

1 SENATE BILL 373

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Phil A. Griego

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9
10 AN ACT

11 RELATING TO TAXATION; PROVIDING FOR A NEW MARKET INCOME TAX
12 CREDIT AND A NEW MARKET CORPORATE INCOME TAX CREDIT.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. A new section of the Income Tax Act is enacted
16 to read:

17 "[NEW MATERIAL] NEW MARKET INCOME TAX CREDIT.--

18 A. A taxpayer who files a New Mexico income tax
19 return, is not a dependent of another taxpayer and who makes a
20 qualified equity investment in a qualified community
21 development entity on or after January 1, 2014 and prior to
22 January 1, 2017 may claim and the department may allow a tax
23 credit against the taxpayer's income tax liability in an amount
24 equal to fifty-eight percent of the qualified equity investment
25 applied in the corresponding seven consecutive taxable years as

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1 specified pursuant to Subsection B of this section. The tax
2 credit provided in this section may be referred to as the "new
3 market income tax credit".

4 B. A taxpayer may claim a new market income tax
5 credit in an amount equal to:

6 (1) zero percent of the qualified equity
7 investment in the taxable year in which the investment is made
8 and in the taxable year immediately following the taxable year
9 in which the investment was made;

10 (2) twelve percent of the qualified equity
11 investment in the third, fourth and fifth taxable years
12 following the taxable year in which the investment is made; and

13 (3) eleven percent of the qualified equity
14 investment in the sixth and seventh taxable years following the
15 taxable year in which the investment is made.

16 C. The purpose of the new market income tax credit
17 is to attract affordable capital to small businesses in low-
18 income communities, to create private sector jobs and to expand
19 businesses.

20 D. The maximum aggregate of qualified equity
21 investments that may be made on or after January 1, 2014 and
22 prior to January 1, 2017 for the purposes of obtaining a new
23 market income tax credit provided by this section or new market
24 corporate income tax credit provided by the Corporate Income
25 and Franchise Tax Act shall be one hundred twenty-five million

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1 dollars (\$125,000,000). The maximum aggregate of new market
2 income tax credits and new market corporate income tax credits
3 provided pursuant to the Corporate Income and Franchise Tax Act
4 that may be allowed shall be seventy-two million five hundred
5 thousand dollars (\$72,500,000).

6 E. The department may allow a maximum aggregate of
7 ten million dollars (\$10,000,000) for total new market income
8 tax credits provided by this section and new market corporate
9 income tax credits provided pursuant to the Corporate Income
10 and Franchise Tax Act in one fiscal year. A taxpayer that
11 submits a claim for a tax credit that is unable to receive the
12 tax credit because the claims for the fiscal year exceed the
13 limitation in this subsection shall be placed for the
14 subsequent fiscal year at the front of a queue of new market
15 income tax credit and new market corporate income tax credit
16 claimants submitting claims in the subsequent fiscal year in
17 the order of the date on which the credit is claimed.

18 F. Any amount of a credit claim that is carried
19 forward pursuant to Subsection E of this section shall be
20 subject to the limit on the aggregate amount of credit claims
21 that may be allowed pursuant to Subsection D of this section in
22 the fiscal year in which that amount is claimed.

23 G. A taxpayer shall apply for the credit within one
24 year following the end of the calendar year in which the
25 qualified equity investment was made; provided that a claim for

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1 the credit shall not be made or allowed with respect to any
2 investment made after December 31, 2016. The new market income
3 tax credit shall only be applied to the taxpayer's income tax
4 liability. That portion of the new market income tax credit
5 approved by the department that exceeds the taxpayer's income
6 tax liability in the taxable year in which the credit is
7 claimed shall not be refunded to the taxpayer. The credit may
8 be carried forward for five consecutive years. The credit
9 shall not be transferred to another taxpayer.

10 H. A husband and wife who file separate returns for
11 a taxable year in which they could have filed a joint return
12 may each claim only one-half of the credit that would have been
13 allowed on a joint return.

14 I. A taxpayer who otherwise qualifies and claims a
15 new market income tax credit that may be claimed by a
16 partnership or limited liability company of which the taxpayer
17 is a member may claim a credit only in proportion to the
18 taxpayer's interest in the partnership or limited liability
19 company. The total credit claimed by all members of the
20 partnership or limited liability company shall not exceed the
21 allowable credit pursuant to Subsection B of this section.

22 J. To be eligible for the new market income tax
23 credit, the taxpayer shall submit an application to the
24 economic development department on a form prescribed by the
25 economic development department. A taxpayer may submit an

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1 application prior to making a qualified equity investment in a
2 qualified community development entity for a determination of
3 eligibility. In connection with the application a taxpayer
4 shall provide:

5 (1) the name, address, tax identification
6 number and certification as a federally qualified community
7 development entity, including evidence that the service area of
8 the qualified community development entity in which the
9 taxpayer made a qualified equity investment includes New
10 Mexico;

11 (2) a copy of the allocation agreement
12 executed by the taxpayer;

13 (3) a certificate executed by the taxpayer:

14 (a) attesting that the allocation
15 agreement remains in effect and has not been revoked or
16 cancelled by the federal community development financial
17 institutions fund; and

18 (b) stating the cumulative amount of
19 allocations awarded to the taxpayer by the federal community
20 development financial institutions fund;

21 (4) a description of the amount and structure
22 of the qualified equity investment;

23 (5) a nonrefundable application fee of five
24 thousand dollars (\$5,000), which shall be paid to the economic
25 development department and required of each application

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1 submitted; and

2 (6) any other information or documentation
3 required by the economic development department to determine
4 the taxpayer's eligibility for a new market income tax credit.

5 K. The economic development department shall
6 promulgate rules establishing procedures to certify a taxpayer
7 for purposes of obtaining a new market income tax credit. The
8 rules shall ensure that the maximum aggregate of qualified
9 equity investments is not exceeded and an equitable process to
10 inform taxpayers that the maximum aggregate of qualified equity
11 investments has been reached. The economic development
12 department shall issue a dated certificate of eligibility
13 containing the taxpayer's identifying information, the amount
14 of the qualified equity investment, the identifying information
15 of the qualified community development entity, the amount of
16 credit the taxpayer is eligible for, the corresponding year
17 following the taxable year in which the qualified equity
18 investment was made and any other information the taxation and
19 revenue department may require. All certificates of
20 eligibility issued pursuant to this subsection shall be
21 sequentially numbered, and an account of all certificates
22 issued or destroyed shall be maintained by the economic
23 development department. The taxation and revenue department
24 shall audit the records of the new market income tax credit
25 maintained by the economic development department on a periodic

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1 basis to ensure effective administration of the new market
2 income tax credit and compliance with the Tax Administration
3 Act and this section.

4 L. To claim a new market income tax credit, the
5 taxpayer shall provide to the taxation and revenue department
6 the certificate of eligibility issued by the economic
7 development department pursuant to this section to the taxpayer
8 for the taxable year for which a tax credit is allowed
9 corresponding to the taxable year following the taxable year in
10 which the qualified equity investment was made.

11 M. A qualified community development entity that
12 receives a qualified equity investment shall provide the
13 economic development department with:

14 (1) sufficiently detailed records with respect
15 to investments made with the proceeds of qualified equity
16 investments to allow the direct tracing of proceeds into
17 qualified low-income community investments in qualified active
18 low-income community businesses in the state;

19 (2) information about each qualified active
20 low-income community business, including a description of:

21 (a) the type of business that received
22 the qualified equity investment;

23 (b) the location of the business that
24 received the qualified equity investment;

25 (c) the physical infrastructure that was

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1 created or preserved;

2 (d) the number of new jobs created;

3 (e) the number of New Mexico residents
4 employed by the qualified active low-income community business
5 and the aggregate wages paid to residents;

6 (f) the number of nonresidents employed
7 by the qualified active low-income community business and the
8 aggregate wages paid to nonresidents; and

9 (g) any other information required by
10 the economic development department to assess objectively the
11 effectiveness of the new market income tax credit.

12 N. The economic development department shall not
13 issue a certificate of eligibility, and the taxation and
14 revenue department shall recapture a tax credit allowed from a
15 taxpayer if:

16 (1) any amount of a federal tax credit
17 available with respect to a qualified equity investment is
18 recaptured under Section 45D of the Internal Revenue Code;
19 provided that the recapture amount shall be proportionate to
20 the federal recapture with respect to that qualified equity
21 investment;

22 (2) the qualified community development entity
23 redeems or makes principal repayment of a qualified equity
24 investment prior to the seventh taxable year following the
25 taxable year in which the investment is made; provided that the

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1 recapture amount shall be proportionate to the amount of the
2 redemption or repayment of that qualified equity investment;

3 (3) the qualified community development entity
4 fails to:

5 (a) invest an amount equal to at least
6 eighty-five percent of the qualified equity investment in
7 qualified low-income community investments in New Mexico within
8 twelve months of the date the qualified equity investment is
9 made; or

10 (b) maintain an amount equal to at least
11 eighty-five percent of the qualified equity investment in
12 qualified low-income community investments in New Mexico
13 through the seventh taxable year following the taxable year in
14 which the qualified equity investment is made; provided that a
15 qualified equity investment shall be deemed held by a qualified
16 equity development entity, even if that investment is sold or
17 repaid, if an amount equal to the capital returned or recovered
18 from the original investment, exclusive of any profits
19 realized, is invested in another qualified low-income community
20 investment within twelve months of the receipt of that capital;
21 or

22 (4) at any time prior to the seventh taxable
23 year following the taxable year in which the qualified equity
24 investment is made, the qualified community development entity
25 uses the qualified equity investment to make qualified

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1 low-income community investments in any one qualified active
2 low-income community business, including affiliated qualified
3 active low-income community businesses, exclusive of
4 reinvestments of capital returned or repaid with respect to
5 earlier investments in that qualified active low-income
6 community business and its affiliates, in excess of twenty-five
7 percent of the qualified equity investment.

8 O. A qualified community development entity shall
9 not be required to reinvest capital returned from a qualified
10 low-income community investment and the qualified low-income
11 community investment shall be considered held by the qualified
12 community development entity through the seventh taxable year
13 following the taxable year in which the qualified equity
14 investment is made after the earlier of:

15 (1) the sixth taxable year following the
16 taxable year in which the qualified equity investment is made
17 and the proceeds of the qualified equity investment were used
18 to make the qualified low-income community investment; or

19 (2) the date by which a qualified community
20 development entity has made qualified low-income community
21 investments with the proceeds of a qualified equity investment
22 on a cumulative basis equal to at least one hundred fifty
23 percent of the qualified equity investment.

24 P. The economic development department shall create
25 an annual report that provides an objective assessment of the

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1 effectiveness of the new market income tax credit for annual
2 presentation to the revenue stabilization and tax policy
3 committee and any other appropriate legislative committees.
4 For the purpose of assessing the effectiveness of the new
5 market income tax credit the inability of the department to
6 aggregate data due to sample size shall not relieve the
7 economic development department of the requirement to report
8 all relevant data to the legislature. The economic development
9 department shall provide notice to qualified community
10 development entities that receive qualified equity investments
11 that information provided to the department may be revealed by
12 the economic development department in reports to the
13 legislature.

14 Q. As used in this section:

15 (1) "direct tracing" means the tracking, by
16 accepted accounting methods, of the proceeds of a qualified
17 equity investment into qualified low-income community
18 investments;

19 (2) "long-term debt security" means any debt
20 instrument issued by a qualified community development entity,
21 at par value or a premium, with an original maturity date of at
22 least seven years from the date of its issuance, with no
23 acceleration of repayment, amortization or prepayment features
24 prior to its original maturity date, without cash interest
25 payments on the debt instrument during the period beginning on

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1 the date of issuance and ending on the seventh year after
2 issuance in an amount that exceeds the cumulative operating
3 income, as defined by regulations adopted under Section 45D of
4 the Internal Revenue Code, of the qualified community
5 development entity for that period prior to giving effect to
6 the expense of such cash interest payments; provided however,
7 that the holder of the debt instrument may accelerate payments
8 on the debt instrument in situations where the qualified
9 community development entity has defaulted on covenants
10 designed to ensure compliance with this section or Section 45D
11 of the Internal Revenue Code;

12 (3) "low-income community" means "low-income
13 community" as defined in Section 45D of the Internal Revenue
14 Code;

15 (4) "qualified active low-income community
16 business" means "qualified active low-income community
17 business" as defined in Section 45D of the Internal Revenue
18 Code, except that any business that derives or projects to
19 derive fifteen percent or more of its annual revenue from the
20 rental or sale of real estate shall not be considered a
21 qualified active low-income community business; but the
22 exclusion does not apply to a business that is controlled by,
23 or under the common control with, another business if the
24 second business does not derive or project to derive fifteen
25 percent or more of its annual revenue from the rental or sale

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1 of real estate and is the primary tenant of the real estate
2 leased from the first business; provided that a business shall
3 be considered a qualified active low-income community business
4 for the duration of the qualified community development
5 entity's investment in, or loan to, the business if the
6 qualified community development entity reasonably expects, at
7 the time it makes the investment or loan, that the business
8 will continue to satisfy the requirements for being a qualified
9 active low-income community business throughout the entire
10 period of the investment or loan;

11 (5) "qualified community development entity"
12 means "qualified community development entity" as defined in
13 Section 45D of the Internal Revenue Code; provided that the
14 qualified community development entity has entered into an
15 allocation agreement with the community development financial
16 institutions fund of the United States department of treasury,
17 with respect to credits authorized by Section 45D of the
18 Internal Revenue Code, that includes New Mexico within the
19 service areas set forth in the allocation agreement and
20 includes a subordinate community development entity that also
21 is a qualified community development entity under Section 45D
22 of the Internal Revenue Code and is controlled by or under the
23 common control with the qualified community development entity
24 that received a qualified equity investment;

25 (6) "qualified equity investment" means any

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1 equity investment in, or long-term debt security issued by, a
2 qualified community development entity that:

3 (a) is acquired on or after January 1,
4 2014 and prior to January 1, 2017, at its original issuance,
5 solely in exchange for cash, or that was constituted a
6 qualified equity investment in the hands of a prior holder;

7 (b) has at least eighty-five percent of
8 the investment used by the qualified community development
9 entity to make qualified low-income community investments in
10 qualified active low-income community businesses located in New
11 Mexico; and

12 (c) is designated by the economic
13 development department as a qualified equity investment
14 pursuant to this section and is certified by the economic
15 development department as not exceeding the limitations on the
16 aggregate amounts of the qualified equity investments that may
17 be certified pursuant to this section or the Corporate Income
18 and Franchise Tax Act; and

19 (7) "qualified low-income community
20 investment" means any capital or equity investment in, or loan
21 to, any qualified active low-income community business by the
22 qualified community development entity."

23 SECTION 2. A new section of the Corporate Income and
24 Franchise Tax Act is enacted to read:

25 "[NEW MATERIAL] NEW MARKET CORPORATE INCOME TAX CREDIT.--

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1 A. A taxpayer that files a New Mexico corporate
2 income tax return and that makes a qualified equity investment
3 in a qualified community development entity on or after January
4 1, 2014 and prior to January 1, 2017 may claim and the
5 department may allow a tax credit against the taxpayer's
6 corporate income tax liability in an amount equal to fifty-
7 eight percent of the qualified equity investment applied in the
8 corresponding seven consecutive taxable years as specified
9 pursuant to Subsection B of this section. The tax credit
10 provided in this section may be referred to as the "new market
11 corporate income tax credit".

12 B. A taxpayer may claim a new market corporate
13 income tax credit in an amount equal to:

14 (1) zero percent of the qualified equity
15 investment in the taxable year in which the investment is made
16 and in the taxable year immediately following the taxable year
17 in which the investment was made;

18 (2) twelve percent of the qualified equity
19 investment in the third, fourth and fifth taxable years
20 following the taxable year in which the investment is made; and

21 (3) eleven percent of the qualified equity
22 investment in the sixth and seventh taxable years following the
23 taxable year in which the investment is made.

24 C. The purpose of the new market corporate income
25 tax credit is to attract affordable capital to small businesses

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1 in low-income communities to create private sector jobs and to
2 expand businesses.

3 D. The maximum aggregate of qualified equity
4 investments that may be made on or after January 1, 2014 and
5 prior to January 1, 2017 for the purposes of obtaining a new
6 market corporate income tax credit provided by this section or
7 new market income tax credit provided by the Income Tax Act
8 shall be one hundred twenty-five million dollars
9 (\$125,000,000). The maximum aggregate of new market corporate
10 income tax credits provided by this section and new market
11 income tax credits provided pursuant to the Income Tax Act that
12 may be allowed shall be seventy-two million five hundred
13 thousand dollars (\$72,500,000).

14 E. The department may allow a maximum aggregate of
15 ten million dollars (\$10,000,000) for total new market
16 corporate income tax credits provided by this section and new
17 market income tax credits provided pursuant to the Income Tax
18 Act in one fiscal year. A taxpayer that submits a claim for a
19 tax credit that is unable to receive the tax credit because the
20 claims for the fiscal year exceed the limitation in this
21 subsection shall be placed for the subsequent fiscal year at
22 the front of a queue of new market corporate income tax credit
23 and new market income tax credit claimants submitting claims in
24 the subsequent fiscal year in the order of the date on which
25 the credit is claimed.

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1 F. Any amount of a credit claim that is carried
2 forward pursuant to Subsection E of this section shall be
3 subject to the limit on the aggregate amount of credit claims
4 that may be allowed pursuant to Subsection D of this section in
5 the fiscal year in which that amount is claimed.

6 G. A taxpayer shall apply for the credit within one
7 year following the end of the calendar year in which the
8 qualified equity investment was made; provided that a claim for
9 the credit shall not be made or allowed with respect to any
10 investment made after December 31, 2016. The new market
11 corporate income tax credit shall only be applied to the
12 taxpayer's corporate income tax liability. That portion of the
13 new market corporate income tax credit approved by the
14 department that exceeds the taxpayer's corporate income tax
15 liability in the taxable year in which the credit is claimed
16 shall not be refunded to the taxpayer. The credit may be
17 carried forward for five consecutive years. The credit shall
18 not be transferred to another taxpayer.

19 H. To be eligible for the new market corporate
20 income tax credit, the taxpayer shall submit an application to
21 the economic development department on a form prescribed by the
22 economic development department. A taxpayer may submit an
23 application prior to making a qualified equity investment in a
24 qualified community development entity for a determination of
25 eligibility. In connection with the application, a taxpayer

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1 shall provide:

2 (1) the name, address, tax identification
3 number and certification as a federally qualified community
4 development entity, including evidence that the service area of
5 the qualified community development entity in which the
6 taxpayer made a qualified equity investment includes New
7 Mexico;

8 (2) a copy of the allocation agreement
9 executed by the taxpayer;

10 (3) a certificate executed by the taxpayer and
11 the qualified community development entity:

12 (a) attesting that the allocation
13 agreement remains in effect and has not been revoked or
14 cancelled by the federal community development financial
15 institutions fund; and

16 (b) stating the cumulative amount of
17 allocations awarded to the taxpayer by the federal community
18 development financial institutions fund;

19 (4) a description of the amount and structure
20 of the qualified equity investment;

21 (5) a nonrefundable application fee of five
22 thousand dollars (\$5,000), which shall be paid to the economic
23 development department and required of each application
24 submitted; and

25 (6) any other information or documentation

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1 required by the economic development department to determine
2 the taxpayer's eligibility for a new market corporate income
3 tax credit.

4 I. The economic development department shall
5 promulgate rules establishing procedures to certify a taxpayer
6 for purposes of obtaining a new market corporate income tax
7 credit. The rules shall ensure that the maximum aggregate of
8 qualified equity investments is not exceeded and an equitable
9 process to inform taxpayers that the maximum aggregate of
10 qualified equity investments has been reached. The economic
11 development department shall issue a dated certificate of
12 eligibility containing the taxpayer's identifying information,
13 the amount of the qualified equity investment, the identifying
14 information of the qualified community development entity, the
15 amount of credit the taxpayer is eligible for, the
16 corresponding year following the taxable year in which the
17 qualified equity investment was made and any other information
18 the taxation and revenue department may require. All
19 certificates of eligibility issued pursuant to this subsection
20 shall be sequentially numbered, and an account of all
21 certificates issued or destroyed shall be maintained by the
22 economic development department. The taxation and revenue
23 department shall audit the records of the new market corporate
24 income tax credit maintained by the economic development
25 department on a periodic basis to ensure effective

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1 administration of the new market corporate income tax credit
2 and compliance with the Tax Administration Act and this
3 section.

4 J. To claim a new market corporate income tax
5 credit, the taxpayer shall provide to the taxation and revenue
6 department the certificate of eligibility issued by the
7 economic development department pursuant to this section to the
8 taxpayer for the taxable year for which a tax credit is allowed
9 corresponding to the taxable year following the taxable year in
10 which the qualified equity investment was made.

11 K. A qualified community development entity that
12 receives a qualified equity investment shall provide the
13 economic development department with:

14 (1) sufficiently detailed records with respect
15 to investments made with the proceeds of qualified equity
16 investments to allow the direct tracing of proceeds into
17 qualified low-income community investments in qualified active
18 low-income community businesses in the state;

19 (2) information about each qualified active
20 low-income community business, including a description of:

21 (a) the type of business that received
22 the qualified equity investment;

23 (b) the location of the business that
24 received the qualified equity investment;

25 (c) the physical infrastructure that was

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1 created or preserved;

2 (d) the number of new jobs created;

3 (e) the number of New Mexico residents
4 employed by the qualified active low-income community business
5 and the aggregate wages paid to residents;

6 (f) the number of nonresidents employed
7 by the qualified active low-income community business and the
8 aggregate wages paid to nonresidents; and

9 (g) any other information required by
10 the economic development department to assess objectively the
11 effectiveness of the new market corporate income tax credit.

12 L. The economic development department shall not
13 issue a certificate of eligibility and the taxation and revenue
14 department shall recapture a tax credit allowed from a taxpayer
15 if:

16 (1) any amount of a federal tax credit
17 available with respect to a qualified equity investment is
18 recaptured under Section 45D of the Internal Revenue Code;
19 provided that the recapture amount shall be proportionate to
20 the federal recapture with respect to that qualified equity
21 investment;

22 (2) the qualified community development entity
23 redeems or makes principal repayment of a qualified equity
24 investment prior to the seventh taxable year following the
25 taxable year in which the investment is made; provided that the

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1 recapture amount shall be proportionate to the amount of the
2 redemption or repayment of that qualified equity investment;

3 (3) the qualified community development entity
4 fails to:

5 (a) invest an amount equal to at least
6 eighty-five percent of the qualified equity investment in
7 qualified low-income community investments in New Mexico within
8 twelve months of the date the qualified equity investment is
9 made; or

10 (b) maintain an amount equal to at least
11 eighty-five percent of the qualified equity investment in
12 qualified low-income community investments in New Mexico
13 through the seventh taxable year following the taxable year in
14 which the qualified equity investment is made; provided that a
15 qualified equity investment shall be deemed held by a qualified
16 equity development entity, even if that investment is sold or
17 repaid, if an amount equal to the capital returned or recovered
18 from the original investment, exclusive of any profits
19 realized, is invested in another qualified low-income community
20 investment within twelve months of the receipt of that capital;
21 or

22 (4) at any time prior to the seventh taxable
23 year following the taxable year in which the qualified equity
24 investment is made, the qualified community development entity
25 uses the qualified equity investment to make qualified low-

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1 income community investments in any one qualified active
2 low-income community business, including affiliated qualified
3 active low-income community businesses, exclusive of
4 reinvestments of capital returned or repaid with respect to
5 earlier investments in that qualified active low-income
6 community business and its affiliates, in excess of twenty-five
7 percent of the qualified equity investment.

8 M. A qualified community development entity shall
9 not be required to reinvest capital returned from a qualified
10 low-income community investment and the qualified low-income
11 community investment shall be considered held by the qualified
12 community development entity through the seventh taxable year
13 following the taxable year in which the qualified equity
14 investment is made after the earlier of:

15 (1) the sixth taxable year following the
16 taxable year in which the qualified equity investment is made
17 and the proceeds of the qualified equity investment were used
18 to make the qualified low-income community investment; or

19 (2) the date by which a qualified community
20 development entity has made qualified low-income community
21 investments with the proceeds of a qualified equity investment
22 on a cumulative basis equal to at least one hundred fifty
23 percent of the qualified equity investment.

24 N. The economic development department shall create
25 an annual report that provides an objective assessment of the

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1 effectiveness of the new market corporate income tax credit for
2 annual presentation to the revenue stabilization and tax policy
3 committee and any other appropriate legislative committees.

4 For the purpose of assessing the effectiveness of the new
5 market corporate income tax credit, the inability of the
6 department to aggregate data due to sample size shall not
7 relieve the economic development department of the requirement
8 to report all relevant data to the legislature. The economic
9 development department shall provide notice to qualified
10 community development entities that receive qualified equity
11 investments that information provided to the department may be
12 revealed by the economic development department in reports to
13 the legislature.

14 O. As used in this section:

15 (1) "direct tracing" means the tracking, by
16 accepted accounting methods, of the proceeds of a qualified
17 equity investment into qualified low-income community
18 investments;

19 (2) "long-term debt security" means any debt
20 instrument issued by a qualified community development entity,
21 at par value or a premium, with an original maturity date of at
22 least seven years from the date of its issuance, with no
23 acceleration of repayment, amortization or prepayment features
24 prior to its original maturity date, without cash interest
25 payments on the debt instrument during the period beginning on

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1 the date of issuance and ending on the seventh year after
2 issuance in an amount that exceeds the cumulative operating
3 income, as defined by regulations adopted under Section 45D of
4 the Internal Revenue Code, of the qualified community
5 development entity for that period prior to giving effect to
6 the expense of such cash interest payments; provided, however,
7 that the holder of the debt instrument may accelerate payments
8 on the debt instrument in situations where the qualified
9 community development entity has defaulted on covenants
10 designed to ensure compliance with this section or Section 45D
11 of the Internal Revenue Code;

12 (3) "low-income community" means "low-income
13 community" as defined in Section 45D of the Internal Revenue
14 Code;

15 (4) "qualified active low-income community
16 business" means "qualified active low-income community
17 business" as defined in Section 45D of the Internal Revenue
18 Code, except that any business that derives or projects to
19 derive fifteen percent or more of its annual revenue from the
20 rental or sale of real estate shall not be considered a
21 qualified active low-income community business; but the
22 exclusion does not apply to a business that is controlled by,
23 or under the common control with, another business if the
24 second business does not derive or project to derive fifteen
25 percent or more of its annual revenue from the rental or sale

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1 of real estate and is the primary tenant of the real estate
2 leased from the first business; provided that a business shall
3 be considered a qualified active low-income community business
4 for the duration of the qualified community development
5 entity's investment in, or loan to, the business if the
6 qualified community development entity reasonably expects, at
7 the time it makes the investment or loan, that the business
8 will continue to satisfy the requirements for being a qualified
9 active low-income community business throughout the entire
10 period of the investment or loan;

11 (5) "qualified community development entity"
12 means "qualified community development entity" as defined in
13 Section 45D of the Internal Revenue Code; provided that the
14 qualified community development entity has entered into an
15 allocation agreement with the community development financial
16 institutions fund of the United States department of treasury,
17 with respect to credits authorized by Section 45D of the
18 Internal Revenue Code, that includes New Mexico within the
19 service areas set forth in the allocation agreement and
20 includes a subordinate community development entity that also
21 is a qualified community development entity under Section 45D
22 of the Internal Revenue Code and is controlled by or under the
23 common control with the qualified community development entity
24 that received a qualified equity investment;

25 (6) "qualified equity investment" means any

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underscoring material = new
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1 equity investment in, or long-term debt security issued by, a
2 qualified community development entity that:

3 (a) is acquired on or after January 1,
4 2014 and prior to January 1, 2017, at its original issuance,
5 solely in exchange for cash, or that was constituted a
6 qualified equity investment in the hands of a prior holder;

7 (b) has at least eighty-five percent of
8 the investment used by the qualified community development
9 entity to make qualified low-income community investments in
10 qualified active low-income community businesses located in New
11 Mexico; and

12 (c) is designated by the economic
13 development department as a qualified equity investment
14 pursuant to this section and is certified by the economic
15 development department as not exceeding the limitations on the
16 aggregate amounts of the qualified equity investments that may
17 be certified pursuant to this section or the Income Tax Act;
18 and

19 (7) "qualified low-income community
20 investment" means any capital or equity investment in, or loan
21 to, any qualified active low-income community business by the
22 qualified community development entity."

23 **SECTION 3. APPLICABILITY.**--The provisions of this act
24 apply to taxable years beginning on or after January 1, 2014.