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HOUSE DRH40147-MC-75 (03/04)

Short Title: Jump-start Businesses/New Markets Tax Credit. (Public)

Sponsors: Representative R. Moore.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NEW MARKETS JOBS ACT AND THE JUMP-START OUR
3 BUSINESS START-UPS ACT.

4 The General Assembly of North Carolina enacts:

5
6 **PART I. NEW MARKETS JOBS ACT OF 2015**

7 **SECTION 1.(a)** Chapter 105 of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 3L.

10 "North Carolina New Markets Jobs Act of 2015.

11 "**§ 105-129.100. Short title.**

12 The provisions of this Article shall be known and may be cited as the "North Carolina New
13 Markets Jobs Act of 2015."

14 "**§ 105-129.101. Definitions.**

15 The following definitions apply in this Article:

- 16 (1) Affiliate. – An entity that directly, or indirectly through one or more
17 intermediaries, controls, is controlled by, or is under common control with
18 the entity specified.
- 19 (2) Applicable percentage. – Zero percent (0%) for the first two reduction
20 allowance dates, twelve percent (12%) for the next three reduction
21 allowance dates, and eleven percent (11%) for the following two reduction
22 allowance dates.
- 23 (3) Below the line reduction of tax or "reduction." – A subtraction from the total
24 amount of State premium tax liability made after all additions and
25 deductions have been made to the gross premium amount and after the
26 appropriate rates of tax have been applied; for the purposes of constitutional,
27 statutory, and common law interpretation and enforcement, the reduction
28 shall be afforded the same property and contractual protections as a credit.
- 29 (4) Department. – The Department of Commerce.
- 30 (5) Long-term debt security. – Any debt instrument issued by a qualified
31 community development entity, at par value or a premium, with an original
32 maturity date of at least seven years from the date of its issuance, with no
33 acceleration of repayment, amortization, or prepayment features prior to its
34 original maturity date. The qualified community development entity that
35 issues the debt instrument may not make cash interest payments on the debt
36 instrument during the period beginning on the date of issuance and ending



1 on the final reduction allowance date in an amount that exceeds the
2 cumulative operating income, as defined by regulations adopted under
3 section 45D of the Internal Revenue Code of 1986, as amended, of the
4 qualified community development entity for that period prior to giving effect
5 to the interest expense of such long-term debt security. The foregoing shall
6 in no way limit the holder's ability to accelerate payments on the debt
7 instrument in situations where the qualified community development entity
8 has defaulted on covenants designed to ensure compliance with this section
9 or section 45D of the Internal Revenue Code of 1986, as amended.

10 (6) Purchase price. – The amount paid to the qualified community development
11 entity upon the issuance of a qualified equity investment.

12 (7) Qualified active low-income community business. – The meaning given
13 such term in section 45D of the Internal Revenue Code of 1986, as amended,
14 and 26 C.F.R. § 1.45D-1 but limited to those businesses meeting the SBA
15 size eligibility standards established in 13 C.F.R. § 121.101-201 at the time
16 the qualified low-income community investment is made. A business shall
17 be considered a qualified active low-income community business for the
18 duration of the qualified community development entity's investment in or
19 loan to the business if the entity reasonably expects, at the time it makes the
20 investment or loan, that the business will continue to satisfy the requirements
21 for being a qualified active low-income community business, other than the
22 SBA size standards, throughout the entire period of the investment or loan.
23 The term excludes any business that derives or projects to derive fifteen
24 percent (15%) or more of its annual revenue from the rental or sale of real
25 estate. This exclusion does not apply to a business that is controlled by or
26 under common control with another business if the second business (i) does
27 not derive or project to derive fifteen percent (15%) or more of its annual
28 revenue from the rental or sale of real estate and (ii) is the primary tenant of
29 the real estate leased from the first business.

30 (8) Qualified community development entity. – The meaning given such term in
31 section 45D of the Internal Revenue Code of 1986, as amended; provided
32 that such entity has entered into, for the current year or any prior year, an
33 allocation agreement with the Community Development Financial
34 Institutions Fund of the U.S. Treasury Department with respect to credits
35 authorized by section 45D of the Internal Revenue Code of 1986, as
36 amended, which includes the State of North Carolina within the service area
37 set forth in the allocation agreement. The term shall include qualified
38 community development entities that are controlled by or are under common
39 control with the qualified community development entity.

40 (9) Qualified equity investment. – Any equity investment in or long-term debt
41 security issued by a qualified community development entity that meets each
42 of the following requirements:

43 a. Is acquired after the effective date of this act at its original issuance
44 solely in exchange for cash.

45 b. Has at least eighty-five percent (85%) of its cash purchase price used
46 by the qualified community development entity to make qualified
47 low-income community investments in qualified active low-income
48 community businesses located in this State by the first anniversary of
49 the initial reduction allowance date.

50 c. Is designated by the qualified community development entity as a
51 qualified equity investment under this subdivision and is certified by

1 the Department as not exceeding the limitation contained in
2 G.S. 105-129.102(d)(5). This term shall include any qualified equity
3 investment that does not meet the provisions of sub-subdivision a. of
4 this subdivision if such investment was a qualified equity investment
5 in the hands of a prior holder.

6 (10) Qualified low-income community investment. – Any capital or equity
7 investment in or loan to any qualified active low-income community
8 business. With respect to any one qualified active low-income community
9 business, the maximum amount of qualified low-income community
10 investments made in such business, on a collective basis with all of the
11 businesses' affiliates, with the proceeds of qualified equity investments
12 certified under G.S. 105-129.102(d) that shall count toward satisfaction of
13 the requirements of sub-subdivision b. of G.S. 105-129.101(9) and
14 sub-subdivision c. of G.S. 105-129.102(e)(1) shall be seven million dollars
15 (\$7,000,000), exclusive of qualified low-income community investments
16 made with repaid or redeemed qualified low-income community investments
17 or interest or profits realized thereon.

18 (11) Reduction allowance date. – With respect to any qualified equity investment,
19 the date on which the investment is initially made and each of the six
20 anniversary dates thereafter.

21 (12) Rural census tracts. – Any census tract in which a qualified active
22 low-income community business is located that also is located in a county
23 designated as Tier 1 or Tier 2 by the North Carolina Department of
24 Commerce as of or after 2015.

25 (13) Secretary. – The Secretary of Commerce.

26 (14) State premium tax liability. – Any liability incurred by any entity under the
27 gross premiums tax or the retaliatory premium tax levied in Article 8B of
28 this Chapter, or, if the tax liability under the gross premiums tax or the
29 retaliatory premium tax levied in Article 8B of this Chapter is eliminated or
30 reduced, the term shall also mean any tax liability imposed on an insurance
31 company or other person that had premium tax liability under the laws of
32 this State.

33 **"§ 105-129.102. Reduction for qualified equity investment.**

34 (a) Reduction Established. – An entity that makes a qualified equity investment earns a
35 vested contractual right to a below-the-line reduction of tax applicable to the entity's State
36 premium tax liability on future premium tax reports filed under Article 8B of Chapter 105 of
37 the General Statutes. On or after each reduction allowance date of the qualified equity
38 investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a
39 portion of the tax reduction during the taxable year, including the reduction allowance date.
40 The tax reduction amount is equal to the applicable percentage for the reduction allowance date
41 multiplied by the purchase price paid to the qualified community development entity. The
42 amount of the tax reduction claimed in that taxable year by a taxpayer shall not exceed the
43 amount of such taxpayer's State tax liability for the tax year for which the tax reduction is
44 claimed. Any amount of tax reduction that the taxpayer is prohibited from claiming in a taxable
45 year as a result of this section may be carried forward for use in any subsequent taxable year.

46 (b) Transferability. – A tax reduction claimed pursuant to this Article is not refundable
47 or saleable on the open market. Tax reductions earned by or allocated to a partnership, limited
48 liability company, or S Corporation may be allocated to the partners, members, or shareholders
49 of such entity for their use in accordance with the provisions of any agreement among such
50 partners, members, or shareholders. These allocations are not considered a sale for purposes of

1 this section. The Department shall issue a certificate to each entity allocated a tax reduction
2 under this Article.

3 (c) Certification of Qualified Equity Investments. – A qualified community
4 development entity that seeks to have an equity investment or long-term debt security
5 designated as a qualified equity investment and eligible for tax reductions under this section
6 shall apply to the Department, which shall begin accepting applications on July 1, 2015. The
7 qualified community development entity must submit an application on a form that the
8 Department provides that includes each of the following:

9 (1) Evidence of the entity's certification as a qualified community development
10 entity, including evidence of the service area of the entity that includes this
11 State.

12 (2) A copy of an allocation agreement executed by the entity or its controlling
13 entity and the Community Development Financial Institutions Fund.

14 (3) A certificate executed by an executive officer of the entity attesting that the
15 allocation agreement remains in effect and has not been revoked or cancelled
16 by the Community Development Financial Institutions Fund.

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

19 (5) If known, identifying information for any taxpayer eligible to utilize tax
20 reductions earned as a result of the issuance of the qualified equity
21 investment.

22 (6) Examples of the types of qualified active low-income businesses in which
23 the applicant, its controlling entity, or affiliates of its controlling entity have
24 invested under the Federal New Markets Tax Credit Program. Applications
25 are not required to identify qualified active low-income community
26 businesses in which they will invest when submitting an application.

27 (7) A nonrefundable application fee of five thousand dollars (\$5,000).

28 (8) The refundable performance deposit required by G.S. 105-129.104.

29 (9) Whether the application is for the Rural Reserve under G.S. 105-129.109.

30 (d) (1) Within 30 days after receipt of a completed application containing the
31 information set forth in subsection (c) of this section, including the payment
32 of the application fee and the performance deposit, the Department shall
33 grant or deny the application in full or in part. If the Department denies any
34 part of the application, it shall inform the qualified community development
35 entity of the grounds for the denial. If the qualified community development
36 entity provides any additional information required by the Department or
37 otherwise completes its application within 15 days of the notice of denial,
38 the application shall be considered completed as of the original date of
39 submission. If the qualified community development entity fails to provide
40 the information or complete its application within the 15-day period, the
41 application is denied and must be resubmitted in full with a new submission
42 date.

43 (2) If the application is deemed complete, the Department shall certify the
44 proposed equity investment or long-term debt security as a qualified equity
45 investment that is eligible for a reduction under this section, subject to the
46 limitations contained in subdivision (5) of this subsection; provided that the
47 Department shall not certify qualified equity investments for any applicant,
48 on a combined basis with all of its affiliates, in excess of sixty million
49 dollars (\$60,000,000) unless such applicant has (i) already had qualified
50 equity investments certified under this section, (ii) satisfied the requirements
51 of subdivision (6) of this subsection with respect to such qualified equity

1 investments, and (iii) filed a new application after satisfying the
2 requirements of (i) and (ii) of this subdivision. The Department shall provide
3 written notice of the certification to the qualified community development
4 entity. The notice shall include the names of those taxpayers who are eligible
5 to utilize the reductions and their respective reduction amounts. If the names
6 of the taxpayers who are eligible to utilize the reductions change due to a
7 transfer of a qualified equity investment or a change in an allocation
8 pursuant to subsection (b) of this section, the qualified community
9 development entity shall notify the Department of such change.

10 (3) Once the Department has certified a qualified equity investment, the
11 qualified community development entity may suballocate all or any portion
12 of the amount of the certified qualified equity investment to one or more
13 qualified community development entities with the same controlling entity
14 as the applicant qualified community development entity, provided that the
15 applicant qualified community development entity files a notice of such
16 suballocation with the Department and the recipient of the suballocation
17 meets all the requirements of a qualified community development entity
18 under this section. The notice of suballocation shall include the information
19 required in the application for all suballocates.

20 (4) The Department shall certify qualified equity investments in the order
21 applications are received by the Department. Applications received on the
22 same day shall be deemed to have been received simultaneously. For
23 applications received on the same day and deemed complete, the Department
24 shall certify, consistent with remaining tax reduction capacity, qualified
25 equity investments in proportionate percentages based upon the ratio of the
26 amount of qualified equity investment requested in an application to the total
27 amount of qualified equity investments requested in all applications received
28 on the same day.

29 (5) The Department shall certify two hundred eight million three hundred
30 thirty-three thousand three hundred thirty-three dollars (\$208,333,333) in
31 qualified equity investment authority pursuant to two allocations, one for the
32 Rural Reserve and one for the Statewide Reserve, each as described in
33 G.S. 105-129.109(a). If a pending request cannot be fully certified due to
34 this limit, the Department shall certify the portion that may be certified
35 unless the qualified community development entity elects to withdraw its
36 request rather than receive partial certification.

37 (6) Within 45 days after receiving notice of certification, the qualified
38 community development entity or any transferee under this section shall
39 issue the qualified equity investment and receive cash in the amount of the
40 certified amount. The qualified community development entity or transferee
41 must provide the Department with evidence of the receipt of the cash
42 investment within 50 days of the applicant receiving notice of certification.
43 If the qualified community development entity or transferee does not receive
44 the cash investment and issue the qualified equity investment within 45 days
45 following receipt of the certification notice, the certification shall lapse and
46 the entity may not issue the qualified equity investment without reapplying
47 to the Department for certification. A certification that lapses reverts back to
48 the Department and shall be reissued pro rata to other applicants whose
49 qualified equity investment allocations were reduced under this section and
50 thereafter in accordance with the application process.

51 (e) Disallowance. –

- 1 (1) The Department may determine that reductions previously claimed or to be
2 claimed by a taxpayer under this Article should be disallowed. Notice that a
3 reduction shall be disallowed shall be transmitted in writing to the taxpayer
4 and the Department of Revenue. Disallowance may be determined if any of
5 the following occurs:
- 6 a. Any amount of the federal tax credit available with respect to a
7 qualified equity investment that is eligible for a tax reduction under
8 this section is recaptured under section 45D of the Internal Revenue
9 Code of 1986, as amended. In such case, the Department's
10 disallowance shall be proportionate to the federal recapture with
11 respect to such qualified equity investment.
- 12 b. The qualified community development entity redeems or makes
13 principal repayment with respect to a qualified equity investment
14 prior to the seventh anniversary of the issuance of such qualified
15 equity investment. In such case, the Department's disallowance shall
16 be proportionate to the amount of the redemption or repayment with
17 respect to such qualified equity investment.
- 18 c. The qualified community development entity fails to (i) invest at
19 least eighty-five percent (85%) of the purchase price of the qualified
20 equity investment in qualified low-income investments in the State
21 within 12 months of the issuance of the qualified equity investment
22 and (ii) maintain such level of investment in qualified low-income
23 community investments in the State until the last reduction allowance
24 date for the qualified equity investment. For qualified equity
25 investments made under the Rural Reserve, all qualified low-income
26 community investments required to meet the requirements of this
27 subsection must be made in qualified active low-income community
28 businesses located in rural census tracts within this State.
- 29 d. Any distribution or debt payment in violation of
30 G.S. 105-129.107(a).
- 31 e. Failure to comply with G.S. 105-129.108, 105-129.109, or
32 105-129.110.
- 33 (2) For purposes of this section, an investment shall be considered held by a
34 qualified community development entity even if the investment has been
35 sold or repaid if the qualified community development entity reinvests an
36 amount equal to the capital returned to or recovered by the qualified
37 community development entity from the original investment, exclusive of
38 any profits realized, in another qualified low-income community investment
39 within 12 months of the receipt of such capital. Periodic amounts received as
40 repayment of principal on a loan that is a qualified low-income community
41 investment shall be treated as continuously invested in a qualified
42 low-income community investment if the amounts are reinvested in one or
43 more qualified low-income community investments by the end of the
44 following calendar year. A qualified community development entity shall
45 not be required to reinvest capital returned from qualified low-income
46 community investments after the sixth anniversary of the issuance of the
47 qualified equity investment, and the qualified low-income community
48 investment shall be considered held by the qualified community
49 development entity through the seventh anniversary of the issuance of the
50 qualified equity investment.

1 (3) A recaptured reduction and the related qualified equity investment authority
2 under the Rural Reserve or the Statewide Reserve, as applicable, reverts
3 back to the Department and shall be reissued pro rata to other applicants
4 whose qualified equity investment allocations were reduced under this
5 section and thereafter in accordance with the application process.

6 **"§ 105-129.103. Notice of noncompliance.**

7 Enforcement of the disallowance under this Article shall not occur until the qualified
8 community development entity shall have been given notice of noncompliance and afforded six
9 months from the date of such notice to cure the noncompliance.

10 **"§ 105-129.104. Refundable performance deposit.**

11 (a) For each application submitted, a qualified community development entity that
12 seeks to have an equity investment or long-term debt security designated as a qualified equity
13 investment and eligible for a reduction under this Article shall make a performance deposit in
14 the amount of the greater of one-quarter of one percent (1/4 of 1%) of the amount of the equity
15 investment or long-term debt security requested to be designated as a qualified equity
16 investment or five hundred thousand dollars (\$500,000) to the Department for deposit in the
17 New Markets performance guarantee account, which is hereby established. The entity shall
18 forfeit the amount deposited if (i) the qualified community development entity together with
19 any qualified community development entities to which it has suballocated qualified equity
20 investment authority pursuant to G.S. 105-129.102(d), if any, fail to issue the total amount of
21 qualified equity investments certified by the Department and receive cash in the total amount
22 certified under G.S. 105-129.102 within 45 days after receiving notice of certification or (ii) the
23 qualified community development entity or any qualified community development entity that
24 issues suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d)
25 certified under this Article fails to invest at least eighty-five percent (85%) of the purchase
26 price of any qualified equity investment issued in qualified low-income community
27 investments within 12 months of the issuance of the qualified equity investment; provided that
28 forfeiture for the failure under clauses (i) and (ii) of this subsection is not subject to the cure
29 period established in G.S. 105-129.103.

30 (b) The performance deposit required under this section shall be paid to the Department
31 and held in the New Markets performance guarantee account without any portion being repaid
32 until such time as compliance with clause (ii) of subsection (a) of this section has been
33 established. The qualified community development entity may request a refund of the
34 performance deposit from the Department no sooner than 30 days after having met the
35 requirements of clause (ii) of subsection (a) of this section. The State Treasurer shall have 30
36 days to comply with the request or give notice of noncompliance.

37 **"§ 105-129.105. Letter rulings.**

38 (a) The Secretary shall issue letter rulings regarding the tax reduction program
39 authorized under this Article, subject to the terms and conditions set forth in this section. For
40 the purposes of this Article, the term "letter ruling" means a written interpretation of law to a
41 specific set of facts provided by the applicant requesting a letter ruling.

42 (b) The Secretary shall respond to a request for a letter ruling within 60 days of receipt
43 of such request. The applicant may provide a draft letter ruling for the Secretary's
44 consideration. The applicant may withdraw the request for a letter ruling in writing prior to the
45 issuance of the letter ruling. The Secretary may refuse to issue a letter ruling for good cause but
46 must list the specific reasons for refusing to issue the letter ruling. Good cause includes any of
47 the following:

48 (1) The applicant requests the director to determine whether a statute is
49 constitutional or a regulation is lawful.

50 (2) The request involves a hypothetical situation or alternative plan.

1 (3) The facts or issues presented in the request are unclear, overbroad,
2 insufficient, or otherwise inappropriate as a basis upon which to issue a letter
3 ruling.

4 (4) The issue is currently being considered in a rule-making procedure,
5 contested case, or other agency or judicial proceeding that may definitely
6 resolve the issue.

7 (c) Letter rulings shall bind the Secretary and the Secretary's agents and their successors
8 and all other State agencies until such time as the entity or its shareholders, members, or
9 partners, as applicable, claim all of the reductions on a North Carolina tax return or report,
10 subject to the terms and conditions set forth in properly published regulations. The letter ruling
11 shall apply only to the applicant.

12 (d) In rendering letter rulings and making other determinations under this Article, to the
13 extent applicable, the Department and the Department of Revenue shall look for guidance to
14 section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations
15 issued thereunder.

16 **"§ 105-129.106. Retaliatory tax.**

17 An entity claiming a reduction under this Article is not required to pay any additional
18 retaliatory tax levied under G.S. 105-228.8 as a result of claiming the reduction. It is the intent
19 of the General Assembly that an entity claiming a reduction under this Article is not required to
20 pay any additional tax that may arise as a result of claiming that reduction.

21 **"§ 105-129.107. Decertification.**

22 (a) Once certified under this Article, a qualified equity investment may not be
23 decertified unless all of the requirements of this section have been met. Until all qualified
24 equity investments issued by a qualified community development entity or any transferee
25 qualified community development entity under G.S. 105-129.102(d) are decertified under this
26 section, the qualified community development entity or any transferee qualified community
27 development entity under G.S. 105-129.102(d) shall not be entitled to distribute to its equity
28 holders or make cash payments on long-term debt securities that have been designated as
29 qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating
30 income, as defined by regulations adopted under section 45D of the Internal Revenue Code of
31 1986, as amended, earned by the qualified community development entity since issuance of the
32 qualified equity investment, prior to giving effect to any interest expense of long-term debt
33 securities designated as qualified equity investments and (ii) fifty percent (50%) of the
34 purchase price of the qualified equity investments issued by the qualified community
35 development entity.

36 (b) To be decertified, all of the following conditions must be met:

37 (1) The qualified equity investment is beyond its seventh reduction allowance
38 date.

39 (2) The qualified equity investment was in compliance with the requirements of
40 this Article through its seventh reduction allowance date, including any
41 cures.

42 (3) The qualified equity investment has its proceeds invested in qualified active
43 low-income community investments such that the total qualified active
44 low-income community investments made, cumulatively including
45 reinvestments, exceeds one hundred fifty percent (150%) of its qualified
46 equity investment. For purposes of making this calculation, qualified
47 low-income community investments to any one qualified active low-income
48 community business, on a collective basis with affiliates, in excess of seven
49 million dollars (\$7,000,000) are not included unless the investments are
50 made with capital returned or repaid from qualified low-income community
51 investments made by the qualified community development entity in other

1 qualified active low-income community businesses or interest earned on or
2 profits realized from any qualified low-income community investments.

3 (c) A qualified community development entity that seeks to have a qualified equity
4 investment decertified under this section shall send notice to the Department of its request for
5 decertification along with evidence supporting the request. The provisions of subdivision (2) of
6 subsection (b) of this section are met if no disallowance action has been commenced by the
7 Department as of the seventh reduction allowance date. A request under this section shall not
8 be unreasonably denied and shall be responded to within 30 days of receiving the request. If the
9 request is denied for any reason, the burden of proof shall be on the Department in any
10 administrative or legal proceeding that follows.

11 **"§ 105-129.108. Limitation on fees.**

12 No qualified community development entity shall be entitled to pay any affiliate of such
13 qualified community development entity any fees in connection with any activity under this
14 Article prior to decertification under G.S. 105-129.107 of all qualified equity investments
15 issued by the qualified community development entity. The foregoing shall not prohibit a
16 qualified community development entity from allocating or distributing income earned by it to
17 the affiliates or paying reasonable interest on amounts lent to the qualified community
18 development entity by such affiliates.

19 **"§ 105-129.109. Rural Investment Reserve.**

20 (a) Of the maximum total two hundred eight million three hundred thirty-three
21 thousand three hundred thirty-three dollars (\$208,333,333) of qualified equity investments
22 eligible for certification by the Department under G.S. 105-129.102, one hundred fifty-six
23 million two hundred fifty thousand dollars (\$156,250,000) of the total shall be reserved for
24 applications submitted for a portion of the New Markets Jobs Act of 2015 hereby designated
25 the "Rural Reserve." The fifty-two million eighty-three thousand three hundred thirty-three
26 dollars (\$52,083,333) not in the Rural Reserve shall be designated the "Statewide Reserve."

27 (b) A qualified community development entity may apply for both the Rural Reserve
28 and the Statewide Reserve, provided it does so in separate applications.

29 (c) All qualified low-income community investments made under the Rural Reserve of
30 qualified equity investment authority shall only be made in qualified active low-income
31 community businesses located in rural census tracts in the State, including those necessary to
32 meet the standards for decertification contained in G.S. 105-129.107.

33 (d) Qualified low-income community investments made under the Statewide Reserve of
34 qualified equity investment authority shall not be geographically restricted so long as the
35 qualified active low-income community business is located in the State.

36 **"§ 105-129.110. New capital requirement.**

37 No qualified active low-income community business that receives a qualified low-income
38 community investment from a qualified community development entity that issues qualified
39 equity investments under this Article, or any affiliates of such a qualified active low-income
40 community business, may directly or indirectly (i) own or have the right to acquire an
41 ownership interest in a qualified community development entity or member or affiliate of a
42 qualified community development entity, including, but not limited to, a holder of a qualified
43 equity investment issued by the qualified community development entity or (ii) loan to or
44 invest in a qualified community development entity or member or affiliate of a qualified
45 community development entity, including, but not limited to, a holder of a qualified equity
46 investment issued by a qualified community development entity, where the proceeds of such
47 loan or investment are directly or indirectly used to fund or refinance the purchase of a
48 qualified equity investment hereunder. For purposes of this section, a qualified community
49 development entity shall not be considered an affiliate of a qualified active low-income
50 community business solely as a result of its qualified low-income community investment in
51 such business.

"§ 105-129.111. Reporting.

(a) A qualified community development entity that issues qualified equity investments shall submit a report to the Department within the first five business days after the first anniversary of the initial reduction allowance that provides documentation as to the investment of eighty-five percent (85%) of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in the State. The report shall include the following:

- (1) A bank statement of the qualified community development entity evidencing each qualified low-income community investment.
- (2) Evidence that the business was a qualified active low-income community business at the time of the qualified low-income community investment.
- (3) Evidence that the qualified active low-income community business was located in a rural census tract at the time of the qualified low-income community investment, if applicable under the Rural Reserve.

(b) After the initial report under subsection (a) of this section, a qualified community development entity shall submit an annual report to the Department on or before April 1 of the calendar year during the compliance period. An annual report is not due before the first anniversary of the initial reduction allowance date. The annual report shall include the following:

- (1) The number of employment positions created and retained as a result of qualified low-income community investments.
- (2) The average annual salary of positions described in subdivision (1) of this subsection.
- (3) Certification from the qualified community development entity that the grounds for disallowance under G.S. 105-129.102(e) have not occurred."

SECTION 1.(b) This Part becomes effective July 1, 2015, and applies to qualified equity investments made on or after that date.

PART II. JUMP-START OUR BUSINESS START-UPS ACT

SECTION 2.(a) G.S. 78A-17 is amended by adding a new subdivision to read:

"(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in accordance with G.S. 78A-17.1."

SECTION 2.(b) Article 3 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"§ 78A-17.1. Invest NC exemption.

(a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is conducted in accordance with each of the following requirements:

- (1) The issuer of the security is a business entity formed under the laws of the State and registered with the Secretary of State.
- (2) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.
- (3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption does not exceed the cap provided in this subdivision.
 - a. One million dollars (\$1,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has not undergone and made available to each prospective investor and the Administrator the documentation resulting from a

- 1 financial audit with respect to its most recently completed fiscal year
2 and meeting generally accepted accounting principles.
- 3 b. Two million dollars (\$2,000,000), less the aggregate amount received
4 for all sales of securities by the issuer within the 12 months before
5 the first offer or sale made in reliance upon this exemption, if the
6 issuer has undergone and made available to each prospective investor
7 and the Administrator the documentation resulting from a financial
8 audit with respect to its most recently completed fiscal year and
9 meeting generally accepted accounting principles.
- 10 (4) The issuer has not accepted more than two thousand dollars (\$2,000) from
11 any single purchaser unless the purchaser is an accredited investor as defined
12 by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.
- 13 (5) Not less than 10 days prior to the commencement of an offering of securities
14 in reliance on this exemption or the use of any publicly available Web site in
15 connection with any such offering, the issuer shall file a notice with the
16 Administrator, in writing or in electronic form as specified by the
17 Administrator, containing the following:
- 18 a. A notice of claim of exemption from registration, specifying that the
19 issuer will be conducting an offering in reliance upon this exemption,
20 accompanied by the filing fee as specified in this section.
- 21 b. A copy of the disclosure statement to be provided to prospective
22 investors in connection with the offering containing the following:
- 23 1. A description of the company, its type of entity, the address
24 and telephone number of its principal office, its history, its
25 business plan, and the intended use of the offering proceeds,
26 including any amounts to be paid, as compensation or
27 otherwise, to any owner, executive officer, director,
28 managing member, or other person occupying a similar status
29 or performing similar functions on behalf of the issuer.
- 30 2. The identity of all persons owning more than ten percent
31 (10%) of the ownership interests of any class of securities of
32 the company.
- 33 3. The identity of the executive officers, directors, managing
34 members, and other persons occupying a similar status or
35 performing similar functions in the name of and on behalf of
36 the issuer, including their titles and their prior experience.
- 37 4. The terms and conditions of the securities being offered and
38 of any outstanding securities of the company, the minimum
39 and maximum amount of securities being offered, if any, and
40 either the percentage ownership of the company represented
41 by the offered securities or the valuation of the company
42 implied by the price of the offered securities.
- 43 5. The identity of any person who has been or will be retained
44 by the issuer to assist the issuer in conducting the offering
45 and sale of the securities, including any Web sites, but
46 excluding persons acting solely as accountants or attorneys
47 and employees whose primary job responsibilities involve the
48 operating business of the issuer rather than assisting the issuer
49 in raising capital, and for each person identified in response
50 to this paragraph, a description of the consideration being
51 paid to such person for such assistance.

- 1 6. A description of any litigation or legal proceedings involving
2 the company or its management.
- 3 7. The names and addresses, including URL, of any Web sites
4 that will be used in connection with the offering.
- 5 c. An escrow agreement with a bank or other depository institution
6 located within this State in which the investor funds will be
7 deposited, providing that all offering proceeds will be released to the
8 issuer only when the aggregate capital raised from all investors is
9 equal to or greater than the minimum target offering amount
10 specified in the business plan as necessary to implement the business
11 plan and that all investors may cancel their commitments to invest if
12 that target offering amount is not raised by the time stated in the
13 disclosure document.
- 14 (6) The issuer is not, either before or as a result of the offering, an investment
15 company, as defined in section 3 of the Investment Company Act of 1940,
16 15 U.S.C. § 8a-3, or an entity that would be an investment company but for
17 the exclusions provided in section 3(c) of the Act, or subject to the reporting
18 requirements of section 13 or 15(d) of the Securities Exchange Act of 1934,
19 15 U.S.C. § 78m and 78o(d).
- 20 (7) The issuer shall inform all prospective purchasers under this section that the
21 securities have not been registered under federal or State securities law and
22 that the securities are subject to limitations on resale. The issuer shall display
23 the following legend conspicuously on the cover page of the disclosure
24 document:
- 25 "IN MAKING AN INVESTMENT DECISION, INVESTORS MUST
26 RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND
27 THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND
28 RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN
29 RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES
30 COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE,
31 THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE
32 ACCURACY OR DETERMINED THE ADEQUACY OF THIS
33 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A
34 CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO
35 RESTRICTIONS ON TRANSFERABILITY AND RESALE AND
36 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS
37 PERMITTED BY SUBSECTION (e) OF SEC RULE 147, 17 C.F.R. §
38 230.147(e) AS PROMULGATED UNDER THE SECURITIES ACT OF
39 1933, AS AMENDED, AND THE APPLICABLE STATE
40 SECURITIES LAWS, PURSUANT TO REGISTRATION OR
41 EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE
42 THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL
43 RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF
44 TIME."
- 45 (8) The issuer shall require each purchaser to certify in writing "I understand
46 and acknowledge that:
- 47 a. I am investing in a high-risk, speculative business venture. I may lose
48 all of my investment, and I can afford the loss of my investment.
- 49 b. This offering has not been reviewed or approved by any state or
50 federal securities commission or other regulatory authority and that
51 no such person or authority has confirmed the accuracy or

- 1 determined the adequacy of any disclosure made to me relating to
2 this offering.
- 3 c. The securities I am acquiring in this offering are illiquid, that there is
4 no ready market for the sale of such securities, that it may be difficult
5 or impossible for me to sell or otherwise dispose of this investment,
6 and that, accordingly, I may be required to hold this investment
7 indefinitely.
- 8 d. I may be subject to tax on my share of the taxable income and losses
9 of the company, whether or not I have sold or otherwise disposed of
10 my investment or received any dividends or other distributions from
11 the company."
- 12 (9) If the offer and sale of securities is made through an Internet Web site, the
13 following requirements apply:
- 14 a. Prior to the offer of an investment opportunity to residents of this
15 State through a Web site, the issuer shall provide to the Web site and
16 to the Administrator evidence that the issuer is organized under
17 North Carolina law and that it is authorized to do business within the
18 State.
- 19 b. The issuer shall obtain from each purchaser of a security under this
20 section evidence that the purchaser is a resident of North Carolina
21 and, if applicable, an accredited investor.
- 22 c. The Web site operator shall register with the Administrator by filing
23 a statement that it is a business entity that is organized under North
24 Carolina law and that it is authorized to do business within the State
25 and that it is being utilized to offer and sell securities pursuant to this
26 exemption. As part of the registration, the Web site shall notify the
27 Administrator of its and the issuer's identity, location, and contact
28 information.
- 29 d. The issuer and the Web site must keep and maintain records of the
30 offers and sales of securities effected through the Web site and must
31 provide ready access to the records to the Administrator, upon
32 request. The Administrator may access, inspect, and review any Web
33 site and its records.
- 34 (10) All payments for purchase of securities must be directed to and held by the
35 bank or depository institution subject to the provisions of sub-subdivision c.
36 of subdivision (5) of subsection (a) of this section. The bank or depository
37 institution shall notify the Administrator of the receipt of payments for
38 securities and the identity and residence of the investors. The information
39 shall be confidential and considered trade secrets within the scope of
40 G.S. 132-1.2 while in the possession of the Administrator.
- 41 (11) No offers or sales of a security shall be made through an Internet Web site
42 unless the Web site is registered with the Administrator pursuant to
43 sub-subdivision c. of subdivision (9) of subsection (a) of this section. The
44 Web site shall not be subject to the registration provisions of G.S. 78A-36
45 provided that all of the following apply:
- 46 a. It does not offer investment advice or recommendations.
- 47 b. It does not solicit purchases, sales, or offers to buy the securities
48 offered or displayed on the Web site.
- 49 c. It does not compensate employees, agents, or other persons for the
50 solicitation or based on the sale of securities displayed or referenced
51 on the Web site.

1 d. It is not compensated based on the amount of securities sold, and it
2 does not hold, manage, possess, or otherwise handle investor funds
3 or securities.

4 e. It does not engage in such other activities as the Administrator, by
5 rule, determines appropriate.

6 (12) An executive officer, director, managing member, or person occupying a
7 similar status or performing similar functions in the name of and on behalf
8 of the issuer shall be exempt from the registration provisions of
9 G.S. 78A-36, provided that the person does not receive, directly or
10 indirectly, any commission or remuneration for offering and selling
11 securities of the issuer pursuant to this exemption.

12 (13) The issuer must provide a copy of the disclosure document provided to the
13 Administrator pursuant to sub-subdivision b. of subdivision (5) of subsection
14 (a) of this section to each prospective investor at the time the offer of
15 securities is made to the prospective investor. In addition to the information
16 described in sub-subdivision b. of subdivision (5) of subsection (a). of this
17 section, the disclosure document provided to the Administrator and to
18 prospective investors should include additional information material to the
19 offering, including, where appropriate, a discussion of significant factors that
20 make the offering speculative or risky. This discussion must be concise and
21 organized logically and should not present risks that could apply to any
22 issuer or any offering.

23 (b) Indexing. – The dollar limitations provided in subdivision (3) of subsection (a) of
24 this section shall be cumulatively adjusted every fifth year by the Administrator to reflect the
25 change in the Consumer Price Index for All Urban Consumers published by the Bureau of
26 Labor Statistics, setting each dollar limitation to the nearest fifty thousand dollars (\$50,000).

27 (c) Report. – An issuer of a security, the offer and sale of which is exempt under this
28 section, shall provide a quarterly report to the issuer's investors until no securities issued under
29 this section are outstanding. The report required by this subsection shall be free of charge. An
30 issuer may satisfy the reporting requirement of this subsection by making the information
31 available on an Internet Web site address if the information is made available within 45 days of
32 the end of each fiscal quarter and remains available until the succeeding quarterly report is
33 issued. An issuer shall file each such quarterly report with the Administrator and must provide
34 a written copy of the report to any investor upon request. The report must contain each of the
35 following:

36 (1) Compensation received by each director and executive officer, including
37 cash compensation earned since the previous report and on an annual basis
38 and any bonuses, stock options, other rights to receive securities of the issuer
39 or any affiliate of the issuer, or other compensation received.

40 (2) An analysis by management of the issuer of the business operations and
41 financial condition of the issuer.

42 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section
43 shall not be used in conjunction with any other exemption under this Chapter, except offers and
44 sales to controlling persons shall not count toward the limitation in subdivision (3) of
45 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or
46 individual occupying similar status or performing similar functions with respect to the issuer or
47 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes
48 of securities of the issuer.

49 (e) Disqualification. – The exemption allowed by this section shall not apply if an
50 issuer or person affiliated with the issuer or offering is subject to any disqualification contained
51 in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the

1 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply
2 if (i) upon a showing of good cause and without prejudice to any other action by the
3 Administrator, the Administrator determines that it is not necessary under the circumstances
4 that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into
5 whether any disqualification existed under this subsection but did not know, and in the exercise
6 of reasonable care could not have known, that a disqualification existed under this subsection.
7 The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer
8 and the other offering participants.

9 (f) Rules. – The Administrator may adopt rules to implement the provisions of this
10 section and to protect investors who purchase securities under this section.

11 (g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred
12 fifty dollars (\$150.00) for filing an exemption notice required by subsection (a) of this section.
13 The fees paid to the Administrator pursuant to this subsection shall be used to pay the costs
14 incurred in administering and enforcing this Chapter. The revenue derived from the fee shall be
15 credited to a nonreverting agency revenue account."

16 **SECTION 2.(c)** Notwithstanding any provision of Article 2A of Chapter 150B of
17 the General Statutes, within 12 months of the effective date of this act, the Secretary of State
18 shall adopt rules to implement the provisions of this act in accordance with the following
19 procedure:

- 20 (1) At least 15 business days prior to adopting a rule, submit the rule and a
21 notice of public hearing to the Codifier of Rules. The Codifier of Rules shall
22 publish the proposed rule and the notice of public hearing on the Internet
23 within five business days.
- 24 (2) At least 15 business days prior to adopting a rule, notify persons on the
25 mailing list maintained pursuant to G.S. 150B-21.2(d) and any other
26 interested parties of the Secretary's intent to adopt a rule and of the public
27 hearing.
- 28 (3) Accept written comments on the proposed rule for at least 15 business days
29 prior to adoption of the rule.
- 30 (4) Hold at least one public hearing on the proposed rule no less than five days
31 after the rule and notice have been published.

32 A rule adopted in accordance with this section becomes effective on the first day of
33 the month following the month the Secretary adopts the rule and submits the rule to the
34 Codifier of Rules for entry into the North Carolina Administrative Code.

35 **SECTION 2.(d)** Any rule adopted more than 12 months after the effective date of
36 this act shall comply with the requirements of Article 2A of Chapter 150B of the General
37 Statutes.

38 **SECTION 2.(e)** Subsection (c) of this section is effective when it becomes law and
39 expires 12 months after the effective date of this act. Subsection (d) of this section becomes
40 effective 12 months after the effective date of this act and expires on July 1, 2017. The
41 remainder of this Part is effective when it becomes law and expires on July 1, 2017.

42 **PART III. EFFECTIVE DATE**

43 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
44 law.
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