers  
12 within two weeks of decertifying the qualified equity  
13 investment.

14 C. The department shall coordinate at least monthly  
15 with the taxation and revenue department and the insurance  
16 division of the public regulation commission to maintain a  
17 record of the cumulative amount of certified qualified equity  
18 investments and the aggregate amount of state new markets  
19 corporate income tax credits and state new markets premium tax  
20 credits that have been issued. To provide guidance to  
21 qualified community development entities regarding the amount  
22 of credit capacity remaining, the department shall post monthly  
23 on the department's web site the aggregate amount of qualified  
24 equity investments that may be certified for the remainder of  
25 the calendar year.

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1           D. Prior to October 1, 2012, the department shall  
2 establish by rule the procedures, forms and minimum criteria  
3 for a qualified community development entity to apply for  
4 certification of a qualified equity investment and a  
5 determination of eligibility for a state new markets tax  
6 credit. Prior to October 1, 2012, the department also shall  
7 establish by rule the procedures for implementation and  
8 administration of the state new markets tax credits and the  
9 immediate and long-term goals to be attained through the  
10 issuance of tax credits. The rules and forms shall be  
11 presented to the revenue stabilization and tax policy committee  
12 and other appropriate legislative committees for comments and  
13 approval during the 2012 legislative interim.

14           E. The department shall provide an application form  
15 on which a qualified community development entity shall  
16 indicate:

17                   (1) the name, address and tax identification  
18 number of the qualified community development entity and  
19 evidence of the entity's federal certification as a qualified  
20 community development entity;

21                   (2) a description of the proposed purchase  
22 price and structure, amount and purchaser of the equity  
23 investment or long-term debt security;

24                   (3) an acknowledgment and waiver allowing  
25 information from the application and a purchaser's tax returns,

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1 reports and filings to be used for the department's report to  
2 the legislature about the effectiveness of the new markets tax  
3 credits;

4 (4) the name and tax identification number of  
5 the purchaser of the qualified equity investment that the  
6 qualified community development entity expects to be eligible  
7 to claim the new markets tax credit allowed as a result of the  
8 issuance of the qualified equity investment;

9 (5) information about the types of qualified  
10 active low-income community businesses in which a qualified  
11 community development entity will invest the proceeds of a  
12 qualified equity investment, including a detailed description  
13 of:

14 (a) the types of businesses to receive  
15 the qualified low-income community investments;

16 (b) the location of the businesses to  
17 receive the qualified low-income community investments;

18 (c) the number of new jobs to be created  
19 or retained; and

20 (d) the physical infrastructure that may  
21 be created or preserved; and

22 (6) any other information required by the  
23 department in its rules.

24 F. The application submission shall include:

25 (1) a copy of the allocation agreement

1       executed by the qualified community development entity, or in  
2       the case of a subordinate qualified community development  
3       entity, the entity that controls or is under common control  
4       with the subordinate qualified community development entity,  
5       and the federal community development financial institutions  
6       fund;

7                       (2) a certificate executed by an executive  
8       officer of the qualified community development entity, or in  
9       the case of a subordinate qualified community development  
10      entity, the entity that controls or is under common control  
11      with the subordinate qualified community development entity,  
12      attesting that the allocation agreement remains in effect and  
13      has not been revoked or canceled by the community development  
14      financial institutions fund; and

15                      (3) an application fee of five thousand  
16      dollars (\$5,000) that shall be nonrefundable, payable to the  
17      department.

18                      G. The department shall approve applications that  
19      comply with this section and its rules in the order that  
20      completed applications are received. Applications received on  
21      the same day shall be deemed to have been received  
22      simultaneously. For applications received on the same day and  
23      deemed complete, the department shall certify, consistent with  
24      remaining tax credit capacity, qualified equity investments in  
25      proportionate percentages based on the ratio of the amount of

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1 qualified equity investment requested in an application to the  
2 total amount of qualified equity investments requested in all  
3 applications received on the same day. If a pending request  
4 cannot be certified fully because the annual cap has been met,  
5 the department shall certify the portion that may be certified  
6 unless the qualified community development entity elects to  
7 withdraw its request rather than receive partial credit.

8 Withdrawn applications may not be resubmitted. Any new or  
9 resubmitted application shall be submitted with the full five-  
10 thousand-dollar (\$5,000) application fee for the qualified  
11 community development entity to be considered for a tax credit.

12 H. Within sixty days of the receipt of an  
13 application that the department determines to be complete, the  
14 department shall grant the application in whole or deny the  
15 application in whole or in part. Subject to the limitations in  
16 this section, the department's rules and the new markets tax  
17 credits provisions in the Corporate Income and Franchise Tax  
18 Act and the New Mexico Insurance Code, the department shall  
19 certify the proposed equity investment or long-term debt  
20 security as a qualified equity investment. If the department  
21 denies any part of the application, it shall inform the  
22 qualified community development entity of the grounds for the  
23 denial. The qualified community development entity shall have  
24 fifteen days after the notice of denial to provide any  
25 additional information required by the department to its

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1 application. If the qualified community development entity  
2 provides the additional information requested within the  
3 fifteen-day period, the application shall be deemed to have  
4 been complete as of its original date of filing. If the  
5 qualified community development entity fails to complete its  
6 application within the fifteen-day period, the application  
7 shall remain denied and must be resubmitted. Any resubmitted  
8 application shall be submitted in full with a new submission  
9 date, subject to the aggregate cap on the amount of qualified  
10 equity investments that the department may certify as of the  
11 new submission date.

12 I. The department shall provide written notice of  
13 the certification to the qualified community development  
14 entity. The notice shall include the names of the purchasers  
15 listed on the application that are eligible to use the new  
16 markets tax credit and their respective tax credit amounts. If  
17 the name of a purchaser that is eligible to use a tax credit  
18 changes due to a transfer of a qualified equity investment or a  
19 change in the allocation provisions of a qualified community  
20 development entity's partnership or operating agreement, the  
21 qualified community development entity shall notify the  
22 department of the change.

23 J. Within ten days after receiving notice of  
24 certification, a qualified community development entity shall  
25 issue the qualified equity investment and shall receive cash in

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1 the amount of the certified purchase price. The qualified  
2 community development entity shall provide the department with  
3 evidence of the receipt of the cash investment within ten  
4 business days after receipt.

5 K. If the qualified community development entity  
6 does not receive the cash investment and issue the qualified  
7 equity investment within ten days following receipt of the  
8 certification notice, the certification shall lapse, the  
9 application shall be permanently rejected and the application  
10 fee shall be forfeited. A certification that lapses reverts to  
11 the department and may be reissued to other applicants.

12 L. A purchaser of a qualified equity investment  
13 that has been certified by the department under this section  
14 shall earn at the time of investment a vested state corporate  
15 income tax credit or state premium tax credit equal to  
16 thirty-nine percent of the purchase price of the qualified  
17 equity investment. Within thirty days of receiving evidence of  
18 a qualified community development entity's receipt of cash in  
19 the amount of the purchase price of the qualified equity  
20 investment, the department shall issue to the qualified  
21 community development entity certificates of eligibility as  
22 follows:

23 (1) for the calendar years that contain the  
24 first and second credit allowance dates of the qualified equity  
25 investment, no certificate shall be issued;

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1                   (2) for the calendar year that contains the  
2 third credit allowance date of the qualified equity investment,  
3 a certificate stating a state new markets tax credit in an  
4 amount equal to seven percent of the purchase price of the  
5 qualified equity investment shall be issued;

6                   (3) for the calendar year that contains the  
7 fourth credit allowance date of the qualified equity  
8 investment, a certificate stating a state new markets tax  
9 credit in an amount equal to eight percent of the purchase  
10 price of the qualified equity investment shall be issued;

11                   (4) for the calendar year that contains the  
12 fifth credit allowance date of the qualified equity investment,  
13 a certificate stating a state new markets tax credit in an  
14 amount equal to eight percent of the purchase price of the  
15 qualified equity investment shall be issued;

16                   (5) for the calendar year that contains the  
17 sixth credit allowance date of the qualified equity investment,  
18 a certificate stating a state new markets tax credit in an  
19 amount equal to eight percent of the purchase price of the  
20 qualified equity investment shall be issued; and

21                   (6) for the calendar year that contains the  
22 seventh credit allowance date of the qualified equity  
23 investment, a certificate stating a state new markets tax  
24 credit in an amount equal to eight percent of the purchase  
25 price of the qualified equity investment shall be issued.

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1 M. The state new markets corporate income tax  
2 credits, state new markets premium tax credits and certificates  
3 of eligibility may not be transferred or sold except  
4 in connection with the sale of the qualified equity investment  
5 with respect to which it was earned.

6 N. A qualified community development entity whose  
7 application is approved under this section shall pay to the  
8 department an annual evaluation fee of five thousand dollars  
9 (\$5,000) on each of the second through seventh anniversary  
10 dates of the initial credit allowance.

11 O. The department may decertify a qualified equity  
12 investment, recapture used state new markets tax credits and  
13 cause the forfeiture of unused state new markets tax credits  
14 and cancellation of certificates when:

15 (1) any amount of federal tax credit available  
16 with respect to qualified equity investments that are eligible  
17 for a tax credit under the Statewide Economic Development Act  
18 is recaptured under Section 45D of the Internal Revenue Code.  
19 The final notice of decertification shall include the amount of  
20 recapture of used tax credits, which under this paragraph shall  
21 be proportionate to the federal recapture with respect to the  
22 qualified equity investment, and state that unused tax credits  
23 are forfeited and certificates are canceled;

24 (2) the qualified community development entity  
25 redeems or makes a principal repayment with respect to

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1 qualified equity investments that generated the tax credit  
2 prior to the final credit allowance date of the qualified  
3 equity investment. The final notice of decertification shall  
4 include the amount of recapture of used tax credits, which  
5 under this paragraph shall be proportionate to the amount of  
6 the redemption or repayment with respect to the qualified  
7 equity investment, and state that unused tax credits are  
8 forfeited and certificates are canceled;

9 (3) the qualified community development entity  
10 fails to invest at least eighty-five percent of the cash  
11 purchase price of the qualified equity investment in qualified  
12 active low-income community businesses located in the state  
13 within twelve months of the issuance of the qualified equity  
14 investment and maintain the same level of investment in  
15 qualified low-income community investments located in the state  
16 until the last credit allowance date for the qualified equity  
17 investment. For purposes of calculating the amount of  
18 qualified low-income community investments held by a qualified  
19 community development entity, an investment shall be considered  
20 held by the entity even if the investment has been sold or  
21 repaid, provided that the qualified community development  
22 entity reinvests an amount equal to the capital returned to or  
23 recovered by the entity from the original investment, exclusive  
24 of any profits realized, in another qualified low-income  
25 community investment located in the state within twelve months

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1 of the receipt of the capital, in accordance with the federal  
2 regulations promulgated pursuant to Section 45D of the Internal  
3 Revenue Code. Any capital returned or repaid to a qualified  
4 community development entity with respect to qualified  
5 low-income community investments during the twelve months  
6 immediately preceding its final credit allowance date are not  
7 required to be reinvested and shall be deemed to be  
8 continuously invested through the final credit allowance date.  
9 The final notice of decertification shall include the amount of  
10 recapture of used tax credits, which under this paragraph shall  
11 be proportionate to the total amount of all tax credits  
12 originally earned by the purchasers of the qualified equity  
13 investment being decertified, and state that unused tax credits  
14 are forfeited and certificates are canceled; or

15 (4) the qualified community development entity  
16 or purchaser of the qualified equity investment fails to pay  
17 the annual evaluation fee to the department. The final notice  
18 of decertification shall include the amount of recapture of  
19 unused tax credits, which under this paragraph shall be  
20 calculated by the department under its rules, and state that  
21 unused tax credits are forfeited and certificates are canceled.

22 P. The department shall provide an initial notice  
23 of decertification to the qualified community development  
24 entity within two weeks of decertifying the qualified equity  
25 investment. The qualified community development entity shall

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1 have ninety days to cure any deficiency indicated in the  
2 department's initial notice of decertification. If the  
3 qualified community development entity fails to cure the  
4 deficiency within the ninety-day period, the department shall  
5 decertify the qualified equity investment and provide a final  
6 notice of decertification to the qualified community  
7 development entity, any known purchaser of the qualified equity  
8 investment that was eligible to claim the credit for the  
9 qualified equity investment, the taxation and revenue  
10 department and the insurance division of the public regulation  
11 commission within two weeks of decertifying the qualified  
12 equity investment. Any recapture of state new markets tax  
13 credits under this section shall be the liability of the  
14 purchaser that claimed the state new markets tax credits on the  
15 purchaser's state corporate income tax return or state premium  
16 tax filing.

17 Q. The qualified community development entity shall  
18 keep sufficiently detailed books and records with respect to  
19 the investments made with the proceeds of qualified equity  
20 investments to allow the direct tracing of proceeds into  
21 qualified low-income community investments in a qualified  
22 active low-income community businesses in the state.

23 R. By July 1, 2014 and each year thereafter, each  
24 qualified community development entity whose qualified equity  
25 investments were certified under this section and that have not

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1 achieved their final credit allowance dates shall:

2 (1) report to the department information about  
3 each qualified active low-income community business, including  
4 a detailed description of:

5 (a) the type of businesses that received  
6 the qualified equity investment;

7 (b) the location of businesses that  
8 received the qualified equity investment;

9 (c) the physical infrastructure that was  
10 created or preserved;

11 (d) the number of new jobs created;

12 (e) the number of New Mexico residents  
13 employed by the qualified active low-income community business  
14 and the aggregate wages paid to them;

15 (f) the number of nonresidents employed  
16 by the qualified active low-income community business and the  
17 aggregate wages paid to them; and

18 (g) any other information required by  
19 the department; and

20 (2) provide to the department financial  
21 statements and audit reports prepared by an independent  
22 auditor.

23 S. By October 1, 2014 and each year thereafter, the  
24 department shall:

25 (1) compile and assess direct tracking data

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1 and any other data that allow the department to assess  
2 objectively the effectiveness of the new markets tax credits;  
3 and

4 (2) with the support and assistance of the  
5 legislative finance committee staff, the taxation and revenue  
6 department and the insurance division of the public regulation  
7 commission, create an annual report that provides an objective  
8 assessment of the effectiveness of the new markets tax credits  
9 for annual presentation to the revenue stabilization and tax  
10 policy committee and any other appropriate legislative  
11 committees.

12 T. For purposes of assessing the effectiveness of  
13 the new markets tax credits, the inability of the department to  
14 aggregate data due to sample size shall not relieve the  
15 department of the requirement to report all relevant data to  
16 the legislature. The department shall provide notice to  
17 qualified community development entities applying for the new  
18 markets tax credits that information provided to the department  
19 might be revealed by the department in reports to the  
20 legislature.

21 U. The revenue stabilization and tax policy  
22 committee and other appropriate legislative committees shall  
23 review the new markets tax credits for their effectiveness in  
24 achieving the goals and meeting the purposes for which the  
25 credits were adopted. The review shall be completed by October

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1 1 of each calendar year.

2 V. As used in this section:

3 (1) "certificate" means a certificate of  
4 eligibility issued by the department stating the maximum amount  
5 of a tax credit vested in a certified qualified equity  
6 investment and the date and terms of use;

7 (2) "credit allowance date" means, with  
8 respect to any qualified equity investment:

9 (a) the date on which the qualified  
10 equity investment is initially made; and

11 (b) each of the six anniversary dates  
12 thereafter;

13 (3) "direct tracing" means the tracking, by  
14 accepted accounting methods, of the proceeds of qualified  
15 equity investments into qualified low-income community  
16 investments;

17 (4) "long-term debt security" means any debt  
18 instrument issued by a qualified community development entity,  
19 at par value or at a premium, with an original maturity date of  
20 at least seven years from the date of its issuance, with no  
21 acceleration of repayment, amortization or prepayment features  
22 prior to its original maturity date. The qualified community  
23 development entity that issues the debt instrument shall not  
24 make cash interest payments on the debt instrument during the  
25 period beginning on the date of issuance and ending on the

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1 final credit allowance date in an amount that exceeds the  
2 cumulative operating income, as defined by regulations adopted  
3 under Section 45D of the Internal Revenue Code of the qualified  
4 community development entity for that period prior to giving  
5 effect to the expense of such cash interest payments. The  
6 foregoing shall in no way limit the holder's ability to  
7 accelerate payments on the debt instrument in situations where  
8 the issuer has defaulted on covenants designed to ensure  
9 compliance with this section or Section 45D of the Internal  
10 Revenue Code;

11 (5) "low-income community" has the same  
12 meaning given to that same term in Section 45D of the Internal  
13 Revenue Code;

14 (6) "new markets tax credit" means a state new  
15 markets corporate income tax credit or a state new markets  
16 premium tax credit;

17 (7) "purchase price" means the amount of cash  
18 paid to the issuer of a qualified equity investment for the  
19 qualified equity investment;

20 (8) "purchaser" means an original purchaser of  
21 the qualified equity investment or a subsequent purchaser of  
22 the qualified equity investment;

23 (9) "qualified active low-income community  
24 business" has the same meaning given to that same term in  
25 Section 45D of the Internal Revenue Code, except that any

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1 business that derives or projects to derive fifteen percent or  
2 more of its annual revenue from the rental or sale of real  
3 estate shall not be considered a "qualified active low-income  
4 community business". This exclusion does not apply to a  
5 business that is controlled by, or under common control with,  
6 another business if the second business does not derive or  
7 project to derive fifteen percent or more of its annual revenue  
8 from the rental or sale of real estate and is the primary  
9 tenant of the real estate leased from the first business. A  
10 business shall be considered a "qualified active low-income  
11 community business" for the duration of the qualified community  
12 development entity's investment in, or loan to, the business if  
13 the entity reasonably expects, at the time it makes the  
14 investment or loan, that the business will continue to satisfy  
15 the requirements for being a qualified active low-income  
16 community business throughout the entire period of the  
17 investment or loan;

18 (10) "qualified community development entity"  
19 has the same meaning given to that same term in Section 45D of  
20 the Internal Revenue Code; provided that the qualified  
21 community development entity has entered into an allocation  
22 agreement with the community development financial institutions  
23 fund of the United States department of treasury, with respect  
24 to credits authorized by Section 45D of the Internal Revenue  
25 Code, that includes the state within the service area set forth

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1 in the allocation agreement. "Qualified community development  
2 entity" also includes a subordinate community development  
3 entity that also is a qualified community development entity  
4 under Section 45D of the Internal Revenue Code and is  
5 controlled by or under common control with the qualified  
6 community development entity that applied for the state new  
7 markets tax credits;

8 (11) "qualified equity investment" means any  
9 equity investment in, or long-term debt security issued by, a  
10 qualified community development entity that:

11 (a) is acquired after the effective date  
12 of this section, at its original issuance, solely in exchange  
13 for cash, or that was constituted a qualified equity investment  
14 in the hands of a prior holder;

15 (b) has at least eighty-five percent of  
16 its cash purchase price used by the qualified community  
17 development entity to make qualified low-income community  
18 investments in qualified active low-income community businesses  
19 located in the state; and

20 (c) is designated by the department as a  
21 qualified equity investment under this section and is certified  
22 by the department as not exceeding the limitations on the  
23 aggregate amounts of qualified equity investments that may be  
24 certified pursuant to this section, the Corporate Income and  
25 Franchise Tax Act and the New Mexico Insurance Code;

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1 (12) "qualified low-income community  
2 investment" means any capital or equity investment in, or loan  
3 to, any qualified active low-income community business by the  
4 qualified community development entity; and

5 (13) "tax credit" means a credit against the  
6 tax liability otherwise due under state law."

7 SECTION 2. A new section of the Corporate Income and  
8 Franchise Tax Act is enacted to read:

9 "[NEW MATERIAL] CORPORATE INCOME TAX CREDIT--QUALIFIED  
10 EQUITY INVESTMENT.--

11 A. A purchaser of a qualified equity investment  
12 certified under the Statewide Economic Development Finance Act  
13 may claim, and the department may allow, a tax credit against  
14 the purchaser's corporate income tax liability in accordance  
15 with the terms of a certificate of eligibility issued by the  
16 economic development department subject to the limitations in  
17 this section and the Statewide Economic Development Finance  
18 Act. The tax credit that may be claimed pursuant to this  
19 section may be referred to as the "state new markets corporate  
20 income tax credit".

21 B. The purposes of the state new markets corporate  
22 income tax credit are to:

23 (1) promote long-term job creation and  
24 investment in new, viable businesses; and

25 (2) fulfill the immediate and long-term goals

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1 adopted by the economic development department in its rules.

2 C. From July 1, 2012 through June 30, 2019:

3 (1) the maximum amount of qualified equity  
4 investments that may be certified and upon which both the  
5 thirty-nine-percent state new markets corporate income tax  
6 credits and thirty-nine-percent state new markets premium tax  
7 credits may be calculated shall be two hundred million dollars  
8 (\$200,000,000);

9 (2) the maximum amount of state new markets  
10 corporate income tax credits and state new markets premium tax  
11 credits that may be issued in certificates of eligibility and  
12 claimed by purchasers shall be seventy-eight million dollars  
13 (\$78,000,000);

14 (3) for any one calendar year, no more than  
15 sixteen million dollars (\$16,000,000) of aggregate state new  
16 markets corporate income tax credits and state new markets  
17 premium tax credits may be claimed or allowed; and

18 (4) the maximum amount of a qualified  
19 low-income community investment in any one qualified active  
20 low-income community business, on a collective basis with all  
21 of the affiliates of that qualified active low-income community  
22 business, that may be counted toward the certification of a  
23 qualified equity investment, whether issued to one or several  
24 qualified community development entities, shall be ten million  
25 dollars (\$10,000,000).

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1           D. For any taxable year, the amount of the tax  
2 credit claimed by a purchaser shall not exceed the amount of  
3 the taxpayer's corporate income tax liability for that year.

4           E. A purchaser claiming a state new markets  
5 corporate income tax credit shall not claim any other state tax  
6 credit, deduction or exemption for the same qualified equity  
7 investment that the purchaser used to qualify for the state new  
8 markets corporate income tax credit.

9           F. If the purchaser of a qualified equity  
10 investment is a corporation, partnership or limited liability  
11 company, any credits earned by the purchaser may be allocated  
12 to the partners, members or shareholders of the purchaser for  
13 their direct use in accordance with a written agreement between  
14 the partners, members or shareholders. For purposes of this  
15 section, such an allocation shall not be considered a sale or  
16 transfer of the credits.

17           G. To claim the state new markets corporate income  
18 tax credit, a purchaser shall attach to its tax return a  
19 certificate of eligibility issued by the economic development  
20 department to be applied against the purchaser's corporate  
21 income tax liability pursuant to the terms stated on the  
22 certificate.

23           H. The department shall coordinate with the  
24 insurance division of the public regulation commission and the  
25 economic development department to maintain a record of the

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1 cumulative amount of claims for the state new markets corporate  
2 income tax credits and state new markets premium tax credits  
3 that have been issued.

4 I. If the amount of the state new markets corporate  
5 income tax credit stated on a certificate of eligibility as  
6 eligible for use in a particular taxable year exceeds the  
7 taxpayer's corporate income tax liability for the taxable year,  
8 the excess credit may be carried forward for use in any of the  
9 next five taxable years. The latest date of the carryforward  
10 is twelve years after the first credit allowance date on which  
11 the initial qualified equity investment was made.

12 J. The state new markets corporate income tax  
13 credit and the certificate of eligibility shall not be sold,  
14 exchanged or otherwise transferred to another purchaser. The  
15 credit is not refundable.

16 K. When the economic development department  
17 provides to the taxation and revenue department a notice of  
18 decertification of the qualified equity investment, the  
19 taxation and revenue department shall recapture from purchasers  
20 that claimed the state new markets corporate income tax credit  
21 any used tax credits in the amounts stated on the notice of  
22 decertification and cause the forfeiture of any unused tax  
23 credits and cancellation of certificates. A recapture shall  
24 create a first priority lien on the assets and property of the  
25 purchaser in favor of the state and a recurring tax liability

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1 for the purchaser until the amount of all state new markets  
2 corporate income tax credits received by the purchaser are  
3 repaid.

4 L. Acceptance by a purchaser of a state new markets  
5 corporate income tax credit pursuant to this section is  
6 authorization by the purchaser for the department to reveal  
7 information to the legislature necessary to analyze the  
8 effectiveness of the state new markets corporate income tax  
9 credit.

10 M. Notwithstanding any other section of law to the  
11 contrary, the department may disclose the number of purchasers  
12 allowed to receive the state new markets corporate income tax  
13 credit, the amount of each credit approved and any other  
14 information required by the legislature, the economic  
15 development department or the taxation and revenue department  
16 to aid in evaluating the effectiveness of the state new markets  
17 corporate income tax credit.

18 N. The revenue stabilization and tax policy  
19 committee and other appropriate legislative committees shall  
20 review the state new markets corporate income tax credit and  
21 the state new markets premium tax credit for their  
22 effectiveness in achieving the goals and achieving the purposes  
23 for which the credits were adopted. The review shall be  
24 completed by October 1 of the calendar year.

25 O. The department may receive a request from and

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1 may issue an advisory letter to a qualified community  
2 development entity regarding its certified qualified equity  
3 investment. The statements contained in an advisory letter  
4 shall not be relied upon by any person or entity other than the  
5 qualified community development entity that applied for the  
6 certification and the purchasers that are entitled to any tax  
7 credits generated from investment in the qualified equity  
8 investment.

9 P. As used in this section:

10 (1) "certificate" means a certificate of  
11 eligibility issued by the economic development department  
12 stating the maximum amount of a tax credit vested in a  
13 certified qualified equity investment and the terms of use;

14 (2) "credit allowance date" means, with  
15 respect to any qualified equity investment:

16 (a) the date on which the qualified  
17 equity investment is initially made; and

18 (b) each of the six anniversary dates  
19 thereafter;

20 (3) "purchaser" means an original purchaser of  
21 the qualified equity investment or a subsequent purchaser of  
22 the qualified equity investment;

23 (4) "qualified community development entity"  
24 has the same meaning given to that same term in Section 45D of  
25 the Internal Revenue Code; provided that the qualified

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1 community development entity has entered into an allocation  
2 agreement with the community development financial institutions  
3 fund of the United States department of treasury, with respect  
4 to credits authorized by Section 45D of the Internal Revenue  
5 Code, that includes the state within the service area set forth  
6 in the allocation agreement. "Qualified community development  
7 entity" includes a subordinate community development entity  
8 that also is a qualified community development entity under  
9 Section 45D of the Internal Revenue Code and is controlled by  
10 or under common control with the qualified community  
11 development entity that applied for the state new markets  
12 corporate income tax credit; and

13 (5) "qualified equity investment" means any  
14 equity investment in, or long-term debt security issued by, a  
15 qualified community development entity that:

16 (a) is acquired after the effective date  
17 of this section, at its original issuance, solely in exchange  
18 for cash, or that was constituted a qualified equity investment  
19 in the hands of a prior holder;

20 (b) has at least eighty-five percent of  
21 its cash purchase price used by the qualified community  
22 development entity to make qualified low-income community  
23 investments in qualified active low-income community businesses  
24 located in the state; and

25 (c) is designated by the economic

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1 development department as a qualified equity investment under  
2 the Statewide Economic Development Finance Act and is certified  
3 by the economic development department as not exceeding the  
4 limitations on the aggregate amounts of qualified equity  
5 investments that may be certified pursuant to this section, the  
6 New Mexico Insurance Code and the Statewide Economic  
7 Development Finance Act."

8 SECTION 3. A new section of the New Mexico Insurance Code  
9 is enacted to read:

10 "[NEW MATERIAL] PREMIUM TAX CREDIT--QUALIFIED EQUITY  
11 INVESTMENT.--

12 A. A purchaser of a qualified equity investment  
13 certified under the Statewide Economic Development Finance Act  
14 may claim, and the division may allow, a tax credit against the  
15 purchaser's premium tax liability in accordance with the terms  
16 of a certificate of eligibility issued by the economic  
17 development department, subject to the limitations in this  
18 section and the Statewide Economic Development Finance Act.  
19 The tax credit that may be claimed pursuant to this section may  
20 be referred to as the "state new markets premium tax credit".

21 B. The purposes of the state new markets premium  
22 tax credit are to:

23 (1) promote long-term job creation and  
24 investment in new, viable businesses; and

25 (2) fulfill the immediate and long-term goals

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1 adopted by the economic development department in its rules.

2 C. From July 1, 2012 through June 30, 2019:

3 (1) the maximum amount of qualified equity  
4 investments that may be certified and upon which both the  
5 thirty-nine-percent state new markets premium tax credits and  
6 thirty-nine-percent state new markets corporate income tax  
7 credits may be calculated shall be two hundred million dollars  
8 (\$200,000,000);

9 (2) the maximum amount of state new markets  
10 premium tax credits and state new markets corporate income tax  
11 credits that may be issued in certificates of eligibility and  
12 claimed by purchasers shall be seventy-eight million dollars  
13 (\$78,000,000);

14 (3) for any one calendar year, no more than  
15 sixteen million dollars (\$16,000,000) of aggregate state new  
16 markets premium tax credits and state new markets corporate  
17 income tax credits may be claimed or allowed; and

18 (4) the maximum amount of a qualified  
19 low-income community investment in any one qualified active  
20 low-income community business, on a collective basis with all  
21 of the affiliates of that qualified active low-income community  
22 business, that may be counted toward the certification of a  
23 qualified equity investment, whether issued to one or several  
24 qualified community development entities, shall be ten million  
25 dollars (\$10,000,000).

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1           D. For any calendar year, the amount of the tax  
2 credit claimed by a purchaser shall not exceed the amount of  
3 the purchaser's state premium tax liability for that year.

4           E. A purchaser claiming a state new markets premium  
5 tax credit shall not claim any other state tax credit,  
6 deduction or exemption for the same qualified equity investment  
7 that the purchaser used to qualify for the state new markets  
8 premium tax credit.

9           F. If a purchaser of a qualified equity investment  
10 is a corporation, partnership or limited liability company, any  
11 credits earned by the purchaser may be allocated to the  
12 partners, members or shareholders of the purchaser for their  
13 direct use in accordance with a written agreement between the  
14 partners, members or shareholders. For purposes of this  
15 section, such an allocation shall not be considered a sale or  
16 transfer of the credits.

17           G. To claim the state new markets premium tax  
18 credit, a purchaser shall attach to its premium tax filings a  
19 certificate of eligibility issued by the economic development  
20 department to be applied against the purchaser's premium tax  
21 liability pursuant to the terms stated on the certificate.

22           H. The division shall coordinate with the taxation  
23 and revenue department and the economic development department  
24 to maintain a record of the cumulative amount of claims for the  
25 state new markets premium tax credits and state new markets

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1 corporate income tax credits that have been issued.

2 I. If the amount of the state new markets premium  
3 tax credit stated on a certificate of eligibility as eligible  
4 for use in a particular calendar year exceeds the taxpayer's  
5 premium tax liability for the calendar year, the excess credit  
6 may be carried forward for use in any of the next five calendar  
7 years from the date of maturity of each certificate. The  
8 latest date of the carryforward is twelve years after the first  
9 credit allowance date on which the initial qualified equity  
10 investment was made.

11 J. The state new markets premium tax credit and the  
12 certificate of eligibility shall not be sold, exchanged or  
13 otherwise transferred to another purchaser. The credit is not  
14 refundable.

15 K. When the economic development department  
16 provides to the division a notice of decertification of the  
17 qualified equity investment, the division shall recapture from  
18 purchasers that claimed the state new markets premium tax  
19 credit any used tax credits in the amounts stated on the notice  
20 of decertification and cause the forfeiture of any unused tax  
21 credits and cancellation of certificates. A recapture shall  
22 create a first priority lien on the assets and property of the  
23 purchaser in favor of the state and a recurring tax liability  
24 for the purchaser until the amount of all state new markets  
25 premium tax credits received by the purchaser are repaid.

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1           L. Acceptance by a purchaser of a state new markets  
2 premium tax credit pursuant to this section is authorization by  
3 the purchaser for the division to reveal information to the  
4 legislature necessary to analyze the effectiveness of the state  
5 new markets premium tax credit.

6           M. Notwithstanding any other section of law to the  
7 contrary, the division may disclose the number of purchasers  
8 allowed to receive the state new markets premium tax credit,  
9 the amount of each credit approved and any other information  
10 required by the legislature, the economic development  
11 department or the division to aid in evaluating the  
12 effectiveness of the state new markets premium tax credit.

13           N. The revenue stabilization and tax policy  
14 committee and any other appropriate legislative committees  
15 shall review the state new markets premium tax credit and state  
16 new markets corporate income tax credit for their effectiveness  
17 in achieving the goals and meeting the purposes for which the  
18 credits were adopted. The review shall be completed by October  
19 1 of the calendar year.

20           O. The division may receive a request from and may  
21 issue an advisory letter to a qualified community development  
22 entity regarding its certified qualified equity investment.  
23 The statements contained in an advisory letter shall not be  
24 relied upon by any person or entity other than the qualified  
25 community development entity that applied for the certification

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1 and the purchasers that are entitled to any tax credits  
2 generated from investment in the qualified equity investment.

3 P. As used in this section:

4 (1) "certificate" means a certificate of  
5 eligibility issued by the economic development department  
6 stating the maximum amount of a tax credit vested in a  
7 certified qualified equity investment and the terms of use;

8 (2) "credit allowance date" means, with  
9 respect to any qualified equity investment:

10 (a) the date on which the qualified  
11 equity investment is initially made; and

12 (b) each of the six anniversary dates  
13 thereafter;

14 (3) "purchaser" means an original purchaser of  
15 the qualified equity investment or a subsequent purchaser of  
16 the qualified equity investment;

17 (4) "qualified community development entity"  
18 has the same meaning given to that same term in Section 45D of  
19 the Internal Revenue Code of 1986; provided that the qualified  
20 community development entity has entered into an allocation  
21 agreement with the community development financial institutions  
22 fund of the United States department of treasury, with respect  
23 to credits authorized by Section 45D of the Internal Revenue  
24 Code of 1986 that includes the state within the service area  
25 set forth in the allocation agreement. "Qualified community

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1 development entity" includes a subordinate community  
2 development entity that also is a qualified community  
3 development entity under Section 45D of the Internal Revenue  
4 Code of 1986 and is controlled by or under common control with  
5 the qualified community development entity that applied for the  
6 state new markets premium tax credit; and

7 (5) "qualified equity investment" means any  
8 equity investment in, or long-term debt security issued by, a  
9 qualified community development entity that:

10 (a) is acquired after the effective date  
11 of this 2012 act, at its original issuance, solely in exchange  
12 for cash, or that was constituted a qualified equity investment  
13 in the hands of a prior holder;

14 (b) has at least eighty-five percent of  
15 its cash purchase price used by the qualified community  
16 development entity to make qualified low-income community  
17 investments in qualified active low-income community businesses  
18 located in the state; and

19 (c) is designated by the New Mexico  
20 finance authority as a qualified equity investment under the  
21 Statewide Economic Development Finance Act and is certified by  
22 the New Mexico finance authority as not exceeding the  
23 limitations on the aggregate amounts of qualified equity  
24 investments that may be certified pursuant to this section, the  
25 Corporate Income and Franchise Tax Act and the Statewide

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1 Economic Development Finance Act."

2 SECTION 4. DELAYED REPEAL.--The provisions of this act  
3 are repealed on July 1, 2019.

4 SECTION 5. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2012.

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