

Assembly Bill No. 446–Committee on Taxation

CHAPTER.....

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; authorizing an additional amount of investments to be made in qualified community development entities in exchange for certain tax credits; 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, insurance companies are entitled to receive a credit against certain taxes 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) **Section 2.5** of this bill: (1) authorizes an additional amount of investments in qualified community development entities which may be made in exchange for a credit against certain taxes imposed on insurance companies; and (2) increases from \$5 million to \$8 million the maximum amount of the investment in a single qualified development entity for which tax credits may be received. **Section 2.3** of this bill prohibits these tax credits from being used for any tax due for a period beginning before July 1, 2021.

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 qualified community development entity for which the entity received tax credits under existing state and 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.

Section 2.7 of this bill requires a qualified community development entity that has made an investment in or a loan to a qualified active low-income community business to allow the business to apply to refinance the investment or loan if at least 4 years has passed since the investment or loan was made and the investment or loan has not previously been refinanced.

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.

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

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



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. 2.3. NRS 231A.200 is hereby amended to read as follows:

231A.200 An entity that makes a qualified equity investment earns a vested right to credit against the entity's liability for insurance premium tax on a premium tax report filed pursuant to NRS 680B.030 that may be used as follows:

1. ~~On~~ *Except as otherwise provided in this subsection, on each credit allowance date of the qualified equity investment, the entity, or the subsequent holder of the qualified equity investment, is entitled to use a portion of the credit during the taxable year that includes the credit allowance date. If an entity makes a qualified equity investment on or after July 1, 2019, the entity may not use any portion of the credit against the entity's liability for insurance premium tax for any period beginning before July 1, 2021.*

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

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

4. If the insurance premium tax is eliminated or reduced below the level that was in effect on the first credit allowance date, the entity is entitled to a credit against any other taxes paid to the Department of Taxation in an amount equal to the difference between the amount the entity would have been able to claim



against its insurance premium tax liability had the tax not been eliminated or reduced and the amount the entity was actually able to claim, if any.

➡ Any amount of tax credit that the entity is prohibited from claiming in a taxable year as a result of subsection 3 or 4 may be carried forward for use in any subsequent taxable year.

Sec. 2.5. NRS 231A.230 is hereby amended to read as follows:

231A.230 1. A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this chapter must apply to the Department for that designation. An application submitted by a qualified community development entity must include the following:

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

(b) A copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund of the United States Department of the Treasury which includes the State of Nevada in the service area set forth in the allocation agreement.

(c) A certificate executed by an executive officer of the applicant:

(1) Attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund; and

(2) Setting forth the cumulative amount of allocations awarded to the applicant by the Community Development Financial Institutions Fund.

(d) A description of the proposed amount, structure and purchaser of the qualified equity investment.

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

(f) Examples of the types of qualified active low-income businesses in which the applicant, its controlling entity or the affiliates of its controlling entity have invested under the federal New Markets Tax Credit Program. An applicant is not required to identify the qualified active low-income community businesses in which it will invest when submitting an application.

(g) A nonrefundable application fee of \$5,000. This fee must be paid to the Department and is required for each application submitted.



(h) The refundable performance fee required by subsection 1 of NRS 231A.270.

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 Department shall grant or deny the application in full or in part. If the Department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Department or otherwise completes its application within 15 days after the date of the notice of denial, the application must be considered complete as of 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 Department 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 Department shall provide written notice of the certification to the qualified community development entity. The notice must include the names of those entities who will earn the credits and their respective credit amounts. If the names of the entities that are eligible to use the credits change as the result of a transfer of a qualified equity investment or an allocation pursuant to NRS 231A.210, the qualified community development entity shall notify the Department of the change.

4. The Department shall certify qualified equity investments in the order applications are received by the Department. 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 Department shall certify, consistent with remaining qualified equity investment capacity, the qualified equity investments in proportionate percentages based upon the ratio that the amount of 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 Department:

(a) Shall certify \$200,000,000 in qualified equity investments ~~on or after July 1, 2019~~
before July 1, 2019, and \$200,000,000 in qualified equity investments on or after July 1, 2019;



(b) Shall not certify any single qualified equity investment of less than ~~[\$5,000,000;]~~ **\$8,000,000;** and

(c) Shall not certify more than a total of \$50,000,000 in qualified equity investments to any single applicant, including all affiliates and partners of the applicant which are qualified community development entities.

➔ If a pending request cannot be fully certified because of these limits, the Department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

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

7. Within 30 days after the 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 Department. The qualified community development entity or transferee under subsection 6 must provide the Department with evidence of the receipt of the cash investment within 10 business days after receipt. 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 entity may not issue the qualified equity investment without reapplying to the Department for certification. Lapsed certifications revert back to the Department and must be reissued, first, pro rata to other applicants whose qualified equity investment allocations were reduced pursuant to subsection 4 and, thereafter, in accordance with requirements for submitting the application.

Sec. 2.7. NRS 231A.240 is hereby amended to read as follows:

231A.240 1. A qualified community development entity which issues qualified equity investments under this chapter shall make qualified low-income community investments in businesses located in severely distressed census tracts, on a combined basis with all of its affiliated qualified community development entities that have issued qualified equity investments under this chapter, in



an amount equal to at least 30 percent of the purchase price of all qualified equity investments issued by such entities.

2. The Director may reduce the requirement in subsection 1 to 20 percent if the qualified community development entity uses its commercially reasonable best efforts to satisfy the requirements of subsection 1 and fails to do so within 9 months after its initial credit allowance date.

3. *A qualified community development entity which makes a qualified low-income community investment must allow the business in which the qualified low-income community investment is made to apply to refinance the qualified low-income investment if at least 4 years has passed since the qualified community development entity made the qualified low-income investment and the qualified low-income investment has not previously been refinanced.*

4. As used in this section, "severely distressed census tract" means a census tract that, in the immediately preceding census, had:

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

(b) A median household income of less than 60 percent of the median household income in this State; or

(c) A rate of unemployment that was equal to or greater than 150 percent of the national average.

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.

