

GENERAL ASSEMBLY OF NORTH CAROLINA  
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HOUSE DRH10018-MC-23 (01/06)

Short Title: Start-Ups Act/New Markets Tax Credit. (Public)

Sponsors: Representatives B. Brown and Bryan (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT AND TO  
3 ENACT THE NEW MARKETS JOBS ACT OF 2015.

4 Whereas, start-up companies play a critical role in creating new jobs and sources of  
5 revenue; and

6 Whereas, crowd funding, or raising money through small contributions from a large  
7 number of investors, allows smaller enterprises in North Carolina to have access to the capital  
8 they need to initiate new business ventures; and

9 Whereas, by promoting crowd funding, the General Assembly can give new  
10 businesses access to additional financing tools, can assist in democratizing start-up capital, and  
11 can facilitate investment by North Carolina residents in North Carolina start-ups; and

12 Whereas, by facilitating investment with appropriate restrictions to protect the  
13 interests of North Carolina investors, the General Assembly can promote the formation and  
14 growth of smaller North Carolina enterprises, along with additional job formation, and can  
15 permit businesses to raise capital using crowd funding unencumbered by excessive government  
16 regulation; Now, therefore,  
17 The General Assembly of North Carolina enacts:

18  
19 **PART I. JUMP-START OUR BUSINESS START-UPS ACT**

20 **SECTION 1.** G.S. 78A-17 is amended by adding a new subdivision to read:

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

23 **SECTION 2.** Article 3 of Chapter 78A of the General Statutes is amended by  
24 adding a new section to read:

25 "**§ 78A-17.1. Invest NC exemption.**

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

- 29 (1) The issuer of the security is a business entity formed under the laws of the  
30 State and registered with the Secretary of State.  
31 (2) The transaction meets the requirements of the federal exemption for  
32 intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15  
33 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. § 230.147.  
34 (3) The sum of all cash and other consideration to be received for all sales of the  
35 security in reliance upon this exemption does not exceed the cap provided in  
36 this subdivision.



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

- 1                   and employees whose primary job responsibilities involve the  
2                   operating business of the issuer rather than assisting the issuer  
3                   in raising capital, and for each person identified in response  
4                   to this paragraph, a description of the consideration being  
5                   paid to such person for such assistance.
- 6                   6.       A description of any litigation or legal proceedings involving  
7                   the company or its management.
- 8                   7.       The names and addresses, including URL, of any Web sites  
9                   that will be used in connection with the offering.
- 10                  c.       An escrow agreement with a bank or other depository institution  
11                  located within this State in which the investor funds will be  
12                  deposited, providing that all offering proceeds will be released to the  
13                  issuer only when the aggregate capital raised from all investors is  
14                  equal to or greater than the minimum target offering amount  
15                  specified in the business plan as necessary to implement the business  
16                  plan and that all investors may cancel their commitments to invest if  
17                  that target offering amount is not raised by the time stated in the  
18                  disclosure document.
- 19                  (6)       The issuer is not, either before or as a result of the offering, an investment  
20                  company, as defined in section 3 of the Investment Company Act of 1940,  
21                  15 U.S.C. § 8a-3, or an entity that would be an investment company but for  
22                  the exclusions provided in section 3(c) of the act, or subject to the reporting  
23                  requirements of section 13 or 15(d) of the Securities Exchange Act of 1934,  
24                  15 U.S.C. § 78m and 78o(d).
- 25                  (7)       The issuer shall inform all prospective purchasers under this section that the  
26                  securities have not been registered under federal or State securities law and  
27                  that the securities are subject to limitations on resale. The issuer shall display  
28                  the following legend conspicuously on the cover page of the disclosure  
29                  document:
- 30                               "IN MAKING AN INVESTMENT DECISION, INVESTORS  
31                               MUST RELY ON THEIR OWN EXAMINATION OF THE  
32                               ISSUER AND THE TERMS OF THE OFFERING, INCLUDING  
33                               THE MERITS AND RISKS INVOLVED. THESE SECURITIES  
34                               HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR  
35                               STATE SECURITIES COMMISSION OR REGULATORY  
36                               AUTHORITY. FURTHERMORE, THE FOREGOING  
37                               AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR  
38                               DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY  
39                               REPRESENTATION TO THE CONTRARY IS A CRIMINAL  
40                               OFFENSE. THESE SECURITIES ARE SUBJECT TO  
41                               RESTRICTIONS ON TRANSFERABILITY AND RESALE AND  
42                               MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS  
43                               PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R.  
44                               § 230.147(E) AS PROMULGATED UNDER THE SECURITIES  
45                               ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE  
46                               SECURITIES LAWS, PURSUANT TO REGISTRATION OR  
47                               EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE  
48                               THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL  
49                               RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD  
50                               OF TIME."

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

1 the registration provisions of G.S. 78A-36 provided that all of the following  
2 apply:

- 3 a. It does not offer investment advice or recommendations.  
4 b. It does not solicit purchases, sales, or offers to buy the securities  
5 offered or displayed on the Web site.  
6 c. It does not compensate employees, agents, or other persons for the  
7 solicitation or based on the sale of securities displayed or referenced  
8 on the Web site.  
9 d. It is not compensated based on the amount of securities sold, and it  
10 does not hold, manage, possess, or otherwise handle investor funds  
11 or securities.  
12 e. It does not engage in such other activities as the Administrator, by  
13 rule, determines appropriate.

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

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

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

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

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

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

48 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section  
49 shall not be used in conjunction with any other exemption under this Chapter, except offers and  
50 sales to controlling persons shall not count toward the limitation in subdivision (3) of  
51 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or

1 individual occupying similar status or performing similar functions with respect to the issuer or  
2 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes  
3 of securities of the issuer.

4 (e) Disqualification. – The exemption allowed by this section shall not apply if an  
5 issuer or person affiliated with the issuer or offering is subject to any disqualification contained  
6 in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in rule 262 as promulgated under the  
7 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply  
8 if (i) upon a showing of good cause and without prejudice to any other action by the  
9 Administrator, the Administrator determines that it is not necessary under the circumstances  
10 that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into  
11 whether any disqualification existed under this subsection but did not know, and in the exercise  
12 of reasonable care could not have known, that a disqualification existed under this subsection.  
13 The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer  
14 and the other offering participants.

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

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

22 **SECTION 3.** G.S. 78A-49(d) reads as rewritten:

23 "(d) The Administrator may by rule or order require the filing of any prospectus,  
24 pamphlet, circular, form letter, advertisement, or other sales literature or advertising  
25 communication addressed or intended for distribution to prospective investors, unless the  
26 security or transaction is exempted by ~~G.S. 78A-16 or 78A-17 (except 78A-17(9), (17), and~~  
27 ~~(19))~~ G.S. 78A-16 and G.S. 78A-17 (except G.S. 78A-17(9), (17), (19), and (20)) and such  
28 exemption has not been denied or revoked under G.S. 78A-18 or the security is a security  
29 covered under federal law or the transaction is with respect to a security covered under federal  
30 law."

31 **SECTION 4.(a)** Notwithstanding any provision of Article 2A of Chapter 150B of  
32 the General Statutes, within 12 months of the effective date of this act, the Secretary of State  
33 shall adopt rules to implement the provisions of this act in accordance with the following  
34 procedure:

- 35 (1) At least 15 business days prior to adopting a rule, submit the rule and a  
36 notice of public hearing to the Codifier of Rules. The Codifier of Rules shall  
37 publish the proposed rule and the notice of public hearing on the Internet  
38 within five business days.
- 39 (2) At least 15 business days prior to adopting a rule, notify persons on the  
40 mailing list maintained pursuant to G.S. 150B-21.2(d) and any other  
41 interested parties of the Secretary's intent to adopt a rule and of the public  
42 hearing.
- 43 (3) Accept written comments on the proposed rule for at least 15 business days  
44 prior to adoption of the rule.
- 45 (4) Hold at least one public hearing on the proposed rule no less than five days  
46 after the rule and notice have been published.

47 A rule adopted in accordance with this section becomes effective on the first day of  
48 the month following the month the Secretary adopts the rule and submits the rule to the  
49 Codifier of Rules for entry into the North Carolina Administrative Code. Any rule adopted  
50 more than 12 months after the effective date of this act shall comply with the requirement of  
51 Article 2A of Chapter 150B of the General Statutes.



1 duration of the qualified community development entity's investment in or  
2 loan to the business if the entity reasonably expects, at the time it makes the  
3 investment or loan, that the business will continue to satisfy the requirements  
4 for being a qualified active low-income community business, other than the  
5 SBA size standards, throughout the entire period of the investment or loan.  
6 The term excludes any business that derives or projects to derive fifteen  
7 percent (15%) or more of its annual revenue from the rental or sale of real  
8 estate. This exclusion does not apply to a business that is controlled by or  
9 under common control with another business if the second business (i) does  
10 not derive or project to derive fifteen percent (15%) or more of its annual  
11 revenue from the rental or sale of real estate and (ii) is the primary tenant of  
12 the real estate leased from the first business.

13 (8) Qualified community development entity. – The meaning given such term in  
14 section 45D of the Internal Revenue Code of 1986, as amended; provided  
15 that such entity has entered into, for the current year or any prior year, an  
16 allocation agreement with the Community Development Financial  
17 Institutions Fund of the U.S. Treasury Department with respect to credits  
18 authorized by section 45D of the Internal Revenue Code of 1986, as  
19 amended, which includes the State of North Carolina within the service area  
20 set forth in the allocation agreement. The term shall include qualified  
21 community development entities that are controlled by or are under common  
22 control with the qualified community development entity.

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

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

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

33 c. Is designated by the qualified community development entity as a  
34 qualified equity investment under this subdivision and is certified by  
35 the Department as not exceeding the limitation contained in  
36 G.S. 105-129.102(d)(5). This term shall include any qualified equity  
37 investment that does not meet the provisions of sub-subdivision a. of  
38 this subdivision if such investment was a qualified equity investment  
39 in the hands of a prior holder.

40 (10) Qualified low-income community investment. – Any capital or equity  
41 investment in or loan to any qualified active low-income community  
42 business. With respect to any one qualified active low-income community  
43 business, the maximum amount of qualified low-income community  
44 investments made in such business, on a collective basis with all of the  
45 businesses' affiliates, with the proceeds of qualified equity investments  
46 certified under G.S. 105-129.102(d) that shall count toward satisfaction of  
47 the requirements of sub-subdivision b. of G.S. 105-129.101(9) and  
48 sub-subdivision c. of G.S. 105-129.102(e)(1) shall be seven million dollars  
49 (\$7,000,000), exclusive of qualified low-income community investments  
50 made with repaid or redeemed qualified low-income community investments  
51 or interest or profits realized thereon.



- 1           (11) Reduction allowance date. – With respect to any qualified equity investment,  
2 the date on which the investment is initially made and each of the six  
3 anniversary dates thereafter.
- 4           (12) Rural census tracts. – Any census tract in which a qualified active  
5 low-income community business is located that also is located in a county  
6 designated as Tier 1 or Tier 2 by the North Carolina Department of  
7 Commerce as of or after 2015.
- 8           (13) Secretary. – The Secretary of Commerce.
- 9           (14) State premium tax liability. – Any liability incurred by any entity under the  
10 gross premiums tax or the retaliatory premium tax levied in Article 8B of  
11 this Chapter, or, if the tax liability under the gross premiums tax or the  
12 retaliatory premium tax levied in Article 8B of this Chapter is eliminated or  
13 reduced, the term shall also mean any tax liability imposed on an insurance  
14 company or other person that had premium tax liability under the laws of  
15 this State.

16 **"§ 105-129.102. Reduction for qualified equity investment.**

17       (a) Reduction Established. – An entity that makes a qualified equity investment earns a  
18 vested contractual right to a below-the-line reduction of tax applicable to the entity's State  
19 premium tax liability on future premium tax reports filed under Article 8B of Chapter 105 of  
20 the General Statutes. On or after each reduction allowance date of the qualified equity  
21 investment, the taxpayer or subsequent holder of the qualified equity investment may utilize a  
22 portion of the tax reduction during the taxable year, including the reduction allowance date.  
23 The tax reduction amount is equal to the applicable percentage for the reduction allowance date  
24 multiplied by the purchase price paid to the qualified community development entity. The  
25 amount of the tax reduction claimed in that taxable year by a taxpayer shall not exceed the  
26 amount of such taxpayer's State tax liability for the tax year for which the tax reduction is  
27 claimed. Any amount of tax reduction that the taxpayer is prohibited from claiming in a taxable  
28 year as a result of this section may be carried forward for use in any subsequent taxable year.

29       (b) Transferability. – A tax reduction claimed pursuant to this Article is not refundable  
30 or saleable on the open market. Tax reductions earned by or allocated to a partnership, limited  
31 liability company, or S Corporation may be allocated to the partners, members, or shareholders  
32 of such entity for their use in accordance with the provisions of any agreement among such  
33 partners, members, or shareholders. These allocations are not considered a sale for purposes of  
34 this section. The Department shall issue a certificate to each entity allocated a tax reduction  
35 under this Article.

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

- 42           (1) Evidence of the entity's certification as a qualified community development  
43 entity, including evidence of the service area of the entity that includes this  
44 State.
- 45           (2) A copy of an allocation agreement executed by the entity or its controlling  
46 entity and the Community Development Financial Institutions Fund.
- 47           (3) A certificate executed by an executive officer of the entity attesting that the  
48 allocation agreement remains in effect and has not been revoked or cancelled  
49 by the Community Development Financial Institutions Fund.
- 50           (4) A description of the proposed amount, structure, and purchaser of the  
51 qualified equity investment.

- 1           (5)   If known, identifying information for any taxpayer eligible to utilize tax  
2           reductions earned as a result of the issuance of the qualified equity  
3           investment.
- 4           (6)   Examples of the types of qualified active low-income businesses in which  
5           the applicant, its controlling entity, or affiliates of its controlling entity have  
6           invested under the Federal New Markets Tax Credit Program. Applications  
7           are not required to identify qualified active low-income community  
8           businesses in which they will invest when submitting an application.
- 9           (7)   A nonrefundable application fee of five thousand dollars (\$5,000).
- 10          (8)   The refundable performance deposit required by G.S. 105-129.104.
- 11          (9)   Whether the application is for the Rural Reserve under G.S. 105-129.109.
- 12          (d)   (1)   Within 30 days after receipt of a completed application containing the  
13          information set forth in subsection (c) of this section, including the payment  
14          of the application fee and the performance deposit, the Department shall  
15          grant or deny the application in full or in part. If the Department denies any  
16          part of the application, it shall inform the qualified community development  
17          entity of the grounds for the denial. If the qualified community development  
18          entity provides any additional information required by the Department or  
19          otherwise completes its application within 15 days of the notice of denial,  
20          the application shall be considered completed as of the original date of  
21          submission. If the qualified community development entity fails to provide  
22          the information or complete its application within the 15-day period, the  
23          application is denied and must be resubmitted in full with a new submission  
24          date.
- 25          (2)   If the application is deemed complete, the Department shall certify the  
26          proposed equity investment or long-term debt security as a qualified equity  
27          investment that is eligible for a reduction under this section, subject to the  
28          limitations contained in subdivision (5) of this subsection; provided that the  
29          Department shall not certify qualified equity investments for any applicant,  
30          on a combined basis with all of its affiliates, in excess of sixty million  
31          dollars (\$60,000,000) unless such applicant has (i) already had qualified  
32          equity investments certified under this section, (ii) satisfied the requirements  
33          of subdivision (6) of this subsection with respect to such qualified equity  
34          investments, and (iii) filed a new application after satisfying the  
35          requirements of (i) and (ii) of this subdivision. The Department shall provide  
36          written notice of the certification to the qualified community development  
37          entity. The notice shall include the names of those taxpayers who are eligible  
38          to utilize the reductions and their respective reduction amounts. If the names  
39          of the taxpayers who are eligible to utilize the reductions change due to a  
40          transfer of a qualified equity investment or a change in an allocation  
41          pursuant to subsection (b) of this section, the qualified community  
42          development entity shall notify the Department of such change.
- 43          (3)   Once the Department has certified a qualified equity investment, the  
44          qualified community development entity may suballocate all or any portion  
45          of the amount of the certified qualified equity investment to one or more  
46          qualified community development entities with the same controlling entity  
47          as the applicant qualified community development entity, provided that the  
48          applicant qualified community development entity files a notice of such  
49          suballocation with the Department and the recipient of the suballocation  
50          meets all the requirements of a qualified community development entity

- 1                   under this section. The notice of suballocation shall include the information  
2                   required in the application for all suballocates.
- 3           (4)       The Department shall certify qualified equity investments in the order  
4                   applications are received by the Department. Applications received on the  
5                   same day shall be deemed to have been received simultaneously. For  
6                   applications received on the same day and deemed complete, the Department  
7                   shall certify, consistent with remaining tax reduction capacity, qualified  
8                   equity investments in proportionate percentages based upon the ratio of the  
9                   amount of qualified equity investment requested in an application to the total  
10                  amount of qualified equity investments requested in all applications received  
11                  on the same day.
- 12           (5)       The Department shall certify two hundred eight million three hundred  
13                   thirty-three thousand three hundred thirty-three dollars (\$208,333,333) in  
14                   qualified equity investment authority pursuant to two allocations, one for the  
15                   Rural Reserve and one for the Statewide Reserve, each as described in  
16                   G.S. 105-129.109(a). If a pending request cannot be fully certified due to  
17                   this limit, the Department shall certify the portion that may be certified  
18                   unless the qualified community development entity elects to withdraw its  
19                   request rather than receive partial certification.
- 20           (6)       Within 45 days after receiving notice of certification, the qualified  
21                   community development entity or any transferee under this section shall  
22                   issue the qualified equity investment and receive cash in the amount of the  
23                   certified amount. The qualified community development entity or transferee  
24                   must provide the Department with evidence of the receipt of the cash  
25                   investment within 50 days of the applicant receiving notice of certification.  
26                   If the qualified community development entity or transferee does not receive  
27                   the cash investment and issue the qualified equity investment within 45 days  
28                   following receipt of the certification notice, the certification shall lapse and  
29                   the entity may not issue the qualified equity investment without reapplying  
30                   to the Department for certification. A certification that lapses reverts back to  
31                   the Department and shall be reissued pro rata to other applicants whose  
32                   qualified equity investment allocations were reduced under this section and  
33                   thereafter in accordance with the application process.
- 34           (e)       Disallowance. –
- 35           (1)       The Department may determine that reductions previously claimed or to be  
36                   claimed by a taxpayer under this Article should be disallowed. Notice that a  
37                   reduction shall be disallowed shall be transmitted in writing to the taxpayer  
38                   and the Department of Revenue. Disallowance may be determined if any of  
39                   the following occurs:
- 40                   a.       Any amount of the federal tax credit available with respect to a  
41                   qualified equity investment that is eligible for a tax reduction under  
42                   this section is recaptured under section 45D of the Internal Revenue  
43                   Code of 1986, as amended. In such case, the Department's  
44                   disallowance shall be proportionate to the federal recapture with  
45                   respect to such qualified equity investment.
- 46                   b.       The qualified community development entity redeems or makes  
47                   principal repayment with respect to a qualified equity investment  
48                   prior to the seventh anniversary of the issuance of such qualified  
49                   equity investment. In such case, the Department's disallowance shall  
50                   be proportionate to the amount of the redemption or repayment with  
51                   respect to such qualified equity investment.

- 1           c.     The qualified community development entity fails to (i) invest at  
2                 least eighty-five percent (85%) of the purchase price of the qualified  
3                 equity investment in qualified low-income investments in the State  
4                 within 12 months of the issuance of the qualified equity investment  
5                 and (ii) maintain such level of investment in qualified low-income  
6                 community investments in the State until the last reduction allowance  
7                 date for the qualified equity investment. For qualified equity  
8                 investments made under the Rural Reserve, all qualified low-income  
9                 community investments required to meet the requirements of this  
10                subsection must be made in qualified active low-income community  
11                businesses located in rural census tracts within this State.
- 12           d.     Any distribution or debt payment in violation of  
13                 G.S. 105-129.107(a).
- 14           e.     Failure to comply with G.S. 105-129.108, 105-129.109, or  
15                 105-129.110.

16           (2)    For purposes of this section, an investment shall be considered held by a  
17                 qualified community development entity even if the investment has been  
18                 sold or repaid if the qualified community development entity reinvests an  
19                 amount equal to the capital returned to or recovered by the qualified  
20                 community development entity from the original investment, exclusive of  
21                 any profits realized, in another qualified low-income community investment  
22                 within 12 months of the receipt of such capital. Periodic amounts received as  
23                 repayment of principal on a loan that is a qualified low-income community  
24                 investment shall be treated as continuously invested in a qualified  
25                 low-income community investment if the amounts are reinvested in one or  
26                 more qualified low-income community investments by the end of the  
27                 following calendar year. A qualified community development entity shall  
28                 not be required to reinvest capital returned from qualified low-income  
29                 community investments after the sixth anniversary of the issuance of the  
30                 qualified equity investment, and the qualified low-income community  
31                 investment shall be considered held by the qualified community  
32                 development entity through the seventh anniversary of the issuance of the  
33                 qualified equity investment.

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

39    **"§ 105-129.103. Notice of noncompliance.**

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

43    **"§ 105-129.104. Refundable performance deposit.**

44           (a)    For each application submitted, a qualified community development entity that  
45                 seeks to have an equity investment or long-term debt security designated as a qualified equity  
46                 investment and eligible for a reduction under this Article shall make a performance deposit in  
47                 the amount of the greater of one-quarter of one percent (1/4 of 1%) of the amount of the equity  
48                 investment or long-term debt security requested to be designated as a qualified equity  
49                 investment or five hundred thousand dollars (\$500,000) to the Department for deposit in the  
50                 New Markets performance guarantee account, which is hereby established. The entity shall  
51                 forfeit the amount deposited if (i) the qualified community development entity together with

1 any qualified community development entities to which it has suballocated qualified equity  
2 investment authority pursuant to G.S. 105-129.102(d), if any, fail to issue the total amount of  
3 qualified equity investments certified by the Department and receive cash in the total amount  
4 certified under G.S. 105-129.102 within 45 days after receiving notice of certification, or (ii)  
5 the qualified community development entity or any qualified community development entity  
6 that issues suballocated qualified equity investment authority pursuant to G.S. 105-129.102(d)  
7 certified under this Article fails to invest at least eighty-five percent (85%) of the purchase  
8 price of any qualified equity investment issued in qualified low-income community  
9 investments within 12 months of the issuance of the qualified equity investment; provided that  
10 forfeiture for the failure under clauses (i) and (ii) of this subsection is not subject to the cure  
11 period established in G.S. 105-129.103.

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

19 **"§ 105-129.105. Letter rulings.**

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

24 (b) The Secretary shall respond to a request for a letter ruling within 60 days of receipt  
25 of such request. The applicant may provide a draft letter ruling for the Secretary's  
26 consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the  
27 issuance of the letter ruling. The Secretary may refuse to issue a letter ruling for good cause but  
28 must list the specific reasons for refusing to issue the letter ruling. Good cause includes any of  
29 the following:

- 30 (1) The applicant requests the director to determine whether a statute is  
31 constitutional or a regulation is lawful.
- 32 (2) The request involves a hypothetical situation or alternative plan.
- 33 (3) The facts or issues presented in the request are unclear, overbroad,  
34 insufficient, or otherwise inappropriate as a basis upon which to issue a letter  
35 ruling.
- 36 (4) The issue is currently being considered in a rule-making procedure,  
37 contested case, or other agency or judicial proceeding that may definitely  
38 resolve the issue.

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

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

48 **"§ 105-129.106. Retaliatory tax.**

49 An entity claiming a reduction under this Article is not required to pay any additional  
50 retaliatory tax levied under G.S. 105-228.8 as a result of claiming the reduction. It is the intent

1 of the General Assembly that an entity claiming a reduction under this Article is not required to  
2 pay any additional tax that may arise as a result of claiming that reduction.

3 **"§ 105-129.107. Decertification.**

4 (a) Once certified under this Article, a qualified equity investment may not be  
5 decertified unless all of the requirements of this section have been met. Until all qualified  
6 equity investments issued by a qualified community development entity or any transferee  
7 qualified community development entity under G.S. 105-129.102(d) are decertified under this  
8 section, the qualified community development entity or any transferee qualified community  
9 development entity under G.S. 105-129.102(d) shall not be entitled to distribute to its equity  
10 holders or make cash payments on long-term debt securities that have been designated as  
11 qualified equity investments in an amount that exceeds the sum of (i) the cumulative operating  
12 income, as defined by regulations adopted under section 45D of the Internal Revenue Code of  
13 1986, as amended, earned by the qualified community development entity since issuance of the  
14 qualified equity investment, prior to giving effect to any interest expense of long-term debt  
15 securities designated as qualified equity investments and (ii) fifty percent (50%) of the  
16 purchase price of the qualified equity investments issued by the qualified community  
17 development entity.

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

- 19 (1) The qualified equity investment is beyond its seventh reduction allowance  
20 date.  
21 (2) The qualified equity investment was in compliance with the requirements of  
22 this Article through its seventh reduction allowance date, including any  
23 cures.  
24 (3) The qualified equity investment has its proceeds invested in qualified active  
25 low-income community investments such that the total qualified active  
26 low-income community investments made, cumulatively including  
27 reinvestments, exceeds one hundred fifty percent (150%) of its qualified  
28 equity investment. For purposes of making this calculation, qualified  
29 low-income community investments to any one qualified active low-income  
30 community business, on a collective basis with affiliates, in excess of seven  
31 million dollars (\$7,000,000) are not included unless the investments are  
32 made with capital returned or repaid from qualified low-income community  
33 investments made by the qualified community development entity in other  
34 qualified active low-income community businesses or interest earned on or  
35 profits realized from any qualified low-income community investments.

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

44 **"§ 105-129.108. Limitation on fees.**

45 No qualified community development entity shall be entitled to pay any affiliate of such  
46 qualified community development entity any fees in connection with any activity under this  
47 Article prior to decertification under G.S. 105-129.107 of all qualified equity investments  
48 issued by the qualified community development entity. The foregoing shall not prohibit a  
49 qualified community development entity from allocating or distributing income earned by it to  
50 the affiliates or paying reasonable interest on amounts lent to the qualified community  
51 development entity by such affiliates.

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

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

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

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

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

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

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

1 anniversary of the initial reduction allowance date. The annual report shall include the  
2 following:

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

9 **SECTION 5.(b)** This section applies to qualified equity investments made on or  
10 after July 1, 2015.

11 **SECTION 6.** Except as otherwise provided, this act is effective when it becomes  
12 law. Sections 1, 2, 3, and 4 expire on July 1, 2017.