

ASSEMBLY BILL NO. 500—COMMITTEE ON WAYS AND MEANS

MAY 22, 2013

Referred to Committee on Ways and Means

SUMMARY—Enacts the Nevada New Markets Jobs Act.
(BDR 57-1229)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to economic development; enacting the Nevada New Markets Jobs Act which provides for tax credits for certain business entities; authorizing the Executive Director of the Office of Economic Development to adopt regulations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 2-38 of this bill enact the Nevada New Markets Jobs Act. Specifically, **section 19** allows certain business entities to receive a credit against the premium tax imposed on insurance companies in exchange for investing in a qualified community development entity.

Section 22 sets forth the application procedures, which include, without limitation, the payment of a nonrefundable \$5,000 application fee and the payment of a refundable performance fee, that a qualified community development entity must follow to have an equity investment or long-term debt security designated as a qualified equity investment and therefore eligible for tax credits. **Section 22** also sets forth certain requirements that the Office of Economic Development must follow when determining whether to approve or disapprove such an application. **Section 31** sets forth: (1) the manner for determining the performance fee that a qualified community development entity must include with an application made to the Office pursuant to **section 22**; and (2) the procedure for obtaining a refund of the performance fee.

Section 27 sets forth conditions under which the tax credits allowed pursuant to the provisions of this bill must be recaptured. **Section 30** provides that the recapture provisions of **section 27** are subject to a 6-month cure period. Specifically, **section 30** prohibits any recapture until the qualified community development entity has been given notice of noncompliance and afforded 6 months after the notice date to cure the noncompliance.



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Section 32 requires the Office of Economic Development to issue letter rulings regarding the tax credit program authorized by this bill and sets forth the procedures for issuing those letter rulings.

Section 34 sets forth the requirements for decertifying a qualified equity investment.

Section 38 authorizes the Executive Director of the Office of Economic Development to adopt regulations to carry out the provisions of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 57 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 38, inclusive, of this act.

Sec. 2. *The provisions of this chapter shall be known and may be cited as the Nevada New Markets Jobs Act.*

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 16, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Affiliate" has the meaning ascribed to it in NRS 78.412.*

Sec. 5. *"Applicable percentage" means 0 percent for the first two credit allowance dates, 12 percent for the next three credit allowance dates and 11 percent for the next two credit allowance dates.*

Sec. 6. *"Credit allowance date" means, with respect to any qualified equity investment:*

1. The date on which the investment is initially made; and

2. Each of the six anniversary dates immediately following the date on which the investment is initially made.

Sec. 7. *"Executive Director" means the Executive Director of the Office.*

Sec. 8. *"Issuer" means a qualified community development entity.*

Sec. 9. *"Liability for insurance premium tax" means any liability incurred by any entity under NRS 680A.330 or 680B.025 to 680B.039, inclusive, or, if the tax liability under NRS 680A.330 or 680B.025 to 680B.039, inclusive, is eliminated or reduced, any tax liability to the Department of Taxation that is imposed on an insurance company or other person who had that tax liability under the laws of this State before the elimination or reduction of that tax liability.*



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1 **Sec. 10.** *“Long-term debt security” means any debt*
2 *instrument which qualifies as such pursuant to section 36 of this*
3 *act.*

4 **Sec. 11.** *“Office” means the Office of Economic*
5 *Development created by NRS 231.043.*

6 **Sec. 12.** *“Purchase price” means the amount paid to the*
7 *issuer of a qualified equity investment for the qualified equity*
8 *investment.*

9 **Sec. 13.** *“Qualified active low-income community business”*
10 *has the meaning ascribed to it in section 45D of the Internal*
11 *Revenue Code of 1986, 26 U.S.C. § 45D and 26 C.F.R. § 1.45D-1,*
12 *but is limited to those businesses that:*

13 1. *Conduct a majority of their principal business operations*
14 *in this State and that meet the size eligibility standards of the*
15 *United States Small Business Administration, 13 C.F.R. §§*
16 *121.101 et seq., at the time the qualified low-income community*
17 *investment is made; and*

18 2. *Meet the requirements of section 17 of this act.*

19 **Sec. 14.** *“Qualified community development entity” means*
20 *an entity which qualifies as a qualified community development*
21 *entity pursuant to section 37 of this act. The term includes any*
22 *subsidiary qualified community development entities of such a*
23 *qualified community development entity.*

24 **Sec. 15.** 1. *“Qualified equity investment” means any equity*
25 *investment in, or long-term debt security issued by, a qualified*
26 *community development entity that:*

27 (a) *Except as otherwise provided in this section, is acquired*
28 *after October 1, 2013, in exchange for cash at the original*
29 *issuance of the equity investment;*

30 (b) *Has at least 85 percent of its cash purchase price of the*
31 *equity investment used by the issuer to make qualified low-income*
32 *community investments in qualified active low-income community*
33 *businesses located in this State by the first anniversary of the*
34 *initial credit allowance date; and*

35 (c) *Is designated by the issuer as a qualified equity investment*
36 *under this section and is certified by the Office as not exceeding*
37 *the limitation contained in subsection 5 of section 22 of this act.*

38 2. *The term includes an investment that does not meet the*
39 *requirements of subsection 1 if the investment was a qualified*
40 *equity investment in the possession or control of a prior holder.*

41 **Sec. 16.** *“Qualified low-income community investment”*
42 *means any capital or equity investment in, or loan to, any*
43 *qualified active low-income community business.*

44 **Sec. 17.** 1. *A business shall be considered a qualified active*
45 *low-income community business for the duration of the equity*



1 *investment of the qualified community development entity in, or*
2 *loan to, the business if the qualified community development entity*
3 *reasonably expects, at the time it makes the investment or loan,*
4 *that the business will continue to satisfy the requirements for*
5 *being a qualified active low-income community business, other*
6 *than the size standards of the United States Small Business*
7 *Administration, 13 C.F.R. §§ 121.101 et seq., throughout the*
8 *entire period of the investment or loan.*

9 2. *Except as otherwise provided in subsection 3, the following*
10 *businesses are not qualified active low-income community*
11 *businesses:*

12 (a) *A business that derives or projects to derive 15 percent or*
13 *more of its annual revenue from the rental or sale of real property.*

14 (b) *An entity that has liability for insurance premium tax on a*
15 *premium tax report filed pursuant to NRS 680B.030.*

16 (c) *A business engaged in banking or lending.*

17 (d) *A massage parlor.*

18 (e) *A bath house.*

19 (f) *A tanning salon.*

20 (g) *A country club.*

21 (h) *A business operating under a nonrestricted license for*
22 *gaming issued pursuant to NRS 463.170.*

23 (i) *A liquor store.*

24 (j) *A golf course.*

25 3. *The exclusion set forth in paragraph (a) of subsection 2*
26 *does not apply to a business that is controlled by, or under*
27 *common control with, another business if the second business:*

28 (a) *Does not derive or project to derive 15 percent or more of*
29 *its annual revenue from the rental or sale of real property; and*

30 (b) *Is the primary tenant of the real property leased from the*
31 *first business.*

32 4. *In addition to the limitations in section 13 of this act, a*
33 *qualified active low-income community business must be located*
34 *in a severely distressed census tract.*

35 5. *As used in this section, "severely distressed census tract"*
36 *means a census tract that, in the immediately preceding census*
37 *had:*

38 (a) *More than 30 percent of households with a household*
39 *income below the federally designated level signifying poverty;*

40 (b) *A median household income of less than 60 percent of the*
41 *state median household income; or*

42 (c) *An unemployment rate that was 150 percent of the national*
43 *average.*



1 **Sec. 18. 1. An entity which has liability for insurance**
2 **premium tax on a premium tax report filed pursuant to NRS**
3 **680B.030 or an affiliate of such an entity may not:**

4 **(a) Manage a qualified community development entity; or**

5 **(b) Control the direction of equity investments for a qualified**
6 **community development entity.**

7 **2. The provisions of subsection 1 apply to any entity described**
8 **in subsection 1 regardless of whether the entity or an affiliate of**
9 **the entity does business in this State.**

10 **3. This section does not preclude an entity described in**
11 **subsection 1 from exercising legal rights or remedies, including**
12 **the interim management of a qualified community development**
13 **entity, with respect to a qualified community development entity**
14 **that is in default of any statutory or contractual obligations to the**
15 **entity described in subsection 1.**

16 **4. This chapter does not limit the amount of nonvoting equity**
17 **interests in a qualified community development entity that an**
18 **entity described in subsection 1 may own.**

19 **Sec. 19. An entity that makes a qualified equity investment**
20 **earns a vested right to credit against the entity's liability for**
21 **insurance premium tax on a premium tax report filed pursuant to**
22 **NRS 680B.030 that may be used as follows:**

23 **1. On each credit allowance date of the qualified equity**
24 **investment, the entity, or the subsequent holder of the qualified**
25 **equity investment, is entitled to use a portion of the credit during**
26 **the taxable year that includes the credit allowance date.**

27 **2. The credit amount is equal to the applicable percentage for**
28 **the credit allowance date multiplied by the purchase price paid to**
29 **the issuer of the qualified equity investment.**

30 **3. Except as otherwise provided in subsection 4, the amount**
31 **of the credit claimed by an entity must not exceed the amount of**
32 **the entity's liability for insurance premium tax for the tax year for**
33 **which the credit is claimed.**

34 **4. If the insurance premium tax is eliminated or reduced**
35 **below the level that was in effect on the first credit allowance date,**
36 **the entity is entitled to a credit against any other taxes paid to the**
37 **Department of Taxation in an amount equal to the difference**
38 **between the amount the entity would have been able to claim**
39 **against its insurance premium tax liability had the tax not been**
40 **eliminated or reduced and the amount the entity was actually able**
41 **to claim, if any.**

42 **↪ Any amount of tax credit that the entity is prohibited from**
43 **claiming in a taxable year pursuant to subsection 3 or 4 may be**
44 **carried forward for use in any subsequent taxable year.**



1 **Sec. 20.** *No tax credit claimed under this chapter may be*
2 *refunded or sold on the open market. Tax credits earned by a*
3 *partnership, limited-liability company, S corporation or other*
4 *similar pass-through entity may be allocated to the partners,*
5 *members or shareholders of such an entity for their direct use in*
6 *accordance with the provisions of any agreement among such*
7 *partners, members or shareholders. Such an allocation is not*
8 *considered a sale for the purposes of this chapter.*

9 **Sec. 21.** *Any offering material involving the sale of the*
10 *securities of a qualified community development entity must*
11 *include the following statement:*

12
13 *By authorizing the formation of a qualified community*
14 *development entity, the State of Nevada does not endorse the*
15 *quality of management or the potential for earnings of the*
16 *qualified community development entity and is not liable for*
17 *damages or losses to any investor in the qualified*
18 *community development entity. Use of the words "certified"*
19 *or "qualified" in an offering does not constitute a*
20 *recommendation or endorsement of the investment by the*
21 *Executive Director of the Office of Economic Development.*

22 **Sec. 22. 1.** *A qualified community development entity that*
23 *seeks to have an equity investment or long-term debt security*
24 *designated as a qualified equity investment and be eligible for tax*
25 *credits under this chapter must apply to the Office for that*
26 *designation. An application submitted by a qualified community*
27 *development entity pursuant to this section must include:*

28 *(a) Evidence of the applicant's certification as a qualified*
29 *community development entity.*

30 *(b) If applicable, a copy of an allocation agreement as*
31 *specified in regulations adopted by the Executive Director*
32 *pursuant to section 38 of this act.*

33 *(c) A certificate executed by an executive officer of the*
34 *applicant as specified in regulations adopted by the Executive*
35 *Director pursuant to section 38 of this act.*

36 *(d) A description of the proposed amount, structure and any*
37 *purchasers of the qualified equity investment.*

38 *(e) If known at the time of application, identifying information*
39 *for any entity that will utilize the tax credits earned as a result of*
40 *the issuance of the qualified equity investment.*

41 *(f) A nonrefundable application fee of \$5,000. This fee must be*
42 *paid to the Office and is required of each application submitted.*

43 *(g) The refundable performance fee required by subsection 1*
44 *of section 31 of this act.*



2. Within 30 days after receipt of a completed application containing the information set forth in subsection 1, including the payment of the application fee and the refundable performance fee, the Office shall grant or deny the application in full or in part. If the Office denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Office or otherwise completes its application within 15 days after the date of the notice of denial, the application must be considered complete on the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application remains denied and must be resubmitted in full with a new date of submission.

3. If the application is complete, the Office shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this chapter, subject to the limitations contained in subsection 5. The Office shall provide written notice of the certification to the qualified community development entity. The notice must include the name or names of any qualified community development entities which earned the tax credits and their respective credit amounts. If the name of any qualified community development entity that is eligible to utilize the credits is changed as the result of a transfer of a qualified equity investment or an allocation pursuant to section 20 of this act, the qualified community development entity shall notify the Office of the change.

4. The Office shall certify qualified equity investments in the order in which applications are received by the Office. Applications received on the same day shall be deemed to have been received simultaneously. For applications that are complete and received on the same day, the Office shall certify, consistent with remaining qualified equity investment capacity, the qualified equity investments in proportionate percentages based upon the ratio that the amount of the qualified equity investment requested in an application bears to the total amount of qualified equity investments requested in all applications received on the same day.

5. The Office shall certify \$250,000,000 in qualified equity investments, and shall not certify any single qualified equity investment of more than \$50,000,000. If a pending request cannot be fully certified because of these limits, the Office shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.



6. *An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity, if the applicant provided the information required in the application with respect to such a transferee and the applicant notifies the Office of the transfer within 30 days after the transfer.*

7. *Within 30 days after an applicant receives notice of certification, the qualified community development entity or any transferee pursuant to subsection 6 shall issue the qualified equity investment and receive cash in the amount certified by the Office. The qualified community development entity or transferee under subsection 6 must provide the Office with evidence of the receipt of the cash investment and a prospective list of investments of the transferee within 10 business days after receipt of the cash investment. If the qualified community development entity or any transferee under subsection 6 does not receive the cash investment and issue the qualified equity investment within 30 days after receipt of the notice of certification, the certification lapses and the qualified community development entity may not issue the qualified equity investment without reapplying to the Office for certification. A lapsed certification reverts back to the Office and must be reissued, first, pro rata to other applicants whose qualified equity investments were partially certified pursuant to subsection 4 and, thereafter, in accordance with the requirements of this section.*

Sec. 23. *1. The Office shall not grant an application for certification of a proposed equity investment or long-term debt security as a qualified equity investment pursuant to section 22 of this act:*

(a) If the applicant does not:

(1) Have, at the time the application is submitted, an equity capitalization of at least \$350,000 in unencumbered cash or cash equivalents;

(2) At the time the application is submitted, employ at least two principals or persons who have at least 4 years of experience in the venture capital industry to manage the funds of the applicant; and

(3) Comply with all regulations adopted by the Executive Director pursuant to section 38 of this act;

(b) If the proposed equity investment or long-term debt security is conditioned in any way on the profitability of the investment portfolio of the applicant; or



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1 (c) If a member of the board of directors of the applicant is at
2 the time the application is submitted, a member of the board of
3 directors of another qualified community development entity.

4 2. For the purposes of paragraph (a) of subsection 1, all or
5 part of the unencumbered cash or cash equivalents of the
6 qualified community development entity may consist of contingent
7 guarantees of investment as defined in the regulations adopted by
8 the Executive Director pursuant to section 38 of this act.

9 Sec. 24. A qualified community development entity shall not
10 pay a fee of more than 2.5 percent of the total qualified equity
11 investment authority of the qualified community development
12 entity per year for the management of the qualified community
13 development entity.

14 Sec. 25. 1. A qualified community development entity shall
15 not grant an investment that materially benefits:

16 (a) A member of the board of directors of the qualified
17 community development entity; or

18 (b) Any person who is related within the second degree of
19 consanguinity or affinity to a member of the board of directors of
20 the qualified community development entity.

21 2. The Executive Director shall impose a fine of not more
22 than \$2,000, in addition to the recapture of tax credits pursuant to
23 section 27 of this act, on a qualified community development entity
24 for a violation of this section.

25 Sec. 26. 1. The Executive Director shall conduct an annual
26 review of each qualified community development entity that has
27 been granted an application for a qualified equity investment
28 pursuant to section 22 of this act to ensure that:

29 (a) The qualified community development entity remains in
30 compliance with the provisions of this chapter and any regulations
31 adopted pursuant thereto; and

32 (b) Any qualified equity investment certified pursuant to
33 section 22 of this act meets the eligibility criteria prescribed in this
34 chapter and any regulations adopted pursuant thereto.

35 2. On June 30 of each even-numbered year, the Executive
36 Director shall submit a report to the Director of the Legislative
37 Counsel Bureau for transmittal to the Legislature. The report
38 must include, for each qualified equity investment certified
39 pursuant to section 22 of this act:

40 (a) Information on the impact of the qualified equity
41 investment on the economy of this State, including, without
42 limitation, the number of jobs created by the qualified equity
43 investment; and

44 (b) Proof that the qualified community development entity
45 responsible for the qualified equity investment is in compliance



1 *with the provisions of this chapter and any regulations adopted*
2 *pursuant thereto.*

3 **Sec. 27.** *Except as otherwise provided in section 30 of this*
4 *act, the Office shall recapture, from the qualified community*
5 *development entity that claimed the tax credit on a return, the tax*
6 *credit allowed under this chapter if:*

7 *1. Any amount of a federal tax credit available with respect to*
8 *a qualified equity investment that is eligible for a tax credit under*
9 *this chapter is recaptured under section 45D of the Internal*
10 *Revenue Code of 1986, 26 U.S.C. § 45D. In such a case, the*
11 *Office's recapture of the tax credit must be proportionate to the*
12 *federal recapture with respect to the qualified equity investment.*

13 *2. The issuer redeems or makes principal repayment with*
14 *respect to a qualified equity investment before the seventh*
15 *anniversary of the issuance of the qualified equity investment. In*
16 *such a case, the Office's recapture of the tax credit must be*
17 *proportionate to the amount of the redemption or repayment with*
18 *respect to the qualified equity investment.*

19 *3. The issuer fails to invest an amount equal to 85 percent of*
20 *the purchase price of the qualified equity investment in qualified*
21 *low-income community investments in this State within 12 months*
22 *after the issuance of the qualified equity investment and maintain*
23 *at least an 85-percent level of investment in qualified low-income*
24 *community investments in this State until after the last credit*
25 *allowance date for the qualified equity investment. For the*
26 *purposes of this chapter, an investment shall be deemed held by an*
27 *issuer even if the investment has been sold or repaid if the issuer*
28 *reinvests an amount equal to the capital returned to or recovered*
29 *by the issuer from the original investment, exclusive of any profits*
30 *realized, in another qualified low-income community investment*
31 *within 12 months after the receipt of such capital. An issuer is not*
32 *required to reinvest capital returned from qualified low-income*
33 *community investments after the earlier of:*

34 *(a) The sixth anniversary of the issuance of the qualified*
35 *equity investment, the proceeds of which were used to make the*
36 *qualified low-income community investment; or*

37 *(b) The date by which a qualified community development*
38 *entity has made qualified low-income community investments with*
39 *the proceeds of the qualified equity investment on a cumulative*
40 *basis equal to at least 150 percent of those proceeds, in which case*
41 *the qualified low-income community investment must be*
42 *considered held by the issuer through the seventh anniversary of*
43 *the qualified equity investment's issuance.*

44 *4. At any time before the final credit allowance date of a*
45 *qualified equity investment, the issuer uses the cash proceeds of*



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1 *the qualified equity investment to make qualified low-income*
2 *community investments in any one qualified active low-income*
3 *community business, including affiliated qualified active low-*
4 *income community businesses, exclusive of reinvestments of*
5 *capital returned or repaid with respect to earlier investments in the*
6 *qualified active low-income community business and its affiliates,*
7 *in excess of 25 percent of the cash proceeds of all qualified equity*
8 *investments issued by the qualified community development entity*
9 *under subsection 7 of section 22 of this act.*

10 5. *The issuer fails to comply with section 21, 24 or 25 of this*
11 *act.*

12 **Sec. 28.** *A qualified community development entity may*
13 *agree to indemnify, or purchase insurance for the benefit of, an*
14 *investor for losses resulting from the recapture of tax credits*
15 *pursuant to section 27 of this act. This section does not modify the*
16 *obligations of a qualified community development entity pursuant*
17 *to subsection 3 of section 27 of this act.*

18 **Sec. 29.** *If, before the 90th day after the date on which a*
19 *qualified community development entity makes an investment in a*
20 *qualified active low-income community business, the qualified*
21 *active low-income community business moves the business's*
22 *principal business operations from this State, the investment may*
23 *not be considered a qualified low-income community investment*
24 *for the purposes of section 27 of this act.*

25 **Sec. 30.** *No recapture of tax credits may occur pursuant to*
26 *section 27 of this act unless the qualified community development*
27 *entity has been given written notice of noncompliance and fails to*
28 *cure the noncompliance within 6 months after the date of the*
29 *notice.*

30 **Sec. 31. 1.** *A qualified community development entity that*
31 *seeks to have an equity investment or long-term debt security*
32 *certified as a qualified equity investment and be eligible for tax*
33 *credits under this chapter must pay a fee to the office in the*
34 *amount of 0.5 percent of the amount of the equity investment or*
35 *long-term debt security requested to be certified as a qualified*
36 *equity investment. The fee must be deposited in the New Markets*
37 *Performance Guarantee Account, which is hereby created in the*
38 *State General Fund. The entity forfeits the fee in its entirety if:*

39 *(a) The qualified community development entity and any*
40 *subsidiary qualified community development entities fail to issue*
41 *the total amount of qualified equity investments certified by the*
42 *Office and receive cash in the total amount certified pursuant to*
43 *subsection 3 of section 22 of this act; or*

44 *(b) The qualified community development entity or any*
45 *subsidiary qualified community development entity that issues a*



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1 *qualified equity investment certified under this chapter fails to*
2 *meet the investment requirement specified in subsection 3 of*
3 *section 27 of this act by the second credit allowance date of the*
4 *qualified equity investment. Forfeiture of the fee under this*
5 *paragraph is subject to the limitations on recapture established*
6 *pursuant to section 30 of this act.*

7 2. *The fee required pursuant to subsection 1 must be paid to*
8 *the Office and held in the New Markets Performance Guarantee*
9 *Account until such time as compliance with the provisions of*
10 *subsection 1 has been established. The qualified community*
11 *development entity may request a refund of the fee from the Office*
12 *not sooner than 30 days after having met all the requirements of*
13 *subsection 1. The Office shall refund the fee within 30 days after*
14 *such a request.*

15 **Sec. 32.** 1. *The Office shall issue letter rulings regarding*
16 *the tax credit program authorized under this chapter, including*
17 *the categorization of a business for the purposes of this chapter,*
18 *subject to the terms and conditions set forth in this section.*

19 2. *The Office shall respond to a request for a letter ruling*
20 *within 60 days after receipt of the request. The applicant may*
21 *provide a draft letter ruling for the Office's consideration. The*
22 *applicant may withdraw the request for a letter ruling, in writing,*
23 *at any time before the issuance of the letter ruling. The Office may*
24 *refuse to issue a letter ruling for good cause, but must list the*
25 *specific reasons for refusing to issue the letter ruling. Good cause*
26 *includes, but is not limited to:*

27 (a) *The applicant requests the Office to determine whether a*
28 *statute is constitutional or a regulation is lawful;*

29 (b) *The request involves a hypothetical situation or alternative*
30 *plans;*

31 (c) *The facts or issues presented in the request are unclear,*
32 *overbroad, insufficient or otherwise inappropriate as a basis upon*
33 *which to issue a letter ruling; and*

34 (d) *The issue presented in the request is currently being*
35 *considered in a rulemaking procedure, contested case or other*
36 *agency or judicial proceeding that may definitively resolve the*
37 *issue.*

38 3. *A letter ruling binds the Office and the Office's agents and*
39 *their successors until such time as the qualified community*
40 *development entity or its shareholders, members or partners, as*
41 *applicable, claim all the covered tax credits on a tax return or*
42 *report, subject to the terms and conditions set forth in regulations*
43 *adopted by the Executive Director pursuant to section 38 of this*
44 *act. A letter ruling applies only to the applicant.*



1 4. In rendering letter rulings and making other
2 determinations under this chapter, to the extent applicable, the
3 Office and the Department of Taxation shall look for guidance in
4 section 45D of the Internal Revenue Code of 1986, 26 U.S.C. §
5 45D, and the rules and regulations issued pursuant thereto.

6 5. For the purposes of this section, "letter ruling" means a
7 written interpretation of law to a specific set of facts provided by
8 the applicant requesting the ruling.

9 Sec. 33. 1. A qualified community development entity
10 claiming a tax credit under this chapter is not required to pay any
11 additional retaliatory tax levied pursuant to NRS 680A.330 as a
12 result of claiming that tax credit.

13 2. In addition to the exclusion in subsection 1, a qualified
14 community development entity claiming a tax credit under this
15 chapter is not required to pay any other additional tax as a result
16 of claiming that tax credit.

17 Sec. 34. 1. Once certified under subsection 3 of section 22
18 of this act, a qualified equity investment may not be decertified
19 unless all the requirements of subsection 2 have been met. Until
20 all qualified equity investments issued by a qualified community
21 development entity are decertified under this section, the qualified
22 community development entity is not entitled to distribute to its
23 equity holders or make cash payments on long-term debt securities
24 that have been designated as qualified equity investments in an
25 amount that exceeds the sum of:

26 (a) The cumulative operating income, as defined by
27 regulations adopted under section 45D of the Internal Revenue
28 Code of 1986, 26 U.S.C. § 45D, earned by the qualified community
29 development entity since issuance of the qualified equity
30 investment, before giving effect to any expense from the payment
31 of interest on long-term debt securities designated as qualified
32 equity investments; and

33 (b) Fifty percent of the purchase price of the qualified equity
34 investments issued by the qualified community development entity.

35 2. To be decertified, a qualified equity investment must:

36 (a) Be beyond its seventh credit allowance date;

37 (b) Have been in compliance with section 27 of this act
38 through its seventh credit allowance date, including coming into
39 compliance during any cure period allowed pursuant to section 30
40 of this act; and

41 (c) Have had its proceeds invested in qualified active low-
42 income community investments such that the total qualified active
43 low-income community investments made, cumulatively and
44 including reinvestments, exceeds 150 percent of its qualified
45 equity investment.



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1 3. *A qualified community development entity that seeks to*
2 *have a qualified equity investment decertified pursuant to this*
3 *section must send notice to the Office of its request for*
4 *decertification along with evidence supporting the request. The*
5 *provisions of paragraph (b) of subsection 2 shall be deemed to be*
6 *satisfied if no recapture action has been commenced by the Office*
7 *before the seventh credit allowance date. The Office shall respond*
8 *to such a request within 30 days after receiving the request. Such*
9 *a request must not be unreasonably denied. If the request is denied*
10 *for any reason, the burden of proof is on the Office in any*
11 *administrative or legal proceeding.*

12 **Sec. 35.** *A qualified community development entity is not*
13 *entitled to pay to any affiliate of the qualified community*
14 *development entity any fees in connection with any activity under*
15 *this chapter before decertification pursuant to section 34 of this*
16 *act of all qualified equity investments issued by the qualified*
17 *community development entity. This section does not prohibit a*
18 *qualified community development entity from allocating or*
19 *distributing income earned by it to such affiliates or paying*
20 *reasonable interest on amounts lent to the qualified community*
21 *development entity by those affiliates.*

22 **Sec. 36.** *To qualify as long-term debt security, a debt*
23 *instrument must be issued by a qualified community development*
24 *entity, at par value or a premium, with an original maturity date of*
25 *at least 7 years after the date of its issuance, with no acceleration*
26 *of repayment, amortization or prepayment features before its*
27 *original maturity date. The qualified community development*
28 *entity that issues the debt instrument shall not make interest*
29 *payments in the form of cash on the debt instrument during the*
30 *period beginning on the date of issuance and ending on the final*
31 *credit allowance date in an amount that exceeds the cumulative*
32 *operating income, as defined by regulations adopted under section*
33 *45D of the Internal Revenue Code of 1986, 26 U.S.C. § 45D, of the*
34 *qualified community development entity for that period before*
35 *giving effect to the expense of those cash interest payments. This*
36 *section does not limit the ability of the holder of the debt*
37 *instrument to accelerate payments on the debt instrument in*
38 *situations in which the issuer has defaulted on covenants designed*
39 *to ensure compliance with this chapter or section 45D of the*
40 *Internal Revenue Code of 1986, 26 U.S.C. § 45D.*

41 **Sec. 37.** *To qualify as a qualified community development*
42 *entity, an entity must:*

43 1. *Be a qualified community development entity as defined in*
44 *section 45D of the Internal Revenue Code of 1986, 26 U.S.C. §*
45 *45D; and*



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1 2. *Have unencumbered cash or cash equivalents equal to or*
2 *greater than \$350,000. For the purposes of this subsection, all or*
3 *part of the unencumbered cash or cash equivalents of the entity*
4 *may consist of contingent guarantees of investment as defined in*
5 *regulations adopted by the Executive Director pursuant to section*
6 *38 of this act.*

7 **Sec. 38.** *The Executive Director shall adopt such regulations*
8 *as are necessary to carry out the provisions of this chapter.*

9 **Sec. 39.** This act applies only to a return or premium tax report
10 filed under title 57 of NRS originally due on or after October 1,
11 2013.

12 **Sec. 40.** This act becomes effective:

13 1. Upon passage and approval for the purpose of adopting
14 regulations and performing any other preparatory administrative
15 tasks that are necessary to carry out the provisions of this act; and

16 2. On October 1, 2013, for all other purposes.

