

## LEGISLATIVE BILL 682

Approved by the Governor May 25, 2021

Introduced by Linehan, 39.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-1101, 77-1102, 77-1110, 77-1115, 77-1116, and 77-1117, Reissue Revised Statutes of Nebraska; to change the New Markets Job Growth Investment Act as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-1101, Reissue Revised Statutes of Nebraska, is amended to read:

77-1101 Sections 77-1101 to 77-1119 and sections 2, 5, 6, and 10 of this act shall be known and may be cited as the New Markets Job Growth Investment Act.

Sec. 2. The purposes of the New Markets Job Growth Investment Act are to:

(1) Provide access to capital to small businesses that are not otherwise able to receive affordable financing;

(2) Attract investment dollars from the New Markets Tax Credit Program of the United States Department of the Treasury; and

(3) Ensure Nebraska small businesses have access to capital to retain and add jobs.

Sec. 3. Section 77-1102, Reissue Revised Statutes of Nebraska, is amended to read:

77-1102 For purposes of the New Markets Job Growth Investment Act, the definitions in sections 77-1103 to 77-1112 and sections 5 and 6 of this act apply.

Sec. 4. Section 77-1110, Reissue Revised Statutes of Nebraska, is amended to read:

77-1110 (1) Qualified equity investment means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(a) Is acquired after January 1, 2012, at its original issuance solely in exchange for cash;

(b) Has at least eighty-five percent, or one hundred percent with respect to the 2021 allocation, 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;

(c) Is designated by the issuer as a qualified equity investment and, with respect to awards of the 2021 allocation pursuant to subsection (6) of section 77-1116, is designated by the issuer as a qualified equity investment under section 45D of the Internal Revenue Code of 1986, as amended; and

(d) Is certified by the Tax Commissioner as not exceeding the limitation contained in section 77-1115.

(2) The term includes any qualified equity investment that does not meet the requirements of subdivision (1)(a) of this section if such investment was a qualified equity investment in the hands of a prior holder.

Sec. 5. 2021 allocation means a monetary amount of qualified equity investments to be awarded by the Tax Commissioner after the 2021 federal notice under the New Markets Job Growth Investment Act that results in a maximum tax credit utilization in any fiscal year of no more than fifteen million dollars of new tax credits.

Sec. 6. 2021 federal notice means the announcement by the Community Development Financial Institutions Fund of the United States Department of the Treasury of allocation awards under a notice of funding availability that was published in the Federal Register in September 2020.

Sec. 7. Section 77-1115, Reissue Revised Statutes of Nebraska, is amended to read:

77-1115 The Tax Commissioner shall limit the monetary amount of qualified equity investments permitted under the New Markets Job Growth Investment Act to a level necessary to limit tax credit utilization in any fiscal year at no more than fifteen million dollars of new tax credits, exclusive of tax credits acquired with respect to qualified equity investments issued under the 2021 allocation. Such limitation on qualified equity investments shall be based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

Sec. 8. Section 77-1116, Reissue Revised Statutes of Nebraska, is amended to read:

77-1116 (1) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under the New Markets Job Growth Investment Act shall apply to the Tax Commissioner. There shall be no new applications for such designation filed under this section after December 31, 2020. The Tax Commissioner shall begin accepting applications with respect to the 2021 allocation not less than thirty days or more than forty-five days

after the 2021 federal notice.

(2) The qualified community development entity shall submit an application on a form that the Tax Commissioner provides that includes:

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

(b) A copy of the allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund referred to in section 77-1109;

(c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund referred to in section 77-1109;

(d) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;

(e) Identifying information for any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment;

(f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment; ~~and~~

(g) A nonrefundable application fee of five thousand dollars; ~~and~~ -

(h) With respect to applications for the 2021 allocation, the amount of qualified equity investment authority the applicant agrees to designate as a federal qualified equity investment under section 45D of the Internal Revenue Code of 1986, as amended, including a copy of the screen shot from the Community Development Financial Institutions Fund's Allocation Tracking System of the applicant's remaining federal qualified equity investment authority.

(3) Within thirty days after receipt of a completed application containing the information necessary for the Tax Commissioner to certify a potential qualified equity investment, including the payment of the application fee, the Tax Commissioner shall grant or deny the application in full or in part. If the Tax Commissioner denies any part of the application, the Tax Commissioner 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 Tax Commissioner or otherwise completes its application within fifteen days after 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 fifteen-day period, the application remains denied and must be resubmitted in full with a new submission date.

(4) If the application is deemed complete, the Tax Commissioner shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits, subject to the limitations contained in section 77-1115. The Tax Commissioner shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to section 77-1114, the qualified community development entity shall notify the Tax Commissioner of such change.

(5) Except as provided in subsection (6) of this section, the Tax Commissioner shall certify qualified equity investments in the order applications are received. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Tax Commissioner shall certify, consistent with remaining tax credit capacity, 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.

(6) With respect to applications for the 2021 allocation, the Tax Commissioner shall certify applications by applicants that agree to designate qualified equity investments as federal qualified equity investments in accordance with subdivision (2)(h) of this section in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in an application to be designated as federal qualified equity investments to the total amount of qualified equity investments to be designated as federal qualified equity investments requested in all applications received on the same day.

(7) (6) Once the Tax Commissioner has certified qualified equity investments that, on a cumulative basis, are eligible for the maximum limitation contained in section 77-1115 or the maximum amount of qualified equity investments authorized pursuant to the 2021 allocation, the Tax Commissioner may not certify any more qualified equity investments for that fiscal year. If a pending request cannot be fully certified, the Tax Commissioner shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(8) (7) Within thirty days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount and, with respect to the 2021 allocation, designate the required amount of qualified equity investment authority as a federal qualified equity investment. The qualified community development entity shall provide the Tax Commissioner with

evidence of the receipt of the cash investment within ten business days after receipt and, with respect to the 2021 allocation, provide evidence that the required amount of qualified equity investment authority was designated as a federal qualified equity investment. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within thirty days after receipt of the certification notice and, with respect to the 2021 allocation, make the required federal qualified equity investment designation, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Tax Commissioner for certification. A certification that lapses reverts back to the Tax Commissioner and may be reissued only in accordance with the application process outlined in this section.

Sec. 9. Section 77-1117, Reissue Revised Statutes of Nebraska, is amended to read:

77-1117 The Tax Commissioner shall recapture, from the taxpayer that claimed the credit on a return, the tax credit allowed under the New Markets Job Growth Investment Act if:

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

(2) The issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh credit allowance date. In such case recapture shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment; or

(3) The issuer fails to invest and satisfy the requirements of subdivision (1)(b) of section 77-1110 and maintain such level of investment in qualified low-income community investments in Nebraska 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 twelve months of the receipt of such capital. With respect to the 2021 allocation, amounts received periodically by a qualified community development entity shall be treated as maintained in qualified low-income community investments if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth credit allowance date, 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 credit allowance date.

Sec. 10. (1) A qualified community development entity that has received an allocation of qualified equity investment authority pursuant to the 2021 allocation shall submit an annual report to the Tax Commissioner on or before the last day of February following the second through seventh credit allowance dates. The annual report shall provide documentation as to the qualified community development entity's qualified low-income community investments and include all of the following:

(a) A bank statement evidencing each qualified low-income community investment;

(b) The name, location, and industry of each qualified active low-income community business receiving a qualified low-income community investment; and

(c) The number of jobs created or retained as a result of each qualified low-income community investment.

(2) The Tax Commissioner shall electronically submit a report to the Legislature on or before April 1, 2022, and on or before each April 1 thereafter through April 1, 2028, with respect to the 2021 allocation. The report shall include all of the following:

(a) The name and number of all of the qualified community development entities approved to participate in the 2021 allocation;

(b) The amount of qualified low-income community investments made by the qualified community development entities;

(c) The location of each qualified active low-income community business;

and  
(d) The number of jobs created or retained as a result of each qualified low-income community investment.

Sec. 11. Original sections 77-1101, 77-1102, 77-1110, 77-1115, 77-1116, and 77-1117, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.