

ASSEMBLY BILL NO. 446—COMMITTEE ON TAXATION

MARCH 25, 2019

Referred to Committee on Taxation

SUMMARY—Revises the Nevada New Markets Jobs Act.
(BDR 18-1100)

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; revising the Nevada New Markets Jobs Act; revising provisions governing investments in, or loans to, qualified active low-income community businesses by certain qualified community development entities; revising provisions governing the recapture of tax credits issued in exchange for an investment in a qualified community development entity; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law enacts the Nevada New Markets Jobs Act. (Chapter 231A of NRS) Under existing law, certain business entities are entitled to receive a credit against the insurance premium tax imposed on insurance companies in exchange for making an investment in a qualified community development entity. (NRS 231A.200) A qualified community development entity in which such an investment is made is required to use 85 percent of the investment to make capital or equity investments in, or loans to, qualified active low-income community businesses, which are defined as businesses that satisfy certain criteria related to conducting business in a low-income community. (NRS 231A.110, 231A.130, 231A.140, 231A.250; 26 U.S.C. § 45D)

Existing regulations prohibit a qualified active low-income community business from accepting investments from more than one qualified community development entity unless the qualified active low-income community business first obtains the approval of the Department of Business and Industry. (NAC 231A.050) **Section 1** of this bill authorizes a qualified community development entity to make a capital or equity investment in, or a loan to, a qualified active low-income community business jointly with one or more other qualified community development entities. **Section 1** also authorizes a qualified community development entity to make a capital or equity investment in, or a loan to, a qualified active low-income community business using money attributable to investments made in the



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qualified community development entity for which the entity received tax credits under existing state or federal law.

Under existing law, for the purpose of determining whether a qualified community development entity is making a capital or equity investment in, or a loan to, a qualified active low-income community business, a business which is receiving certain abatements from taxation is not eligible to be considered a qualified active low-income community business. (NRS 231A.170) **Section 2** of this bill authorizes a business receiving such an abatement from taxation to be considered a qualified active low-income community business if the business waives the abatement and provides written notice of that waiver to the Office of Economic Development not later than the due date of the first payment of any tax that would be abated pursuant to the abatement from taxation.

Existing law requires the Department of Business and Industry to recapture a tax credit provided under the Act from the business entity claiming the tax credit under certain circumstances, including, without limitation, if the qualified community development entity in which the business entity invested: (1) fails to make capital or equity investments in, or loans to, qualified active low-income community businesses in an amount equal to at least 85 percent of the money received by the qualified community development entity from the business entity's investment; or (2) uses the cash proceeds of the investment to make a capital or equity investment in, or loan to, one qualified active low-income community business in an amount that exceeds 25 percent of those cash proceeds. (NRS 231A.250) Existing regulations define "cash proceeds" for the purposes of these provisions as the amount paid by the business entity to the qualified community development entity for the investment in the qualified community development entity. (NAC 231A.070) **Section 3** of this bill incorporates that definition into statute.

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

Section 1. Chapter 231A of NRS is hereby amended by adding thereto a new section to read:

1. A qualified community development entity may make a qualified low-income community investment jointly with one or more other qualified community development entities.

2. A qualified community development entity may make a qualified low-income community investment using money attributable to:

(a) The purchase price of a qualified equity investment;

(b) The amount paid to a qualified community development entity for a qualified equity investment, as defined in 26 U.S.C. § 45D(b), by an entity that receives a tax credit pursuant to 26 U.S.C. § 45D; or

(c) Any combination of the amounts described in paragraphs (a) and (b).

Sec. 2. NRS 231A.170 is hereby amended to read as follows:

231A.170 1. For the purpose of NRS 231A.110, a qualified active low-income community business is limited to those



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businesses meeting the Small Business Administration size eligibility standards established in 13 C.F.R. §§ 121.101 to 201, inclusive, at the time the qualified low-income community investment is made. A business must be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business, other than the Small Business Administration size standards, throughout the entire period of the investment or loan.

2. Except as otherwise provided in this subsection, the businesses limited by this section do not include any business that derives or projects to derive 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business:

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

(b) Is the primary tenant of the real estate leased from the first business.

3. ~~The~~ *Except as otherwise provided in subsection 4, the following businesses are not qualified active low-income community businesses:*

(a) A business that has received an abatement from taxation pursuant to NRS 274.310, 274.320, 274.330, 360.750, 360.753 or 360.754.

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

(c) A business engaged in banking or lending.

(d) A massage parlor.

(e) A bath house.

(f) A tanning salon.

(g) A country club.

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

(i) A liquor store.

(j) A golf course.

4. *A business that has received an abatement from taxation pursuant to NRS 274.310, 274.320, 274.330, 360.750, 360.753 or 360.754 is a qualified active low-income community business if the business elects to waive the abatement and provides written notice of the waiver of the abatement to the Office of Economic Development not later than the due date of the first payment of any tax which would be abated if the abatement became effective.*



If the business provides the written notice to the Office of Economic Development:

(a) Within the period required by this subsection:

(1) Any agreement entered into by the business and the Office of Economic Development pursuant to NRS 274.310, 274.320, 274.330, 360.750, 360.753 or 360.754 is void; and;

(2) The Office of Economic Development must forward a copy of the written notice to the Department and each governmental entity or official to whom a copy of the certificate of eligibility for the abatement was forwarded.

(b) After the period required by this subsection has expired, the Office of Economic Development must provide written notice to the Department and the business that the abatement has not been waived and the business is not a qualified active low-income community business.

Sec. 3. NRS 231A.250 is hereby amended to read as follows:

231A.250 Except as otherwise provided in NRS 231A.260, the Department shall recapture, from the entity that claimed the credit on a return, the tax credit allowed under this chapter if:

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

2. The issuer redeems or makes principal repayment with respect to a qualified equity investment before the seventh anniversary of the issuance of the qualified equity investment. In such a case, the Department's recapture must be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment.

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



capital returned from qualified low-income community investments after the earlier of:

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

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

4. At any time before the final credit allowance date of a qualified equity investment, the issuer uses the cash proceeds of the qualified equity investment to make qualified low-income community investments in any one qualified active low-income community business, including affiliated qualified active low-income community businesses, exclusive of reinvestments of capital returned or repaid with respect to earlier investments in the qualified active low-income community business and its affiliates, in excess of 25 percent of those cash proceeds.

➡ *As used in this section, "cash proceeds" or "proceeds" means the amount paid to the issuer of a qualified equity investment for the qualified equity investment.*

Sec. 4. This act becomes effective on July 1, 2019.

