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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2778

03/06/2014 Authored by Persell; Mahoney; Hamilton; Ward, J.E.; Radinovich and others

The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance and Policy

03/12/2014 Adoption of Report: Re-referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to economic development; adopting the Minnesota New Markets
1.3 Jobs Act; providing capital for business growth in economically distressed
1.4 communities; imposing penalties; proposing coding for new law as Minnesota
1.5 Statutes, chapter 116X.

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

1.7 Section 1. **[116X.01] TITLE.**

1.8 This chapter shall be known as and may be cited as the "Minnesota New Markets
1.9 Jobs Act."

1.10 Sec. 2. **[116X.02] DEFINITIONS.**

1.11 Subdivision 1. **Scope.** For the purposes of this chapter, the following terms defined
1.12 in this section have the meanings given.

1.13 Subd. 2. **Applicable percentage.** "Applicable percentage" means zero percent
1.14 for the first two credit allowance dates, eight percent for the third through sixth credit
1.15 allowance dates, and seven percent for the seventh credit allowance date.

1.16 Subd. 3. **Department.** "Department" means the Department of Employment and
1.17 Economic Development.

1.18 Subd. 4. **Code.** "Code" or "the Code" means the Internal Revenue Code of 1986 as
1.19 amended through the date in section 290.01, subdivision 19.

1.20 Subd. 5. **Credit allowance date.** "Credit allowance date" means with respect to
1.21 any qualified equity investment:

1.22 (1) the date on which the investment is initially made; and

1.23 (2) each of the six anniversary dates of that date thereafter.

2.1 Subd. 6. **Long-term debt security.** "Long-term debt security" means any debt
2.2 instrument issued by a qualified community development entity at par value with an
2.3 original maturity date of at least seven years from the date of its issuance, with no
2.4 acceleration of repayment, amortization, or prepayment features prior to its original
2.5 maturity date. The qualified community development entity that issues the debt instrument
2.6 must not make cash interest payments on the debt instrument during the period beginning
2.7 on the date of issuance and ending on the final credit allowance date in an amount that
2.8 exceeds the cumulative operating income, as defined by regulations adopted under section
2.9 45D of the Code of the qualified community development entity for that period prior to
2.10 giving effect to the expense of the cash interest payments. This subdivision shall not limit
2.11 the holder's ability to accelerate payments on the debt instrument in situations where the
2.12 issuer has defaulted on covenants designed to ensure compliance with this section or
2.13 section 45D of the Code.

2.14 Subd. 7. **Purchase price.** "Purchase price" means the amount paid to the issuer of a
2.15 qualified equity investment for such qualified equity investment.

2.16 Subd. 8. **Qualified active low-income community business.** "Qualified active
2.17 low-income community business" has the meaning given in section 45D of the Code
2.18 and Code of Federal Regulations, title 26, section 1.45D-1. A business is considered
2.19 a qualified active low-income community business for the duration of the qualified
2.20 community development entity's investment in, or loan to, the business if the entity
2.21 reasonably expects, at the time it makes the investment or loan, that the business will
2.22 continue to satisfy the requirements for being a qualified active low-income community
2.23 business, throughout the entire period of the investment or loan. The term qualified active
2.24 low-income community business excludes any business that derives or projects to derive
2.25 15 percent or more of its annual revenue from the rental or sale of real estate. This
2.26 exclusion does not apply to a business that is controlled by, or under common control with,
2.27 another business if the second business:

2.28 (1) does not derive or project to derive 15 percent or more of its annual revenue
2.29 from the rental or sale of real estate; and

2.30 (2) is the primary tenant of the real estate leased from the first business.

2.31 Subd. 9. **Qualified community development entity.** (a)(1) "Qualified community
2.32 development entity" has the meaning given in section 45D of the Code; provided that the
2.33 entity has entered into, for the current year or any prior year, an allocation agreement with
2.34 the Community Development Financial Institutions Fund of the United States Department
2.35 of the Treasury with respect to credits authorized by section 45D of the Code, which
2.36 includes Minnesota within the service area set forth in the allocation agreement. The

term includes subsidiary community development entities or affiliates of any qualified community development entity, all of which shall be treated as a single applicant for purposes of section 116X.05.

(2) The term qualified community development entity shall not include any regulated financial institution that is subject to the provisions of the Community Reinvestment Act of 1977, United States Code, title 12, chapter 30, or any subsidiary or affiliate thereof.

(3) Clause (2) shall not apply to a regulated financial institution, or subsidiary or affiliate thereof, if the regulated financial institution is chartered by, or headquartered in, the state of Minnesota and the regulated financial institution otherwise meets the requirements of clause (1).

Subd. 10. **Qualified equity investment.** (a) "Qualified equity investment" means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(1) is acquired after January 1, 2014, at its original issuance solely in exchange for cash;

(2) has at least 100 percent 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 this state by the first anniversary of the initial credit allowance date; and

(3) is designated by the issuer as a qualified equity investment under this subdivision and is certified by the department as not exceeding the limitation contained in section 116X.05, subdivision 4.

(b) Notwithstanding the restrictions on transferability contained in section 116X.04, this term shall include any qualified equity investment that does not meet the provisions of paragraph (a) if the investment:

(1) is transferred to a subsequent holder; and

(2) was a qualified equity investment in the hands of any prior holder.

(c) This term shall not include either (1) any qualified equity investment that entitles the holder to claim tax credits under section 45D of the Code, or (2) any qualified equity investment, the proceeds of which are used to make debt or equity investments in, directly or indirectly, any other qualified community development entity.

Subd. 11. **Qualified low-income community investment.** "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of

its affiliates, with the proceeds of qualified equity investments that have been certified under section 116X.05 shall be \$10,000,000 whether made by one or several qualified community development entities.

Subd. 12. State premium tax liability. "State premium tax liability" means any liability incurred by any entity under Chapter 297I.

Subd. 13. Refundable performance fee. "Refundable performance fee" means a fee that a qualified community development entity seeking to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under section 116X.05 shall pay to the department as assurance of compliance with certain requirements of this chapter. The amount of the fee shall be equal to one-half of one percent of the amount of the equity investment or long-term debt security requested to be designated as a qualified equity investment, up to a maximum performance fee of \$500,000.

Subd. 14. Affiliate. For the purposes of subdivision 9, the term "affiliate" shall include any entity, without regard to whether such entity otherwise constitutes a qualified community development entity under subdivision 9, paragraph (a), that is the initial holder, either directly or through one or more special purpose entities, of a qualified equity investment in the qualified community development entity and any entity, without regard to whether such entity otherwise constitutes a qualified community development entity under subdivision 9, paragraph (a), that provides insurance or any other form of guaranty to the ultimate recipient of tax credits under section 116X.03 with respect to a recapture or forfeiture of such tax credits under section 116X.06, either directly or through the guaranty of any other economic benefit that is paid in lieu of the tax credits allowable under section 116X.03. The determination of whether an entity is an affiliate shall be made by taking into account all relevant facts and circumstances, including the description of the proposed amount, structure, and initial purchaser of the qualified equity investment required by section 116X.05, subdivision 1, paragraph (a), clause (4), and the determination shall assume that the information provided pursuant to section 116X.05, subdivision 1, paragraph (a), clause (4), is true and complete as of the date an application is submitted pursuant to section 116X.05.

Sec. 3. [116X.03] CREDIT ESTABLISHED.

(a) Any entity that makes a qualified equity investment earns a vested right to credit against the entity's state premium tax liability on a premium tax report filed under this section that may be utilized as described in paragraphs (b) to (e).

5.1 (b) On each credit allowance date of the qualified equity investment, the entity, or
5.2 subsequent holder of the qualified equity investment, shall be entitled to utilize a portion
5.3 of the credit during the taxable year, including the credit allowance date.

5.4 (c) The credit amount shall be equal to the applicable percentage for the credit
5.5 allowance date multiplied by the purchase price paid to the issuer of the qualified equity
5.6 investment.

5.7 (d) The amount of the credit claimed by an entity shall not exceed the amount of the
5.8 entity's state premium tax liability for the tax year for which the credit is claimed. Any
5.9 amount of tax credit that the entity is prohibited from claiming in a taxable year as a result
5.10 of this chapter may be carried forward for use in any subsequent taxable year.

5.11 (e) An entity claiming a credit under this chapter is not required to pay any additional
5.12 retaliatory tax levied under section 297I.05 as a result of claiming that credit. In addition,
5.13 it is the intent of this act that an entity claiming a credit under this chapter is not required
5.14 to pay any additional tax that may arise as a result of claiming that credit.

5.15 Sec. 4. **[116X.04] TRANSFERABILITY.**

5.16 No tax credit claimed under this chapter shall be refundable or saleable on the open
5.17 market. However, a participating investor may transfer credits to an affiliated insurance
5.18 company, provided that it gives prior written notice to the department. Tax credits earned
5.19 by a partnership, limited liability company, S-corporation, or other "pass-through" entity
5.20 may be allocated to the partners, members, or shareholders of the entity for their direct
5.21 use in accordance with the provisions of any agreement among those partners, members,
5.22 or shareholders. Any allocation of tax credits made to a partner, member, or shareholder
5.23 in accordance with this section shall not be considered a sale of such tax credits for
5.24 purposes of this chapter.

5.25 Sec. 5. **[116X.05] CERTIFICATION OF QUALIFIED EQUITY INVESTMENTS.**

5.26 Subdivision 1. **Application.** (a) A qualified community development entity that
5.27 seeks to have an equity investment or long-term debt security designated as a qualified
5.28 equity investment and eligible for tax credits under this chapter shall apply to the
5.29 department. The department shall begin accepting applications on January 1, 2015. The
5.30 qualified community development entity shall include the following in its application:

5.31 (1) evidence of the applicant's certification as a qualified community development
5.32 entity, including evidence of the service area of the entity that includes Minnesota;

(2) a copy of the allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund under section 116X.02, subdivision 9;

(3) a certificate executed by an executive officer of the applicant attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund;

(4) a description of the proposed amount, structure, and initial purchaser of the qualified equity investment;

(5) the minimum amount of the qualified equity investment the qualified community development entity is willing to accept in the event the amount proposed to be certified under clause (4) is less than the applicant's proposed amount of qualified equity investment;

(6) a plan describing the proposed investment of the proceeds of the qualified equity investment, including the types of qualified active low-income community businesses in which the applicant expects to invest. Applicants are not required to identify qualified active low-income community businesses in which they will invest when submitting an application;

(7) a nonrefundable application fee of \$5,000. This fee shall be paid to the department and shall be required of each application submitted; and

(8) the refundable performance fee required by section 116X.08.

Subd. 2. **Consideration of application.** Within 30 days after receipt of a completed application containing the information in subdivision 1, including the payment of the application fee and the refundable performance fee, the department shall grant or deny the application in full or in part. If the department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application remains denied and must be resubmitted in full with a new submission date.

Subd. 3. **Certification.** If the application required under this section is complete, the department shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this chapter, subject to the limitations contained in subdivision 5. The department shall provide written notice of the certification to the qualified community development entity. The notice shall include the name of the initial purchaser of the qualified equity investment and the credit amount.

Before any tax credits are claimed under this chapter, the qualified community development entity shall provide written notice to the department of the names of the entities eligible to claim such credits as a result of holding a qualified equity investment. If the names of the entities that are eligible to utilize the credits change due to a transfer of a qualified equity investment or an allocation or affiliate transfer pursuant to section 116X.04, the qualified community development entity shall notify the department of the change.

Subd. 4. **Amount certified.** The department shall certify \$250,000,000 in qualified equity investments. The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications that are complete and received on the same day, the department shall certify, consistent with remaining qualified equity investment capacity, the qualified equity investments in proportionate percentages based upon the ratio 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. If any amount of qualified equity investment that would be certified under this section is less than the acceptable minimum amount specified in the application as required by subdivision 1, clause (5), the application is deemed withdrawn and the amount of qualified equity investment shall be proportionately allocated among the other applicants pursuant to this subdivision.

Subd. 5. **Transfer of authority.** An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity, provided that the applicant provides the information required in the application with respect to such transferee and the applicant notifies the department of the transfer within 30 days of the transfer.

Subd. 6. **Cash investment.** Within 60 days of the applicant receiving notice of certification, the qualified community development entity or any transferee under subdivision 5 shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee under subdivision 5 must provide the department with evidence of the receipt of the cash investment within ten business days after receipt. If the qualified community development entity or any transferee under subdivision 5 does not receive the cash investment and issue the qualified equity investment within 60 days following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the department for certification. Lapsed certifications revert back to the department and shall be reissued, first, pro rata to other applicants whose qualified

equity investment allocations were reduced under subdivision 4 and, thereafter, in accordance with the application process.

Sec. 6. [116X.06] DISALLOWANCE OF TAX CREDITS AND PENALTIES.

(a) The department shall disallow the utilization of any tax credits earned as a result of holding a qualified equity investment, but not yet claimed, if:

(1) the issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of the qualified equity investment. In this case, the department's disallowance of unclaimed tax credits shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment;

(2) the issuer fails to invest an amount equal to 100 percent of the purchase price of the qualified equity investment in qualified low-income community investments in Minnesota within 12 months of the issuance of the qualified equity investment and maintain at least 100 percent of such level of investment in qualified low-income community investments in Minnesota until the last credit allowance date for the qualified equity investment. For purposes of this section, an investment shall be considered held by an issuer even if the investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within 12 months of the receipt of such capital. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, 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; or

(3) there is any violation of section 116X.10.

(b) Notwithstanding any contrary provision, any tax credits already claimed under this chapter shall not be subject to recapture upon the occurrence of an event set forth in paragraph (a), clause (1) or (2).

(c) If the department disallows the utilization of tax credits under this section, it may also, at its discretion, impose penalties on the qualified community development entity that issued the qualified equity investment for which tax credits are disallowed, not to exceed the amount of the refundable performance fee required under section 116X.08 and without regard to whether such fee has been refunded to the qualified community development entity.

9.1 Sec. 7. **[116X.07] NOTICE OF NONCOMPLIANCE.**

9.2 Enforcement of each of the disallowance and penalty provisions shall be subject
9.3 to a six-month cure period. No disallowance or penalty shall occur until the qualified
9.4 community development entity shall have been given notice of noncompliance and
9.5 afforded six months from the date of the notice to cure the noncompliance.

9.6 Sec. 8. **[116X.08] REFUNDABLE PERFORMANCE FEE.**

9.7 Subdivision 1. Performance guarantee amount. A qualified community
9.8 development entity that seeks to have an equity investment or long-term debt security
9.9 designated as a qualified equity investment and eligible for tax credits under this section
9.10 shall pay a refundable performance fee to the department for deposit in the new markets
9.11 performance guarantee account, which is hereby established. The entity shall forfeit:

9.12 (1) the performance fee in its entirety if the qualified community development entity
9.13 and its subsidiary qualified community development entities fail to issue the total amount
9.14 of qualified equity investments certified by the department and receive cash in the total
9.15 amount certified under section 116X.05, subdivision 3; or

9.16 (2) the amount of the performance fee equal to the product of the original amount of
9.17 the refundable performance fee multiplied by the percentage of the remaining amount of
9.18 the proceeds of the qualified equity investment not used to make qualified low-income
9.19 equity investments if the qualified community development entity or any subsidiary
9.20 qualified community development entity that issues a qualified equity investment certified
9.21 under this section fails to meet the investment requirement under section 116X.06 by the
9.22 second credit allowance date of such qualified equity investment. Forfeiture of the fee
9.23 or any portion thereof under this paragraph shall be subject to the six-month cure period
9.24 established under section 116X.07.

9.25 Subd. 2. Request for refund. The fee required under subdivision 1 shall be paid
9.26 to the department and held in the new markets performance guarantee account until
9.27 compliance with subdivision 1 shall have been established. The qualified community
9.28 development entity may request a refund of the fee from the department no sooner than 30
9.29 days after having met all the requirements of subdivision 1. The department shall have 30
9.30 days to comply with the request or give notice of noncompliance.

9.31 Sec. 9. **[116X.09] PREAPPROVAL OF INVESTMENTS.**

9.32 Before making a proposed qualified low-income community investment, a qualified
9.33 community development entity may request from the department a written determination
9.34 that the proposed investment will qualify as a qualified low-income community investment

10.1 and will satisfy all applicable provisions of this chapter. The department must notify a
10.2 qualified community development entity within ten business days from the receipt of a
10.3 request of its determination and an explanation thereof. Any determination made by the
10.4 department pursuant to this section shall be binding on the department.

10.5 Sec. 10. **[116X.10] USE OF PROCEEDS PROHIBITED.**

10.6 A qualified active low-income community business that receives a qualified
10.7 low-income community investment under this chapter, or any affiliates of a qualified
10.8 active low-income community business, may not directly or indirectly use the proceeds
10.9 of such qualified active low-income community investment to lend to or invest in a
10.10 qualified community development entity or member or affiliate of a qualified community
10.11 development entity where the proceeds of the loan or investment are directly or indirectly
10.12 used to fund or refinance the purchase of a qualified equity investment hereunder.

10.13 Sec. 11. **EFFECTIVE DATE.**

10.14 Sections 1 to 10 are effective the day following final enactment, and apply to
10.15 premium tax returns originally due on or after that date.