

House Bill 439 (COMMITTEE SUBSTITUTE)

By: Representatives Shaw of the 176th, Abrams of the 89th, England of the 116th, Hatchett of the 150th, Knight of the 130th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to
2 general provisions regarding insurance, so as to establish qualified low-income community
3 investment; to provide for a short title; to provide for definitions; to provide that certain
4 entities may earn credit against state premium tax liability; to provide for certification of
5 qualified equity investments; to provide for recapture of credit claimed under certain
6 circumstances; to provide for certain refundable fees; to provide for a retaliatory tax; to
7 provide for decertification; to provide for an effective date and applicability; to provide for
8 related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Chapter 1 of Title 33 of the Official Code of Georgia Annotated, relating to general
12 provisions regarding insurance, is amended by adding a new Code section to read as follows:

13 "33-1-24.

14 (a) This Code section shall be known and may be cited as the 'Georgia New Markets Jobs
15 Act.'

16 (b) As used in this Code section, the term:

17 (1) 'Affiliate' means an entity that directly or indirectly through one or more
18 intermediaries controls, is controlled by, or is under common control with the entity
19 specified.

20 (2) 'Applicable percentage' means 0 percent for the first two credit allowance dates, 12
21 percent for the next three credit allowance dates, and 11 percent for the next two credit
22 allowance dates.

23 (3) 'Credit allowance date' means with respect to any qualified equity investment:

24 (A) The date on which such investment is initially made; and

25 (B) Each of the six anniversary dates of such date thereafter.

26 (4) 'Department' means the Department of Community Affairs.

27 (5) 'Letter ruling' means a written interpretation of law to a specific set of facts provided
28 by the applicant requesting a letter ruling.

29 (6) 'Long-term debt security' means any debt instrument issued by a qualified community
30 development entity, at par value or a premium, with an original maturity date of at least
31 seven years from the date of its issuance, with no acceleration of repayment,
32 amortization, or prepayment features prior to its original maturity date. The qualified
33 community development entity that issues the debt instrument may not make cash interest
34 payments on the debt instrument during the period beginning on the date of issuance and
35 ending on the final credit allowance date in an amount that exceeds the cumulative
36 operating income, as defined by regulations adopted under Section 45D of the Internal
37 Revenue Code of 1986, as amended, of the qualified community development entity for
38 that period prior to giving effect to the expense of such cash interest payments. The
39 foregoing shall in no way limit the holder's ability to accelerate payments on the debt
40 instrument in situations where the qualified community development entity has defaulted
41 on covenants designed to ensure compliance with this Code section or Section 45D of the
42 Internal Revenue Code of 1986, as amended.

43 (7) 'Purchase price' means the amount paid to the qualified community development
44 entity that issues the qualified equity investment for such qualified equity investment.

45 (8) 'Qualified active low-income community business' shall have the same meaning
46 given such term in Section 45D of the Internal Revenue Code of 1986, as amended, and
47 26 C.F.R. Section 1.45D-1 but is limited to those businesses, including affiliates of such
48 businesses, that have fewer than 250 employees and not more than \$10 million in net
49 income in the previous year at the time the qualified low-income community investment
50 is made, provided that the employees and net income of affiliates of the business shall not
51 be aggregated for purposes of satisfying this requirement if the affiliate business is
52 classified under a different North American Industry Classification system code. A
53 business shall be considered a qualified active low-income community business for the
54 duration of the qualified community development entity's investment in, or loan to, the
55 business if the entity reasonably expects, at the time it makes the investment or loan, that
56 the business will continue to satisfy the requirements for being a qualified active
57 low-income community business, other than the size and net income standards,
58 throughout the entire period of the investment or loan. Such term excludes any business
59 that derives or projects to derive 15 percent or more of its annual revenue from the rental
60 or sale of real estate. This exclusion does not apply to a business that is controlled by,
61 or under common control with, another business if the second business: (A) does not
62 derive or project to derive 15 percent or more of its annual revenue from the rental or sale
63 of real estate and (B) is the primary tenant of the real estate leased from the first business.

64 (9) 'Qualified community development entity' shall have the same meaning given such
65 term in Section 45D of the Internal Revenue Code of 1986, as amended, provided that
66 such entity has entered into, for the current year or any prior year, an allocation
67 agreement with the Community Development Financial Institutions Fund of the United
68 States Treasury Department with respect to credits authorized by Section 45D of the
69 Internal Revenue Code of 1986, as amended, which includes the State of Georgia within
70 the service area set forth in such allocation agreement. Such term shall include subsidiary
71 community development entities of any such qualified community development entity.

72 (10) 'Qualified equity investment' means any equity investment in, or long-term debt
73 security issued by, a qualified community development entity that:

74 (A) Is acquired after the effective date of this Code section at its original issuance
75 solely in exchange for cash;

76 (B) Has at least 85 percent of its cash purchase price used by the qualified community
77 development entity to make qualified low-income community investments in qualified
78 active low-income community businesses located in this state by the first anniversary
79 of the initial credit allowance date; and

80 (C) Is designated by the qualified community development entity as a qualified equity
81 investment under this paragraph and is certified by the department as not exceeding the
82 limitation contained in paragraph (6) of subsection (e) of this Code section.

83 Such term shall include any qualified equity investment that does not meet the provisions
84 of subparagraph (A) of this paragraph if such investment was a qualified equity
85 investment in the hands of a prior holder.

86 (11) 'Qualified low-income community investment' means any capital or equity
87 investment in, or loan to, any qualified active low-income community business; but, with
88 respect to any one qualified active low-income community business, the maximum
89 amount of qualified low-income community investments made in such business, on a
90 collective basis with all of the businesses' affiliates, with the proceeds of qualified equity
91 investments certified pursuant to subsection (e) of this Code section is \$4 million,
92 exclusive of qualified low-income community investments made with repaid or redeemed
93 qualified low-income community investments or interest or profits realized thereon.

94 (12) 'State premium tax liability' means any liability incurred by any entity under Code
95 Sections 33-3-26 and 33-8-4, or, if the tax liability under Code Sections 33-3-26 and
96 33-8-4 is eliminated or reduced, the term shall also mean any tax liability imposed on an
97 insurance company or other person that had premium tax liability under the laws of this
98 state.

99 (c) Any entity that makes a qualified equity investment earns a vested right to credit
100 against the entity's state premium tax liability on a premium tax report filed under this Code
101 section that may be utilized as follows:

102 (1) On each credit allowance date of such qualified equity investment, the entity, or
103 subsequent holder of the qualified equity investment, shall be entitled to utilize a portion
104 of such credit during the taxable year, including such credit allowance date;

105 (2) The credit amount shall be equal to the applicable percentage for such credit
106 allowance date multiplied by the purchase price paid to the qualified community
107 development entity; and

108 (3) The amount of the credit claimed by an entity shall not exceed the amount of such
109 entity's state premium tax liability for the tax year for which the credit is claimed. Any
110 amount of tax credit that the entity is prohibited from claiming in a taxable year as a
111 result of this Code section may be carried forward for use in any subsequent taxable year.

112 (d) No tax credit claimed under this Code section shall be refundable or saleable on the
113 open market. Tax credits earned by or allocated to a partnership, limited liability company,
114 or S-corporation may be allocated to the partners, members, or shareholders of such entity
115 for their direct use in accordance with the provisions of any agreement among such
116 partners, members, or shareholders. Such allocation shall be not considered a sale for
117 purposes of this Code section.

118 (e)(1) A qualified community development entity that seeks to have an equity investment
119 or long-term debt security designated as a qualified equity investment and that is eligible
120 for tax credits under this Code section shall apply to the department. The department
121 shall begin accepting applications on August 1, 2015. The qualified community
122 development entity shall include the following:

123 (A) Evidence of the applicant's certification as a qualified community development
124 entity, including evidence of the service area of the entity that includes this state;

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

127 (C) A certificate executed by an executive officer of the applicant: (i) attesting that the
128 allocation agreement remains in effect and has not been revoked or cancelled by the
129 Community Development Financial Institutions Fund and (ii) stating the cumulative
130 amount of allocations awarded to the applicant by the Community Development
131 Financial Institutions Fund and by other state or states under their New Markets
132 programs;

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

135 (E) Examples of the types of qualified active low-income businesses in which the
136 applicant, its controlling entity, or affiliates of its controlling entity have invested under
137 the federal New Markets Tax Credit Program. Applicants are not required to identify
138 qualified active low-income community businesses in which they will invest when
139 submitting an application;

140 (F) A nonrefundable application fee of \$5,000.00. This fee shall be paid to the
141 department and shall be required of each application submitted; and

142 (G) The refundable performance fee required by paragraph (1) of subsection (h) of this
143 Code section.

144 (2) A qualified community development entity, on an aggregate basis with all of its
145 subsidiary qualified community development entities, may not apply to have equity
146 investments or long-term debt instruments designated as qualified equity investments
147 under this subsection in excess of the total amount of allocations awarded to such
148 applicant and its subsidiary qualified community development entities by the Community
149 Development Financial Institutions Fund under Section 45D of the Internal Revenue
150 Code of 1986, as amended, and by any other state or states under their New Markets
151 programs.

152 (3) Within 30 days after receipt of a completed application containing the information
153 set forth in paragraph (1) of this subsection, including the payment of the application fee
154 and the refundable performance fee, the department shall grant or deny the application
155 in full or in part. If the department denies any part of the application, it shall inform the
156 qualified community development entity of the grounds for the denial. If the qualified
157 community development entity provides any additional information required by the
158 department or otherwise completes its application within 15 business days of the notice
159 of denial, the application shall be considered completed as of the original date of
160 submission. If the qualified community development entity fails to provide the
161 information or complete its application within the 15 business day period, the application
162 shall remain denied and must be resubmitted in full with a new submission date.

163 (4) If the application is complete, the department shall certify the proposed equity
164 investment or long-term debt security as a qualified equity investment that is eligible for
165 tax credits under this Code section, subject to the limitations contained in paragraph (5)
166 of this subsection. The department shall provide written notice of the certification to the
167 qualified community development entity. The notice shall include the names of those
168 entities who will earn the credits which may be further allocated pursuant to
169 subsection (d) of this Code section and their respective credit amounts. If the names of
170 the entities that are eligible to utilize the credits change due to a transfer of a qualified
171 equity investment authority under paragraph (7) of this subsection or an allocation

172 pursuant to subsection (d) of this Code section, the qualified community development
173 entity shall notify the department of such change.

174 (5) The department shall certify qualified equity investments in the order applications
175 are received by the department. Applications received on the same day shall be deemed
176 to have been received simultaneously. For applications that are complete and received
177 on the same day, the department shall certify, consistent with remaining qualified equity
178 investment capacity, the qualified equity investments in proportionate percentages based
179 upon the ratio of the amount of qualified equity investment requested in an application
180 to the total amount of qualified equity investments requested in all applications received
181 on the same day.

182 (6) The department shall certify \$240 million in qualified equity investments. If a
183 pending request cannot be fully certified due to this limit, the department shall certify the
184 portion that may be certified unless the qualified community development entity elects
185 to withdraw its request rather than receive partial certification.

186 (7) An approved applicant may transfer all or a portion of its certified qualified equity
187 investment authority to its controlling entity or any subsidiary qualified community
188 development entity of the controlling entity, provided that the applicant provides the
189 information required in the application with respect to such transferee and the applicant
190 notifies the department of such transfer within 30 days of the transfer. The department
191 shall acknowledge such transfer if requested by the approved applicant.

192 (8) Within 30 days of the applicant receiving notice of certification, the qualified
193 community development entity or any transferee under paragraph (7) of this subsection
194 shall issue the qualified equity investment and receive cash in the certified amount. The
195 qualified community development entity or transferee under paragraph (7) of this
196 subsection must provide the department with evidence of the receipt of the cash
197 investment within ten business days after receipt. If the qualified community
198 development entity or any transferee under paragraph (7) of this subsection does not
199 receive the cash investment and does not issue the qualified equity investment within 30
200 days following receipt of the certification notice, the certification shall lapse and the
201 entity may not issue the qualified equity investment without reapplying to the department
202 for certification. Lapsed certifications revert back to the department and shall be
203 reissued, first, pro rata to other applicants whose qualified equity investment allocations
204 were reduced under paragraph (5) of this subsection and, thereafter, in accordance with
205 application process.

206 (9) A qualified community development entity that issues qualified equity investments
207 must notify the department of the names of the entities that are eligible to utilize tax
208 credits pursuant to subsection (d) of this Code section.

209 (f)(1) The department shall recapture from the entity that claimed the credit on a return
210 the tax credit allowed under this Code section if:

211 (A) Any amount of a federal tax credit available with respect to a qualified equity
212 investment that is eligible for a credit under this Code section is recaptured under
213 Section 45D of the Internal Revenue Code of 1986, as amended. In such case, the
214 department's recapture shall be proportionate to the federal recapture with respect to
215 such qualified equity investment;

216 (B) The qualified community development entity redeems or makes principal
217 repayment with respect to a qualified equity investment prior to the seventh anniversary
218 of the issuance of such qualified equity investment. In such case, the department's
219 recapture shall be proportionate to the amount of the redemption or repayment with
220 respect to such qualified equity investment;

221 (C) The qualified community development entity fails to invest an amount equal to 85
222 percent of the purchase price of the qualified equity investment in qualified low-income
223 community investments in Georgia within 12 months of the issuance of the qualified
224 equity investment and maintain at least 85 percent of such level of investment in
225 qualified low-income community investments in Georgia until the last credit allowance
226 date for the qualified equity investment. For purposes of this Code section, an
227 investment shall be considered held by a qualified community development entity even
228 if the investment has been sold or repaid if the qualified community development entity
229 reinvests an amount equal to the capital returned to or recovered by the qualified
230 community development entity from the original investment, exclusive of any profits
231 realized, in another qualified low-income community investment within 12 months of
232 the receipt of such capital. Periodic amounts received as repayment of principal
233 pursuant to regularly scheduled amortization payments on a loan that is a qualified
234 low-income community investment shall be treated as continuously invested in a
235 qualified low-income community investment if the amounts are reinvested in one or
236 more qualified low-income community investments by the end of the following
237 calendar year. A qualified community development entity shall not be required to
238 reinvest capital returned from qualified low-income community investments after the
239 sixth anniversary of the issuance of the qualified equity investment, the proceeds of
240 which were used to make the qualified low-income community investment, and the
241 qualified low-income investment community shall be considered held by the qualified
242 community development entity through the seventh anniversary of the qualified equity
243 investment's issuance;

244 (D) Any distribution or debt payment in violation of paragraph (1) of subsection (k) of
245 this Code section; or

246 (E) Any violation of subsection (l), (m), or (n) of this Code section.
 247 (2) Recaptured or returned tax credits and the related qualified equity investment
 248 authority revert back to the department and shall be reissued, first, pro rata to other
 249 applicants whose qualified equity investment allocations were reduced under
 250 paragraph (5) of subsection (e) of this Code section and, thereafter, in accordance with
 251 the application process.

252 (g) Enforcement of each of the recapture provisions in subsection (f) of this Code section
 253 shall be subject to a six-month cure period. No recapture shall occur until the qualified
 254 community development entity shall have been given notice of noncompliance and
 255 afforded six months from the date of such notice to cure the noncompliance.

256 (h)(1) A qualified community development entity that seeks to have an equity investment
 257 or long-term debt security designated as a qualified equity investment and eligible for tax
 258 credits under this subsection shall pay a fee in the amount one-half of 1 percent of the
 259 amount of the equity investment or long-term debt security requested to be designated as
 260 a qualified equity investment to the department for deposit in the New Markets
 261 Performance Guarantee Account, which is hereby established. The entity shall forfeit the
 262 fee in its entirety without the benefit of subsection (g) of this Code section if:

263 (A) The qualified community development entity and its subsidiary qualified
 264 community development entities fail to issue the total amount of qualified equity
 265 investments certified by the administrator and receive cash in the total amount certified
 266 under paragraph (5) of subsection (e) of this Code section; or

267 (B) The qualified community development entity or any subsidiary qualified
 268 community development entity that issues a qualified equity investment certified under
 269 this subsection fails to make qualified low-income community investments in qualified
 270 active low-income community businesses in this state equal to at least 85 percent of the
 271 purchase price of the qualified equity investment in compliance with subsection (l) of
 272 this Code section by the second credit allowance date of such qualified equity
 273 investment.

274 (2) The fee required under paragraph (1) of this subsection shall be paid to the
 275 department and held in the New Markets Performance Guarantee Account until such time
 276 as compliance with the provisions of this subsection shall have been established. The
 277 qualified community development entity may request a refund of the fee from the
 278 department no sooner than 30 days after the qualified community development entity and
 279 all transferees under paragraph (7) of subsection (e) of this Code section have invested 85
 280 percent of the purchase price of qualified equity investments issued by the qualified
 281 community development entity and such transferees by the second credit allowance date

282 in compliance with subsection (l) of this Code section. The state treasurer shall have 30
 283 days to comply with such request or give notice of noncompliance.

284 (i)(1) The department shall issue letter rulings regarding the tax credit program
 285 authorized under this Code section, subject to the terms and conditions set forth in this
 286 Code section.

287 (2) The department shall respond to a request for a letter ruling within 60 days of receipt
 288 of such request. The applicant may provide a draft letter ruling for the department's
 289 consideration. The applicant may withdraw the request for a letter ruling, in writing,
 290 prior to the issuance of the letter ruling. The department may refuse to issue a letter
 291 ruling for good cause but must list the specific reasons for refusing to issue the letter
 292 ruling. Good cause includes, but is not limited to:

293 (A) The applicant requests the department to determine whether a statute is
 294 constitutional or a regulation is lawful;

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

296 (C) The facts or issues presented in the request are unclear, overbroad, insufficient, or
 297 otherwise inappropriate as a basis upon which to issue a letter ruling; and

298 (D) The issue is currently being considered in a rule-making procedure, contested case,
 299 or other agency or judicial proceeding that may resolve the issue.

300 (3) Letter rulings shall bind the department and the department's agents and their
 301 successors until such time as the entity or its shareholders, members, or partners, as
 302 applicable, claim all of such credits on a Georgia tax return or report, subject to the terms
 303 and conditions set forth in properly published regulations. The letter ruling shall apply
 304 only to the applicant.

305 (4) In rendering letter rulings and making other determinations under this Code section,
 306 to the extent applicable, the department and the Department of Revenue shall look for
 307 guidance to Section 45D of the Internal Revenue Code of 1986, as amended, and the rules
 308 and regulations issued thereunder.

309 (j)(1) An entity claiming a credit under this Code section is not required to pay any
 310 additional retaliatory tax levied under Code Section 33-3-26 as a result of claiming that
 311 credit.

312 (2) In addition to the exclusion in paragraph (1) of this subsection, an entity claiming a
 313 credit under this Code section shall not be required to pay any additional tax that may
 314 arise as a result of claiming that credit.

315 (k)(1) Once certified under paragraph (4) of subsection (e) of this Code section, a
 316 qualified equity investment shall not be decertified unless all of the requirements of
 317 paragraph (2) of this subsection have been met. Until all qualified equity investments
 318 issued by a qualified community development entity are decertified under this subsection,

319 the qualified community development entity shall not be entitled to distribute to its equity
320 holders or make cash payments on long-term debt securities that have been designated
321 as qualified equity investments in an amount that exceeds the sum of: (i) the cumulative
322 operating income, as defined by regulations adopted under Section 45D of the Internal
323 Revenue Code of 1986, as amended, earned by the qualified community development
324 entity since issuance of the qualified equity investment, prior to giving effect to any
325 expense from the payment of interest on long-term debt securities designated as qualified
326 equity investments, and (ii) 50 percent of the purchase price of the qualified equity
327 investments issued by the qualified community development entity.

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

329 (A) Be beyond its seventh credit allowance date;

330 (B) Have been in compliance with subsection (f) of this Code section up through its
331 seventh credit allowance date, including any cures under subsection (g) of this Code
332 section; and

333 (C) Have had its proceeds invested in qualified low-income community investments
334 such that the total qualified low-income community investments made, cumulatively
335 including reinvestments, exceeds 150 percent of its qualified equity investment.

336 (3) A community development entity that seeks to have a qualified equity investment
337 decertified under this subsection shall send notice to the department of its request for
338 decertification along with evidence supporting the request. The provisions of
339 subparagraph (B) of paragraph (2) of this subsection shall be deemed to be met if no
340 recapture action has been commenced by the department as of the seventh credit
341 allowance date. Such request shall not be unreasonably denied and shall be responded
342 to within 30 days of receiving the request. If the request is denied for any reason, the
343 burden of proof shall be on the department in any administrative or legal proceeding that
344 follows.

345 (l) No qualified community development entity shall be entitled to pay to any affiliate of
346 such qualified community development entity any fees in connection with any activity
347 under this subsection prior to the decertification under subsection (k) of this Code section
348 of all qualified equity investments issued by such qualified community development entity
349 and all transferees under paragraph (7) of subsection (e) of this Code section. The
350 foregoing shall not prohibit a qualified community development entity from allocating or
351 distributing income earned by it to such affiliates or from paying reasonable interest on
352 amounts loaned to the qualified community development entity by such affiliates.

353 (m) A qualified active low-income community business that receives a qualified
354 low-income community investment from a qualified community development entity that

355 issues qualified equity investments pursuant to this chapter, or any affiliates of such a
 356 qualified active low-income community business, may not directly or indirectly:

357 (1) Own or have the right to acquire an ownership interest in a qualified community
 358 development entity or member or affiliate of a qualified community development entity,
 359 including, but not limited to, a holder of a qualified equity investment issued by the
 360 qualified community development entity; or

361 (2) Lend to or invest in a qualified community development entity or member or affiliate
 362 of a qualified community development entity, including, but not limited to, a holder of
 363 a qualified equity investment issued by a qualified community development entity where
 364 the proceeds of the loan or investment are directly or indirectly used to fund or refinance
 365 the purchase of a qualified equity investment hereunder.

366 For purposes of this subsection, a qualified community development entity is not
 367 considered an affiliate of a qualified active low-income community business solely as a
 368 result of its qualified low-income community investment in the business.

369 (n) For purposes of satisfying subparagraph (f)(1)(C) of this Code section, a qualified
 370 community development entity, together with all transferees under paragraph (7) of
 371 subsection (e) of this Code section, shall:

372 (1) Invest an amount equal to at least 25 percent of the purchase price of all qualified
 373 equity investments issued by the qualified community development entity and such
 374 transferees in qualified active low-income community businesses located in
 375 nonmetropolitan counties in this state as identified by the Community Development
 376 Financial Institutions Fund in connection with Section 45D of the Internal Revenue Code
 377 of 1986, as amended; and

378 (2) Maintain such level of investment set forth in paragraph (1) of this subsection in
 379 accordance with subparagraph (f)(1)(C) of this Code section.

380 (o)(1) Qualified community development entities issuing qualified equity investments
 381 shall submit a report to the department within the first five business days after the first
 382 anniversary of the initial credit allowance date that provides documentation as to the
 383 investment of 85 percent of the purchase price in qualified low-income community
 384 investments in qualified active low-income community businesses located in this state.

385 The report shall include:

386 (A) A bank statement of the qualified community development entity evidencing each
 387 qualified low-income community investment;

388 (B) Evidence that the business was a qualified active low-income community business
 389 at the time of the qualified low-income community investment; and

390 (C) Evidence of the qualified community development entity's compliance with
 391 subsection (l) of this Code section.

392 (2) After submitting the annual report required pursuant to subparagraph (A) of
393 paragraph (1) of this subsection, the qualified community development entity shall submit
394 an annual report to the department within 60 days of the beginning of the calendar year
395 during the compliance period. An annual report is not due before the first anniversary of
396 the initial credit allowance date. The report shall include, but not be limited to, the
397 following:

398 (A) Number of employment positions created and retained as a result of qualified
399 low-income community investments; and

400 (B) Average annual salary of positions described in subparagraph (A) of this
401 paragraph."

402 **SECTION 2.**

403 This Act shall become effective on July 1, 2015, and shall be applicable to all taxable years
404 beginning on or after January 1, 2016.

405 **SECTION 3.**

406 All laws and parts of laws in conflict with this Act are repealed.