

Stricken language would be deleted from and underlined language would be added to present law.  
Act 1474 of the Regular Session

State of Arkansas  
89th General Assembly  
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As Engrossed: H3/21/13 S3/26/13

# A Bill

HOUSE BILL 1832

By: Representatives Williams, Steel, J. Edwards, Leding, Jean, Lenderman, Branscum, Lampkin, Ratliff, Gillam, T. Thompson, Magie, Jett, Rice, Lea, Kerr, D. Altes, Wren, Copenhagen, E. Armstrong, Bragg, Hutchison, Gossage, C. Armstrong, Baine, Barnett, J. Dickinson, Ferguson, Fielding, Hawthorne, Hickerson, Hodges, Holcomb, House, Julian, Kizzia, Love, S. Malone, McElroy, McGill, McLean, Murdock, Nickels, B. Overbey, Perry, Richey, Sabin, Slinkard, Vines, W. Wagner, Wardlaw, D. Whitaker, B. Wilkins, H. Wilkins, Word, Wright, Broadaway, Shepherd, F. Smith, Farrer, Hopper, C. Douglas, Biviano, *J. Burris*

By: Senators J. Dismang, Files, Teague, Maloch, B. Sample, Hester, L. Chesterfield, J. English, B. Pierce, Rapert, J. Woods, D. Sanders

## For An Act To Be Entitled

AN ACT TO PROMOTE ACCESS TO CAPITAL FOR JOB CREATION  
AND ECONOMIC DEVELOPMENT IN LOW-INCOME COMMUNITIES;  
TO CREATE AND REGULATE ELIGIBILITY OF THE NEW MARKET  
TAX CREDIT; AND FOR OTHER PURPOSES.

## Subtitle

THE NEW MARKETS JOBS ACT OF 2013.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 15, Chapter 4, is amended to add an additional subchapter to read as follows:

Subchapter 35 – New Markets Jobs Act of 2013

15-4-3501. Title.

This subchapter shall be known and may be cited as the “New Markets Jobs Act of 2013”.

15-4-3502. Definitions.



As used in this subchapter:(1) "Applicable percentage" means:

(A) Zero percent (0%) for the first two (2) credit allowance dates;

(B) Twelve percent (12%) for the third, fourth, and fifth credit allowance dates; and

(C) Eleven percent (11%) for the sixth and seventh credit allowance dates;

(2) "Credit allowance date" means with respect to a qualified equity investment:

(A) The date on which the qualified equity investment is initially made; and

(B) Each of the subsequent six (6) anniversary dates of the date on which the qualified equity investment was initially made;

(3) "Letter ruling" means a written interpretation of law to a specific set of facts provided by an applicant requesting the written interpretation from the *Arkansas Economic Development Commission*;

(4) "Long-term debt security" means a debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven (7) years from the date of its issuance without acceleration of repayment, amortization, or prepayment features before its original maturity date;

(5) "Purchase price" means the amount paid to the issuer of a qualified equity investment for a qualified equity investment;

(6)(A) "Qualified active low-income community business" means the same as defined in 26 U.S.C. § 45D and 26 C.F.R. 1.45D-1, as they existed on January 1, 2013, if:

(i) At the time of the qualified community development entity's investment in or loan to the corporation, limited liability company, association, partnership, or other business entity, the corporation, limited liability company, association, partnership, or other business entity meets the United States Small Business Administration size eligibility standards established in 13 C.F.R. 121.101-201, as it existed on January 1, 2013; and

(ii)(a) The corporation, limited liability company, association, partnership, or other business entity agrees to retain or create

jobs that pay an average wage of at least one hundred fifteen percent (115%) of the federal poverty income guidelines for a family of four (4) for the census tract.

(b) The *commission* may waive the requirement stated in subdivision (6)(A)(ii)(a) of this section if the *commission* determines that an investment in the proposed active qualified low-income community business will have a positive impact on the community.

(B) A corporation, limited liability company, association, partnership, or other business entity will be considered a qualified low-income community business for the duration of the qualified community development entity's investment in or loan to the corporation, limited liability company, association, partnership, or other business entity if the relevant qualified community development entity reasonably expects, at the time it makes an investment or loan, that the corporation, limited liability company, association, partnership, or other business entity will continue to satisfy the requirements for being a qualified active low-income community business other than the requirements stated in subdivision (6)(A)(i) of this section throughout the entire period of the investment or loan.

(C) "Qualified active low-income community business" does not include the following:

(i)(a) A corporation, limited liability company, association, partnership, or other business entity that is the beneficiary of an incentive under § 15-4-2705, § 15-4-2706(b), or § 15-4-2706(c)(2).

(b) However, the *commission* may waive the requirement stated in subdivision (6)(C)(i)(a) of this section if the *commission* determines that an investment in the proposed active qualified low-income community business will have a positive impact on the community;

(ii)(a) Any industry excluded under a rule of the *commission*.

(b) However, the *commission* may waive the requirement stated in subdivision (6)(C)(ii)(a) of this section if the *commission* determines that an investment in the proposed active qualified low-income community business will have a positive impact on the community;  
or

(iii)(a) A corporation, limited liability company, association, partnership, or other business entity that derives or projects

to derive at least fifteen percent (15%) of its annual revenue from the rental or sale of real estate.

(b) However, the restriction in subdivision (6)(C)(iv)(a) of this section does not apply to a corporation, limited liability company, association, partnership, or other business entity that is controlled by or under common control with another corporation, limited liability company, association, partnership, or other business entity that:

(1) Does not derive or project to derive at least fifteen percent (15%) of its annual revenue from the rental or sale of real estate; and

(2) Is the primary tenant of the real estate leased from the corporation, limited liability company, association, partnership, or other business entity;

(7)(A) "Qualified community development entity" means the same as defined in 26 U.S.C. § 45D, as it existed on January 1, 2013, if the corporation, limited liability company, association, partnership, or other business entity has entered into, for the current year or any prior year, an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized under 26 U.S.C. § 45D that includes Arkansas within the service area stated in the allocation agreement.

(B) "Qualified community development entity" includes a qualified community development entity that is controlled by or under common control with a qualified community development entity described in this subdivision (7);

(8)(A) "Qualified equity investment" means an equity investment in or a long-term debt security issued by a qualified community development entity that:

(i) Is acquired after the effective date of this act at its original issue solely in exchange for cash;

(ii) Has at least eighty-five percent (85%) of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in Arkansas by the first anniversary of the initial credit allowance date; and

(iii) Is designated by the issuer as a qualified equity investment under this subdivision (8) and is certified by the Arkansas

Economic Development Commission as not exceeding the limitation stated in § 15-4-3505(d).

(B) “Qualified equity investment” includes an investment that does not meet the requirements of subdivision (8)(A)(i) of this section if the investment was a qualified equity investment in the hands of a previous holder;

(9) “Qualified low-income community investment” means a capital or equity investment in or loan to a qualified active low-income community business; and

(10) “State premium tax liability” means:

(A) Tax liability incurred by a corporation, limited liability company, association, partnership, or other business entity under §§ 23-63-102 and 26-57-601 – 26-57-605, excluding any liability for taxes on a health insurance premium; or

(B) If the tax liability under subdivision (10)(A) of this section is eliminated or reduced, any tax liability imposed on an insurance company or other person that had premium tax liability under the laws of the state.

15-4-3503. New market tax credit.

(a) A corporation, limited liability company, association, partnership, or other business entity that makes a qualified equity investment earns a vested right to a tax credit against state premium tax liability.

(b) The tax credit established under subsection (a) of this section may be utilized as follows:

(1) On each credit allowance date of the qualified equity investment, the corporation, limited liability company, association, partnership, or other business entity or the subsequent holder of the qualified equity investment may utilize a portion of the tax credit during the taxable year that includes the credit allowance date;

(2) The tax credit amount shall be 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) The amount of the tax credit claimed by a corporation, limited liability company, association, partnership, or other business entity

shall not exceed the state premium tax liability owed by the taxpayer that files the premium tax report for the tax year for which the tax credit is claimed; and

(4) The tax credit is payable only from the general revenues derived from the nonallocated portion of the state premium tax liability funds as described in § 26-57-611.

(c) Any unused portion of a tax credit established under this section may be carried forward for nine (9) consecutive tax years.

15-4-3504. Transferability.

(a) A tax credit claimed under this subchapter shall not be refundable or saleable on the open market.

(b)(1) A tax credit earned by a corporation, limited liability company, association, partnership, or other business entity may be allocated to the partners, members, or shareholders of the corporation, limited liability company, association, partnership, or other business entity for their direct use in accordance with any agreement among the partners, members, or shareholders.

(2) An allocation under subdivision (b)(1) of this section:

(A) May occur after the issuance of a qualified equity investment; and

(B) Is not a sale for purposes of this subchapter.

15-4-3505. Certification of qualified equity investments.

(a)(1)(A)(i) A qualified community development entity that seeks to have an equity investment or a long-term debt security designated as a qualified equity investment eligible for a tax credit under this subchapter shall apply to the Arkansas Economic Development Commission.

(ii) The commission shall begin accepting applications on July 15, 2013.

(B)(i) If the qualified community development entity seeks to have a long-term debt security designated as a qualified equity investment under this section, the qualified community development entity shall not make cash interest payments on the long-term debt security during the period beginning on the date of issuance and ending on the final credit allowance date in an amount that exceeds the cumulative operating income, as determined

under 26 C.F.R. § 1.45D-1, as it existed on January 1, 2013, of the qualified community development entity for that period before giving effect to interest expense on the long-term debt security.

(ii) However, the holder's ability to accelerate payments on the long-term debt security instrument in situations in which the issuer has defaulted on covenants designed to ensure compliance with this subchapter or 26 U.S.C. § 45D, as it existed on January 1, 2013, shall not be affected by this subchapter.

(2)(A) A qualified community development entity seeking certification of a qualified equity investment shall submit an application to the commission.

(B) The application submitted under subdivision (a)(2)(A) of this section shall include the following:

(i) Evidence of the applicant's certification as a qualified community development entity, including evidence that the service area of the applicant includes Arkansas;

(ii) A copy of an allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;

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

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

(b) Stating the cumulative amount of allocations awarded to the applicant by the Community Development Financial Institutions Fund;

(iv) A description of the proposed amount, structure, and purchaser of the qualified equity investment;

(v) If known at the time of application, identifying information for each corporation, limited liability company, association, partnership, or other business entity that will utilize the tax credits earned from the issuance of the qualified equity investment;

(vi)(a) Examples of the types of qualified active low-income businesses in which the applicant, its controlling entity, or affiliates of its controlling entity have invested under the federal New

Markets Tax Credit Program, if any.

(b) An applicant shall not be required to identify qualified active low-income community businesses in which the applicant will invest when submitting an application;

(vii) A nonrefundable application fee of five thousand dollars (\$5,000); and

(viii) The refundable performance fee required under § 15-4-3509.

(b)(1) Within thirty (30) days after receipt of a completed application, the commission shall grant or deny the application in full or in part.

(2)(A) If the commission denies any part of an application, the commission shall inform the qualified community development entity of the grounds for the denial.

(B)(i) If an application is denied as incomplete and the qualified community development entity provides the additional information or documentation required by the commission or otherwise completes its application within fifteen (15) days of the notice of denial, the application shall be considered completed as of the original date of submission.

(ii) If the qualified community development entity fails to provide the information or complete its application within the fifteen-day period, the application remains denied and must be resubmitted in full with a new submission date.

(3)(A) If the application is complete and meets the requirements of this subchapter, the commission shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for a tax credit under this subchapter, subject to the limitations contained in subsection (d) of this section.

(B)(i) The commission shall provide written notice of the certification to the qualified community development entity.

(ii) The written notice shall include the name, if known, of each corporation, limited liability company, association, partnership, or other business entity that will earn the tax credit and the respective tax credit amount.

(iii) If the name of a corporation, limited liability company, association, partnership, or other business entity that is

eligible to use the tax credit changes as the result of a transfer of a qualified equity investment or an allocation under § 15-4-3504(b), the qualified community development entity shall notify the commission of the change.

(c)(1) The commission shall certify qualified equity investments in the order the applications are received by the commission.

(2)(A) Applications received on the same day shall be deemed to have been received simultaneously.

(B) For applications that are complete and meet the requirements of this subchapter and are received on the same day, the commission shall certify, consistent with the remaining qualified equity investment capacity, the qualified equity investments in proportionate percentages based on the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(d)(1) The commission shall certify up to one hundred sixty-six million dollars (\$166,000,000) in qualified equity investments.

(2) If a pending request cannot be fully certified because of the limitation stated in subdivision (d)(1) of this section, the commission shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

(e) An approved applicant may transfer all or part of the applicant's certified qualified equity investment authority to the applicant's controlling entity or any qualified community development entity controlled by or under common control with the applicant:

(1) Provides the information required in the application with respect to the transferee; and

(2) Notifies the commission of the transfer by providing evidence of the receipt of the cash investment as required under subdivision (f)(2) of this section.

(f)(1) Within thirty (30) days of the applicant receiving notice of certification, the qualified community development entity or any transferee under subsection (e) of this section shall issue the qualified equity investment and receive cash in the amount of the certified amount.

(2) The qualified community development entity or transferee

under subsection (e) of this section must provide the commission with evidence of the receipt of the cash investment within ten (10) business days after receipt.

(3)(A) If the qualified community development entity or a transferee under subsection (e) does not receive the cash investment and issue the qualified equity investment within thirty (30) days following receipt of the certification notice, the certification shall lapse, and the corporation, limited liability company, association, partnership, or other business entity may not issue the qualified equity investment without reapplying to the commission for certification.

(B) A lapsed certification reverts back to the commission and shall be reissued:

(i) First, pro rata to any other applicants whose qualified equity investment allocations were reduced under subsection (d) of this section; and

(ii) Second, in accordance with the application process.

15-4-3506. Letter rulings.

(a) Subject to the requirements and limitations of this section, the Arkansas Economic Development Commission shall issue letter rulings regarding the tax credit program authorized under this subchapter.

(b)(1) The commission shall respond to a request for a letter ruling within sixty (60) days of receiving the request.

(2)(A) However, the commission may deny a request for a letter ruling for good cause.

(B) If the commission denies a request for a letter ruling for good cause, it shall list the specific reasons for refusing to issue the letter ruling.

(C) Good cause for denying a request for a letter ruling under this subsection (b) includes without limitation the following:

(i) The applicant requests the commission to determine whether a statute is constitutional or a regulation is lawful;

(ii) The request involves a hypothetical situation or alternative plans;

(iii) The facts or issues presented in the request

are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling; and

(iv) The issue is currently being considered in a rulemaking procedure, contested case, or other agency or judicial proceeding that may resolve the issue.

(3) In rendering letter rulings under this subchapter, the commission shall look for guidance to 26 U.S.C. § 45D and 26 C.F.R. 1.45D-1, as they existed on January 1, 2013, and to the extent they are applicable.

(c) An applicant may:

(1) Provide a draft letter ruling for the commission's consideration; and

(2) Withdraw a request for a letter ruling, in writing, before the issuance of the letter ruling.

(d) Letter rulings bind all state agencies, including the commission and the commission's agents and successors until the qualified community development entity or its shareholders, members, or partners claim all of the applicable tax credits under this subchapter on a Arkansas tax return or report.

(e)(1) A letter ruling issued under this section applies only to the applicant that requested the letter ruling.

(2) However, a taxpayer identified in a letter ruling may rely on the letter ruling to the extent the letter ruling applies to the taxpayer.

15-4-3507. Recapture.

The Arkansas Economic Development Commission shall recapture the tax credit allowed under this subchapter from the taxpayer that claimed the tax credit if:

(1)(A) Any amount of a federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this subchapter is recaptured under 26 U.S.C. § 45D, as it existed on January 1, 2013.

(B) If a recapture occurs under subdivision (1)(A) of this section, the commission's recapture shall be proportionate to the federal recapture with respect to the qualified equity investment;

(2)(A) 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.

(B) If a recapture occurs under subdivision (2)(A) of this section, the commission's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment;

(3)(A) The issuer fails to:

(i) Invest an amount equal to eighty-five percent (85%) of the purchase price of the qualified equity investment in qualified low-income community investments in Arkansas within twelve (12) months of the issuance of the qualified equity investment; and

(ii) Maintain the minimum investment level required under subdivision (3)(A)(i) of this section until the last credit allowance date for the qualified equity investment.

(B)(i) A qualified equity investment shall be considered held by an issuer even if a qualified low-income community 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 qualified low-income community investment, exclusive of any profits realized, in another qualified low-income community investment within twelve (12) months of the receipt of such returned capital.

(ii) Periodic amounts received during a calendar year as repayment of principal on a loan that is a qualified low-income community investment shall be treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in one (1) or more qualified low-income community investments by the end of the following year.

(C) An issuer shall not be required to reinvest capital returned from a qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the seventh anniversary of the qualified equity investment's issuance after the earlier of:

(i) The sixth anniversary of the credit allowance date of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment; or

(ii) The date by which a qualified community development entity has made qualified low-income community investments with the proceeds of such qualified equity investment on a cumulative basis equal

to at least one hundred fifty percent (150%) of such proceeds; or

(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 (1) or more qualified active low-income community businesses, including without limitation affiliated qualified active low-income community businesses and excluding reinvestments of capital returned or repaid with respect to earlier qualified equity investments in the qualified active low-income community business and its affiliates in excess of twenty-five percent (25%) of the cash proceeds of all qualified equity investments issued by the issuer under this section.

15-4-3508. Cure period – Notice of noncompliance.

(a) Enforcement of each the recapture provisions under § 15-4-3507 is subject to a six-month cure period.

(b) Recapture shall not occur until the Arkansas Economic Development Commission has given the qualified community development entity written notice of its noncompliance and has afforded the qualified community development entity six (6) months from the date of the notice to cure the noncompliance.

15-4-3509. Refundable performance fee.

(a) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment eligible for a tax credit under this subchapter shall pay a fee in the amount one-half of one percent (0.5%) of the amount of the equity investment or long-term debt security requested to be designated as a qualified equity investment to the Arkansas Economic Development Commission for deposit into the New Markets Performance Guarantee Fund, § 19-5-1249.

(b) The qualified community development entity shall forfeit the fee required under this section if:

(1) The qualified community development entity and its subsidiary qualified community development entities fail to:

(A) Issue the total amount of qualified equity investments certified by the commission; and

(B) Receive cash in the total amount certified under and

within the time period stated in § 15-4-3505; or

(2)(A) The qualified community development entity or any subsidiary qualified community development entity that issues a qualified equity investment certified under this subchapter fails to meet the investment requirement under § 15-4-3507(3) by the second credit allowance date of the qualified equity investment.

(B) Forfeiture of the fee under subdivision (b)(2)(A) of this section shall be subject to the six-month cure period established under § 15-4-3508.

(c)(1) The fee required under subsection (a) of this section shall be held in the New Markets Performance Guarantee Fund until compliance with the requirements of this section is established.

(2)(A) A qualified community development entity may request a refund of the fee from the commission no sooner than thirty (30) days after having met all the requirements of this section.

(B) The Treasurer of State shall comply with a request under subdivision (c)(2)(A) of this section or give notice of noncompliance within thirty (30) days of receiving the request.

15-4-3510. Retaliatory tax.

(a) An entity claiming a tax credit under this chapter is not required to pay any additional retaliatory tax levied under § 23-63-102 as a result of claiming the tax credit.

(b) In addition to the exclusion in subsection (a) of this section, it is the intent of this subchapter that an entity claiming a tax credit under this subchapter is not required to pay any additional tax that may arise as a result of claiming the tax credit.

15-4-3511. Decertification.

(a)(1) If a qualified equity investment is certified under § 15-4-3505, the qualified equity investment shall not be decertified unless the requirements of subsection (b) of this section are met.

(2) Until all qualified equity investments issued by a qualified community development entity are decertified under this section, the qualified community development entity shall not distribute to its equity holders or make cash payments on long-term debt securities that have been

designated as qualified equity investments in an amount that exceeds the sum of:

(A) The cumulative operating income, as determined under 26 C.F.R. § 1.45D-1, as it existed on January 1, 2013, earned by the qualified community development entity since issuance of the qualified equity investment, before giving effect to any expense from interest on long-term debt securities designated as qualified equity investments; and

(B) Fifty percent (50%) of the purchase price of the qualified equity investments issued by the qualified community development entity.

(b) To be decertified, a qualified equity investment shall:

(1) Be beyond its seventh credit allowance date;

(2)(A) Have been in compliance with § 15-4-3507 up through its seventh credit allowance date, including any cures under § 15-4-3508.

(B) The requirement under subdivision (b)(2)(A) of this section is satisfied if no recapture action has been commenced by the Arkansas Economic Development Commission as of the seventh credit allowance date; and

(3) Have invested its proceeds in qualified active low-income community investments such that the total qualified active low income community investments made, cumulatively including reinvestments, exceeds one hundred fifty percent (150%) all qualified equity investments issued by the issuer.

(c)(1) A qualified community development entity that seeks to have a qualified equity investment decertified under this section shall send notice to the commission of its request for decertification along with evidence supporting the request.

(2)(A) A request under subdivision (c)(1) of this section shall not be unreasonably denied and shall be responded to within thirty (30) days of receiving the request.

(B) If the request is denied for any reason, the burden of proof shall be on the commission in any administrative or legal proceeding that follows to establish that the request was not unreasonably denied.

15-4-3512. Reports.

(a)(1) A qualified community development entity that issues a

qualified equity investment under this subchapter shall submit a report to the Arkansas Economic Development Commission within five (5) business days after the first anniversary of the initial credit allowance date.

(2) The report required under subdivision (a)(1) of this section shall provide evidence:

(A) That at least eighty-five percent (85%) of the cash purchase price for each qualified equity investment was used to make qualified low-income community investments in qualified active low-income community businesses located in Arkansas;

(B) Of each qualified low-income community investment by providing a bank statement for the qualified community development entity that includes the qualified low-income community investment; and

(C) That each business was a qualified low-income community business at the time the qualified low-income community investment was made and shall state the name, location, and industry code of each qualified low-income community business receiving a qualified low-income community investment.

(b)(1) After submitting the report required under subsection (a) of this section, a qualified community development entity shall submit an annual report to the commission within five (5) business days after each anniversary of the credit allowance date.

(2) The report required under subdivision (b)(1) of this section shall:

(A) Be submitted to the commission in electronic form and as a hard copy; and

(B) Include without limitation the following:

(i) The number of employment positions created and retained as the result of each qualified low-income community investment;

(ii) The average annual salary of the positions described in subdivision (b)(2)(B)(i) of this section;

(iii) Any other information required by the commission; and

(iv) Any other information submitted by the qualified community development entity to demonstrate the effectiveness of the qualified low-income community investment.

(c) A qualified community development entity shall not include in a

report required under this section a qualified low-income community investment that has been redeemed or repaid.

15-4-3513. Revenue impact assessment.

(a)(1) Before making a qualified low-income community investment, a qualified community development entity shall submit to the Arkansas Economic Development Commission for review a revenue impact assessment prepared by a nationally recognized third-party independent economic forecasting firm utilizing the Regional Economics Model, Inc. or MIG, Inc. model that demonstrates that the qualified low-income community investment will have a revenue positive impact on the state over ten (10) years against the aggregate tax credit utilization over the same ten-year period.

(2) The aggregate tax credit utilization under subdivision (a)(1) of this section is equal to the amount of the qualified low-income community investment multiplied by fifty-eight percent (58%).

(b)(1) The commission shall complete its review and notify the qualified community development entity within ten (10) business days from the receipt of a revenue impact assessment.

(2) A proposed qualified low-income community investment shall be deemed revenue positive if the commission does not notify a qualified community development entity of its review with ten (10) business days of receipt of a revenue impact assessment.

(c) If the commission determines that the revenue impact assessment does not reflect a revenue positive qualified low-income community investment, the commission may waive the requirement under this section if the commission determines that the proposed qualified low-income community investment will further economic development.

15-4-3514. Rules.

The Arkansas Economic Development Commission shall promulgate rules to implement this subchapter.

SECTION 2. Arkansas Code Title 19, Chapter 5, Subchapter 12, is amended to add an additional section to read as follows:

19-5-1249. New Markets Performance Guarantee Fund.

(a) There is created on the books of the Treasurer of State, the

Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the "New Markets Performance Guarantee Fund".

(b) The fund shall consist of:

(1) Fees paid under § 15-4-3509;

(2) Grants made by a person, organization, or federal or state government agency; and

(3) Any other funds provided by law.

(c) The fund shall be used by the Arkansas Economic Development Commission to guarantee qualified community development entities' performance under the New Markets Jobs Act of 2013, § 15-4-3501 et seq.

SECTION 3. DO NOT CODIFY. Applicability. This act applies only to a return or report originally due on or after the effective date of this act.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the unemployment rate in Arkansas is high; that the high rate of unemployment in this state hinders Arkansas's economic recovery; that there is an urgent need to create jobs in this state; and that this act is immediately necessary to encourage the creation of additional jobs for Arkansans and to support Arkansas's continual economic recovery. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

*/s/Williams*

**APPROVED: 04/22/2013**