

This Document can be made available
in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. **1303**

02/16/2017 Authored by Albright, Vogel, Davids, Mahoney, Metsa and others
The bill was read for the first time and referred to the Committee on Job Growth and Energy Affordability Policy and Finance
03/09/2017 Adoption of Report: Amended and re-referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; income; establishing a new markets tax credit program;
1.3 requiring a report; appropriating money; amending Minnesota Statutes 2016,
1.4 section 297I.20, by adding a subdivision; proposing coding for new law in
1.5 Minnesota Statutes, chapter 290; proposing coding for new law as Minnesota
1.6 Statutes, chapter 116X.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. [116X.01] NEW MARKETS TAX CREDIT.

1.9 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
1.10 the meanings given.

1.11 (b) "Affiliate" means a business that shares 50 percent or more common ownership with
1.12 another entity.

1.13 (c) "Applicable percentage" means five percent for each of the first three credit allowance
1.14 dates and six percent for each of the final four credit allowance dates.

1.15 (d) "Applicant" means a qualified community development entity as defined in paragraph
1.16 (m).

1.17 (e) "Commissioner" means the commissioner of employment and economic development.

1.18 (f) "Credit allowance date" means:

1.19 (1) the date on which a qualified equity investment is initially made; and

1.20 (2) each of the six anniversary dates thereafter.

1.21 (g) "Greater Minnesota" means the area of the state that excludes the metropolitan area.

1.22 (h) "Internal Revenue Code" has the meaning given in section 290.01, subdivision 31.

2.1 (i) "Investments held by a qualified community development entity" means any capital
2.2 or equity investment or loan held by a qualified community development entity, even if the
2.3 qualified low-income community investment has been sold or repaid; provided that the
2.4 qualified community development entity reinvests an amount equal to the capital returned
2.5 to or recovered by the qualified community development entity from the original investment,
2.6 exclusive of any profits realized, in another qualified low-income community investment
2.7 within 12 months of the return or recovery of the capital investment. For the purposes of
2.8 this requirement, a qualified community development entity is not required to reinvest
2.9 capital returned from qualified low-income community investments after the sixth anniversary
2.10 of the issuance of the qualified equity investment. The qualified low-income community
2.11 investment is considered to be held by the qualified community development entity through
2.12 the seventh anniversary of the qualified equity investment's issuance. Periodic amounts
2.13 received by the issuer during a calendar year as repayment of principal on a loan that is a
2.14 qualified low-income community investment shall be treated as continuously invested in a
2.15 qualified low-income community business if the amounts received are reinvested in another
2.16 qualified low-income community business within 12 months.

2.17 (j) "Metropolitan area" means the area defined in section 473.121, subdivision 2.

2.18 (k) "Purchase price" means the amount paid by an investor as a qualified equity
2.19 investment to the qualified community development entity in exchange for a tax credit
2.20 allocation.

2.21 (l) "Qualified active low-income community business" has the meaning given in section
2.22 45D of the Internal Revenue Code, or is a project the commissioner deems to have regional
2.23 economic significance. The term does not include:

2.24 (1) any trade or business engaged in insurance, banking, lending, lobbying, political
2.25 consulting, or leisure; or

2.26 (2) any trade or business activity consisting of the operation of any private or commercial
2.27 golf course, country club, suntan facility, hot tub facility, massage parlor, race track, or
2.28 other facility used for gambling, or any store the principal business of which is the sale of
2.29 alcoholic beverages for consumption off premises.

2.30 (m) "Qualified community development entity" has the meaning given in section 45D
2.31 of the Internal Revenue Code; provided that the entity:

2.32 (1) has previously entered into an allocation agreement with the Community Development
2.33 Financial Institutions Fund of the United States Treasury Department with respect to credits

3.1 authorized by section 45D of the Internal Revenue Code or has received a Minnesota
3.2 allocation under this bill within the past three years;

3.3 (2) includes Minnesota within the service area set forth in the allocation agreement and
3.4 has an office or headquarters in Minnesota from which it conducts business; and

3.5 (3) has direct lending experience serving businesses in disadvantaged communities in
3.6 the state and a primary mission of economic development.

3.7 (n) "Qualified equity investment" means an equity investment in a qualified community
3.8 development entity, if the equity investment:

3.9 (1) is acquired after January 1, 2018, at its original issuance solely in exchange for cash;

3.10 (2) has at least 95 percent of its cash purchase price used by the issuer to make initial
3.11 qualified low-income community investments with reinvestments required to be made in
3.12 Minnesota at a minimum of 85 percent of the amount returned or recovered by the qualified
3.13 community development entity;

3.14 (3) is designated by the qualified community development entity as a qualified equity
3.15 investment under this subdivision and is certified by the commissioner as not exceeding the
3.16 limitation contained in subdivision 2. The term includes any qualified equity investment
3.17 that does not meet the provisions of this paragraph if the investment met the definition of
3.18 a qualified equity investment while under possession of a prior holder; and

3.19 (4) not more than five percent of the qualified equity investment is held as a loan loss
3.20 reserve.

3.21 (o) "Qualified low-income community investment" means any investment in, or loan
3.22 to, any qualified active low-income community business.

3.23 (p) "Tax credit" means a credit against the tax otherwise due under chapter 290 or any
3.24 gross premiums tax under chapter 297I.

3.25 (q) "Taxpayer" means any individual or entity subject to the tax imposed under chapter
3.26 290 or 297I.

3.27 Subd. 2. **Credit allowed; qualification; limitation.** (a) A taxpayer that makes a qualified
3.28 equity investment is entitled to a tax credit subject to the conditions and limitations provided
3.29 in this section.

3.30 (b) The tax credit amount equals 39 percent of the state tax credit authority allocated
3.31 pursuant to this section and assigned to a qualified equity investment. The amount of the
3.32 tax credit claimed must not exceed the amount of the taxpayer's state tax liability under

4.1 chapter 290 or 297I for the tax year for which the tax credit is claimed. On each credit
4.2 allowance date of the qualified equity investment the taxpayer, or subsequent holder of the
4.3 qualified equity investment, is entitled to a tax credit during the taxable year including the
4.4 credit allowance date. The tax credit equals the qualified equity investment multiplied by
4.5 the applicable percentage. The tax credit is not transferable.

4.6 (c) Tax credits earned by a partnership, a limited liability company, an S-corporation,
4.7 or other pass-through entity may be allocated to the partners, members, or shareholders of
4.8 the entity for their direct use in accordance with the provisions of any agreement among
4.9 the partners, members, or shareholders.

4.10 (d) Any amount of tax credit that the taxpayer is prohibited by this section from claiming
4.11 in a taxable year may be carried forward to any of the taxpayer's subsequent taxable years.

4.12 (e) An entity claiming a tax credit under this chapter is not required to pay any retaliatory
4.13 tax levied under section 297I.05 as a result of claiming that credit. In addition, it is the intent
4.14 of this section that an entity claiming a credit under this chapter is not required to pay any
4.15 additional tax as a result of claiming that credit.

4.16 (f) The amount of allocation authority under this subdivision cannot exceed a cumulative
4.17 outstanding and unused allocation of \$300,000,000.

4.18 Subd. 3. **Certification.** (a) The qualified community development entity receiving the
4.19 qualified equity investment must certify to the commissioner the dollar amount of the loan
4.20 or investment to be made within the state of Minnesota during the first 24-month period
4.21 following the initial credit allowance date, subject to a maximum amount of \$15,000,000
4.22 of all qualified low-income community investments from all sources to a specific business
4.23 and all of its affiliates collectively, beyond which no Minnesota new markets tax credit is
4.24 allowed to that business or any of its affiliates.

4.25 (b) If the qualified community development entity or transferee as allowed in subdivision
4.26 8 does not receive the qualified equity investment and issue the qualified low-income
4.27 community investment within 24 months following receipt of the certification notice, the
4.28 certification lapses and the entity may not accept the qualified equity investment without
4.29 reapplying to the commissioner for certification. Lapsed certifications revert to the
4.30 commissioner and must be reissued, first, pro rata to other applicants whose qualified equity
4.31 investment allocations were reduced under subdivision 6 and, thereafter, in accordance with
4.32 the application process.

4.33 (c) A business is considered a qualified active low-income community business for the
4.34 duration of the qualified community development entity's investment in, or loan to, the

5.1 business if the qualified active low-income community business and the qualified certified
5.2 development entity reasonably expects, when the qualified certified development entity
5.3 makes the investment or loan, that the business will continue to satisfy the requirements for
5.4 being a qualified active low-income community business throughout the entire period of
5.5 the investment or loan.

5.6 Subd. 4. **Amount certified.** The commissioner shall certify up to \$300,000,000 in tax
5.7 credit authority over a three-year period for taxable years beginning after December 31,
5.8 2017. The commissioner shall certify allocations of tax credit to qualified community
5.9 development entities based on a competitive review of applications received by the
5.10 commissioner using criteria established in subdivisions 5 and 6.

5.11 Subd. 5. **Application.** (a) The commissioner shall develop an application form calling
5.12 for information necessary to evaluate Minnesota benefits from tax credit projects. A qualified
5.13 community development entity that seeks to have an equity investment designated as a
5.14 qualified equity investment and eligible for tax credits under this chapter may apply to the
5.15 commissioner on or after final enactment, according to the application deadline. The
5.16 application must include the following:

5.17 (1) evidence of the applicant's certification as a qualified community development entity,
5.18 such as a copy of an allocation agreement that is executed by the applicant or its controlling
5.19 entity and the Community Development Financial Institutions Fund under section 116X.02,
5.20 subdivision 10, and that includes a service area including the state of Minnesota, or a
5.21 Minnesota allocation within the past three years;

5.22 (2) evidence that the applicant or its controlling entity has received at least \$20,000,000
5.23 of allocation of qualified equity investment authority from the Community Development
5.24 Financial Institutions Fund, or has received a Minnesota allocation within the past three
5.25 years;

5.26 (3) evidence that the applicant, its controlling entity, and subsidiary qualified community
5.27 development entities of the controlling entity have collectively made at least \$20,000,000
5.28 in qualified low-income community loans or investments under the federal new markets
5.29 tax credit program, and either:

5.30 (i) at least \$20,000,000 of those investments were made in the state of Minnesota; or

5.31 (ii) the applicant has direct lending experience serving businesses in disadvantaged
5.32 communities in the state of at least \$10,000,000 and a primary mission of economic
5.33 development serving areas including part or all of the state of Minnesota;

6.1 (4) evidence that the qualified community development entity has demonstrated
6.2 experience providing capital or technical assistance to disadvantaged businesses or
6.3 communities in the state;

6.4 (5) the extent to which an applicant demonstrates direct experience in asset and risk
6.5 management and in fulfilling government compliance requirements, particularly for tax
6.6 credit program compliance;

6.7 (6) the extent to which an applicant demonstrates a capitalization strategy that ensures
6.8 that the economic benefit of the tax credit remains in the state;

6.9 (7) the extent to which the applicant establishes standards for wages and benefits
6.10 exceeding federal poverty guidelines and includes a means by which to monitor and measure
6.11 ongoing compliance with those standards;

6.12 (8) in circumstances where the state allocation is paired with a federal new market tax
6.13 allocation, the extent to which the applicant develops evaluation criteria and tools to assess
6.14 the extent to which the state allocation is necessary to produce the community benefit to be
6.15 provided through financing of the qualified active low-income community business;

6.16 (9) a plan describing the proposed types of qualified active low-income community
6.17 businesses in which the applicant expects to invest, and the financial contributions expected
6.18 to be made to the project from nonstate sources;

6.19 (10) a nonrefundable application fee of \$5,000, which is required to be paid to the
6.20 commissioner for each application submitted; and

6.21 (11) any other criteria the commissioner deems necessary.

6.22 (b) The requirements of paragraph (a), clauses (2) and (3), do not apply to a qualified
6.23 community development entity incorporated or headquartered in Minnesota, if the qualified
6.24 community development entity provides evidence of direct experience with at least
6.25 \$20,000,000 of allocation of qualified equity investment authority from the Community
6.26 Development Financial Institutions Fund as:

6.27 (1) a direct lender to a new markets tax credit structure; or

6.28 (2) a direct investor to such a structure, as long as the applicant has direct lending
6.29 experience serving businesses in disadvantaged communities in the state of at least
6.30 \$10,000,000 and a primary mission of economic development serving areas including part
6.31 or all of the state of Minnesota.

7.1 Subd. 6. **Consideration of application.** (a) Within 90 days after the application deadline,
7.2 for each completed application containing all of the information in subdivision 5, including
7.3 the payment of the application fee, the commissioner shall grant or deny the application in
7.4 full or in part. If the commissioner denies any part of the application, the commissioner
7.5 shall inform the qualified community development entity of the grounds for the denial. If
7.6 the qualified community development entity provides any additional information required
7.7 by the commissioner or otherwise completes its application within 15 days of the notice of
7.8 denial, the application is considered completed as of the original date of submission. If the
7.9 qualified community development entity fails to provide the information or complete its
7.10 application within the 15-day period, the application remains denied until the next application
7.11 date.

7.12 (b) If the application required under this section is complete, the commissioner shall
7.13 certify the proposed equity investment as a qualified equity investment that is eligible for
7.14 tax credits under this chapter, subject to the limitations in subdivision 4 and the pro rata
7.15 award of allocations to eligible applicants within the limitations. The commissioner shall
7.16 provide written notice of the certification to the qualified community development entity.
7.17 The notice must include the name of the qualified community development entity and the
7.18 credit amount. Before any tax credits are claimed under this chapter, the qualified community
7.19 development entity shall provide written notice to the commissioner of the names of the
7.20 entities eligible to claim the credits as a result of holding a qualified equity investment. If
7.21 the names of the entities that are eligible to utilize the credits change due to a transfer of a
7.22 qualified equity investment or an allocation or affiliate transfer under section 116X.04, the
7.23 qualified community development entity shall notify the commissioner of the change.

7.24 (c) The commissioner shall certify up to \$300,000,000 in qualified equity investments,
7.25 to be spread evenly over three years. The commissioner shall certify qualified equity
7.26 investments to those eligible applicants who have submitted a complete application meeting
7.27 all requirements, subject to the limitations in subdivision 4, with no more than \$100,000,000
7.28 per applicant and its affiliates across all three years. For applications that are complete and
7.29 received within the same application round, the commissioner shall certify, consistent with
7.30 remaining qualified equity investment capacity, the qualified equity investments in
7.31 proportionate percentages based upon the ratio of the amount of qualified equity investment
7.32 requested in an application, up to the total available in that year per entity, to the total amount
7.33 of qualified equity investments requested in all eligible and complete applications received.

8.1 (d) Notwithstanding the requirements of this subdivision, the commissioner shall certify
8.2 half of the available annual allocation authority to qualified equity investments located in
8.3 the metropolitan area and half to qualified equity investments located in greater Minnesota.

8.4 Subd. 7. **Credit recapture.** (a) The commissioner shall recapture the tax credit allowed
8.5 under this section for a specific qualified equity investment if any amount of the federal tax
8.6 credit available with respect to a qualified equity investment is recaptured under section
8.7 45D of the Internal Revenue Code due to any of the following reasons:

8.8 (1) the qualified active low-income community business receiving the benefit of the
8.9 investment fails to reasonably document at the initial loan or investment closing evidence
8.10 of being a qualified active low-income community business;

8.11 (2) the qualified community development entity under this section causes the recapture
8.12 of the federal tax credit under section 45D of the Internal Revenue Code for the specific
8.13 qualified equity investment by losing its certification as a qualified community development
8.14 entity as determined by the Community Development Financial Institutions Fund within
8.15 the United States Department of Treasury; or

8.16 (3) if any of the qualified equity investment is returned to the investor prior to the end
8.17 of the compliance period. If the tax credit is recaptured under this section, no further tax
8.18 credits are allowed for the investor for the specific qualified equity investment.

8.19 (b) If there are no federal tax credits involved in a specific qualified equity investment
8.20 but any of the reasons listed in paragraph (a), clauses (1) to (3), occur, the commissioner
8.21 shall recapture the tax credit allowed under this section for that specific qualified equity
8.22 investment.

8.23 (c) Notwithstanding the recapture provisions of this subdivision, any portion of the tax
8.24 credit already rightfully claimed by the investor for the specific qualified equity investment
8.25 for years ended before the year in which the recapture occurs, is not recaptured.

8.26 (d) Enforcement of each of the above recapture provisions is subject to a six-month cure
8.27 period after the qualified community development entity determines, should have reasonably
8.28 determined, or has received notice of, the noncompliance.

8.29 (e) If the commissioner disallows tax credits under this subdivision, the commissioner
8.30 may also impose penalties on the qualified community development entity that received
8.31 the qualified equity investment for which tax credits are disallowed, not to exceed one-half
8.32 of one percent of the qualified equity investment.

9.1 (f) Any tax credit that is subject to recapture must be recaptured from the taxpayer that
9.2 claimed the tax credit on a return.

9.3 Subd. 8. **Suballocation.** An approved qualified community development entity may
9.4 transfer all or a portion of its qualified equity investment authority from its qualified
9.5 community development entity to a subsidiary qualified community development entity
9.6 provided that the qualified community development entity provides written notification to
9.7 the commissioner within 30 days of the transfer. The subsidiary shall be subject to the same
9.8 rules, requirements, and limitations applicable to the qualified community development
9.9 entity.

9.10 Subd. 9. **Annual reporting by community development entities.** (a) A qualified
9.11 community development entity that has received a qualified equity investment must submit
9.12 an annual report to the commissioner within 180 days after the end of the fiscal year of a
9.13 qualified community development entity which includes a credit allowance date. The report
9.14 shall include information on investments made in the preceding year, including but not
9.15 limited to the following:

9.16 (1) the identity of the types of industries, identified by the North American Industry
9.17 Classification System Code, in which qualified low-income community investments were
9.18 made;

9.19 (2) the identity of the types of industries, identified by the North American Industry
9.20 Classification System Code, in which qualified low-income community investments were
9.21 made;

9.22 (3) the names of the counties in which the qualified active low-income community
9.23 businesses are located which received qualified low-income community investments;

9.24 (4) the number of jobs created and retained by qualified active low-income community
9.25 businesses receiving qualified low-income community investments, including verification
9.26 that the average wages and benefits paid to full-time employees, based on an hourly wage
9.27 for a 40-hour work week, meet or exceed 105 percent of the federal poverty income
9.28 guidelines for a family of four; and

9.29 (5) other information and documentation required by the commissioner to:

9.30 (i) determine the investments made in the metropolitan area and greater Minnesota;

9.31 (ii) verify continued certification as a qualified community development entity under
9.32 section 45D of the Internal Revenue Code; and

9.33 (iii) any other necessary reporting data.

10.1 (b) Within 120 days after the end of the applicant's fiscal year which includes a credit
10.2 allowance date, an applicant must submit annual financial statements for the qualified
10.3 community development entity and any subsidiary qualified community development entities
10.4 having a credit allowance date for the preceding tax year in a form established by the
10.5 commissioner.

10.6 Subd. 10. **Application fees; account created.** A nonrefundable application fee shall be
10.7 submitted by the qualified community development entity at the time the application is
10.8 submitted and shall be equal to an amount as published in the Minnesota new markets tax
10.9 credit program application, initially set at \$5,000. The commissioner may allow up to 25
10.10 percent of the fee to be submitted up to 180 days following the allocation award and up to
10.11 25 percent of the fee to be submitted up to 270 days following the allocation award.
10.12 Application fees are deposited in the new market tax credit administration account in the
10.13 special revenue fund.

10.14 Subd. 11. **Administrative fees.** Upon the receipt of a qualified equity investment by a
10.15 qualified community development entity, an administrative fee in an amount determined
10.16 by the commissioner, no more than two percent of the qualified equity investment, and
10.17 published in the allocation agreement will be deposited in the new markets tax credit
10.18 administration account in the special revenue fund.

10.19 Subd. 12. **Administrative expenses.** Amounts in the new markets tax credit
10.20 administration account are appropriated annually to the commissioner for administrative
10.21 expenses related to administering the new markets tax credit in this section.

10.22 Subd. 13. **Program report.** The commissioner shall report to the legislature no later
10.23 than December 31, 2024, regarding the implementation of this tax credit, including an
10.24 evaluation of the success of the tax credit in the state. The report must include:

10.25 (1) the extent to which wages and benefits for the qualified equity investments exceed
10.26 federal poverty guidelines;

10.27 (2) the community development benefits resulting from qualified equity investments,
10.28 including permanent job creation or retention, construction jobs, and job training;

10.29 (3) the financial contributions made to projects from sources other than the state new
10.30 markets tax credit program;

10.31 (4) the extent to which the reduced cost of borrowing or other flexible or nontraditional
10.32 terms are provided to the borrower, thereby ensuring that the benefits of the tax credit equity
10.33 accrued to the borrower; and

11.1 (5) other information the commissioner deems necessary.

11.2 Subd. 14. **Economic significance determination.** The commissioner must provide
11.3 written explanation concerning any "qualified active low-income business" not eligible
11.4 under section 45D of the Internal Revenue Code, but allowed under subdivision 1, paragraph
11.5 (l), to the chairs and ranking minority members of the legislative committees and budget
11.6 divisions with jurisdiction over the agency. The written explanation must be provided as
11.7 soon after the determination as practicable.

11.8 Subd. 15. **Expiration.** This section expires nine taxable years following final enactment,
11.9 except that the commissioner's authority to allow the credit under subdivision 2 based on
11.10 certificates that were issued under subdivision 3 before expiration remains in effect through
11.11 the year following the year in which all certificates have either been canceled or resulted
11.12 in issuance of credit certificates, or 2031, whichever is earlier.

11.13 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
11.14 31, 2017.

11.15 Sec. 2. **[290.0693] NEW MARKETS TAX CREDIT.**

11.16 Subdivision 1. **Definition.** For purposes of this section, "qualified equity investment"
11.17 has the meaning given in section 116X.01, subdivision 1.

11.18 Subd. 2. **Credit allowed.** A taxpayer that makes a qualified equity investment is allowed
11.19 a credit against the tax imposed under this chapter equal to the amount provided under
11.20 section 116X.01, subdivision 2.

11.21 Subd. 3. **Audit powers.** Notwithstanding any issuance of credit by the commissioner
11.22 of employment and economic development under section 116X.01, the commissioner may
11.23 utilize any audit and examination powers under chapter 270C or 289A to the extent necessary
11.24 to verify that the taxpayer is eligible for the credit and to assess for the amount of any
11.25 improperly claimed credit.

11.26 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December
11.27 31, 2017.

11.28 Sec. 3. Minnesota Statutes 2016, section 297I.20, is amended by adding a subdivision to
11.29 read:

11.30 Subd. 4. **New markets tax credit.** (a) For purposes of this subdivision, "qualified equity
11.31 investment" has the meaning given in section 116X.01, subdivision 1.

- 12.1 (b) An insurance company that makes a qualified equity investment may claim a credit
12.2 against the premiums tax imposed under this chapter equal to the amount provided under
12.3 section 116X.01, subdivision 2.
- 12.4 (c) This credit does not affect the calculation of police and fire aid under section 69.021.
- 12.5 **EFFECTIVE DATE.** This section is effective the day following final enactment and
12.6 applies to premium tax returns originally due on or after December 31, 2017.