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AMENDED IN SENATE AUGUST 22, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1399

Introduced by Assembly Members Medina and V. Manuel Pérez

March 11, 2013

An act to add Section 26011.9 to the Public Resources Code, and to add Section 18410.3 to, and to add and repeal Sections 12283, 17053.9, and 23622.9 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1399, as amended, Medina. Income taxation: insurance taxation: credits: California New Markets Tax Credit.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. Existing law creates the California Competes Tax Credit Committee, which has specified duties in regard to tax credits for economic development. Existing law establishes the Governor's Office of Business and

Economic Development, also known as “GO-Biz,” to, among other duties, serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth.

Existing law imposes an annual tax on the gross premiums of an insurer, as defined, doing business in this state at specified rates.

This bill would allow a credit under the Personal Income Tax Law and the Corporation Tax Law, and a credit against the tax imposed on an insurer, in modified conformity with a federal New Markets Tax Credit, for taxable years beginning on or after January 1, 2015, and before January 1, 2027, in a specified amount for investments in low-income communities. The bill would limit the total annual amount of credit allowed pursuant to these provisions to an amount equal to any portion not granted under a specified sales and use tax exclusion, not to exceed \$40,000,000 per calendar year, and would limit the allocation of the credit to a cumulative total of no more than \$200,000,000, as provided. The bill would impose specified duties on the California Competes Tax Credit Committee and GO-Biz with regard to the application for, and allocation of, the credit. The bill would require GO-Biz to establish and impose reasonable fees upon entities that apply for the allocation of the credit, to be deposited in the California New Markets Tax Credit Fund established by the bill, and use the revenue, upon appropriation by the Legislature, to defray the cost of *applying to, and* administering the program, as specified. The bill would specify that the credit would not be allowed unless the Legislature makes an appropriation from the fund.

The bill would provide that its provisions are severable.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) While many areas of California have recovered from the
- 3 economic and community development impacts of the 2006
- 4 Financial Crisis and the 2010 global recession, Californians in a
- 5 number of communities and neighborhoods are still experiencing
- 6 their lingering effects. In some cases this has resulted in small and
- 7 medium businesses in low-income areas lacking sufficient access

1 to capital and technical assistance. Given that the state has many
2 needs and limited resources, moneys from the private sector are
3 necessary to fill this capital and investment gap.

4 (b) Initially enacted in 2000, the federal government established
5 the New Markets Tax Credit (NMTC) Program, which uses a
6 market-based approach for expanding capital and technical
7 assistance to businesses in lower income communities. The federal
8 program is jointly administered by the Community Development
9 Financial Institutions Fund (CDFI Fund) and the Internal Revenue
10 Service. The NMTC Program allocates federal tax incentives to
11 community development entities (CDE), which they then use to
12 attract private investors who contribute funds that can be used to
13 finance and invest in businesses and develop real estate in
14 low-income communities. Through the 2013–14 funding round,
15 the CDFI Fund had awarded approximately \$40,000,000,000 in
16 NMTC in 836 awards including \$3,000,000,000 in American
17 Recovery and Investment Act of 2009 awards and \$1,000,000,000
18 of special allocation authority to be used for the recovery and
19 redevelopment of the Gulf Opportunity Zone.

20 (c) The federal NMTC totals 39 percent of the original
21 investment amount in the CDE and is claimed over a period of
22 seven years (5 percent for each of the first three years, and 6
23 percent for each of the remaining four years). ~~The~~ Any investment
24 by ~~the~~ any taxpayer in the CDE redeemed before the end of the
25 seven-year period will be recaptured.

26 (d) Fourteen states in the United States have adopted state
27 programs using the NMTC model including Alabama, Florida,
28 Illinois, Nevada, and Oregon. While some of the programs
29 substantially mirror the federal program, others vary in both the
30 percentage of the credit and some of the policies that form the
31 foundation of the credit. One of the reasons cited for establishing
32 state-level programs is to make ~~their~~ a state more attractive to
33 CDEs, which results in increasing the amount of federal NMTCs
34 being utilized in ~~their~~ a state. Further, several studies, including a
35 January 1, 2011, case study by Pacific Community Ventures,
36 showed that for every dollar of forgone tax revenue, the federal
37 NMTC leverages \$12 to \$14 of private investment.

38 SEC. 2. Section 26011.9 is added to the Public Resources Code,
39 to read:

1 26011.9. The authority shall make a determination of the
2 amount of the one hundred million dollars (\$100,000,000) in
3 exclusions not granted in the assigned calendar year pursuant to
4 Section 26011.8. An amount equal to that amount shall be granted
5 in the subsequent calendar year through the California New
6 Markets Tax Credit Program pursuant to Sections 12283, 17053.9,
7 and 23622.9 of the Revenue and Taxation Code. This section shall
8 not prevent a taxpayer granted an exclusion pursuant to Section
9 6010.8 of the Revenue and Taxation Code from applying for, and
10 receiving a refund for, taxes paid under Part 1 (commencing with
11 Section 6001) of Division 2 of the Revenue and Taxation Code.

12 SEC. 3. Section 12283 is added to the Revenue and Taxation
13 Code, to read:

14 12283. (a) There is hereby created the California New Markets
15 Tax Credit Program as provided in this section, Section 17053.9,
16 and Section 23622.9. The purpose of this program is to stimulate
17 private sector investment in lower income communities by
18 providing a tax incentive to community and economic development
19 entities that can be leveraged by the entity to attract private sector
20 investment that in turn will be deployed by providing financing
21 and technical assistance to small- and medium-size businesses and
22 the development of commercial, industrial, and community
23 development projects, including, but not limited to, facilities for
24 nonprofit service organizations, light manufacturing, and mixed-use
25 and transit-oriented development. The committee and GO-Biz
26 shall administer this program as provided in this section, Section
27 17053.9, and Section 23622.9. *The Director of GO-Biz may*
28 *delegate the administration of all or portions of the program within*
29 *GO-Biz.*

30 (b) (1) For taxable years beginning on or after January 1, 2015,
31 and before January 1, 2027, and subject to subdivision (h), there
32 shall be allowed as a credit against the tax described in Sections
33 12201, 12204, 12206, and 12209, an amount determined in
34 accordance with Section 45D of the Internal Revenue Code, ~~as~~
35 ~~amended by Public Law 111-5, Public Law 111-312, and Public~~
36 ~~Law 112-240~~, as modified as set forth in this section.

37 ~~(2) This credit shall be allowed only if the taxpayer holds the~~
38 ~~qualified equity investment, or has been allocated a credit pursuant~~
39 ~~to paragraph (3), on the credit allowance date and each of the six~~
40 ~~following anniversary dates of that date.~~

1 ~~(3) A tax credit allowed under this section shall not be sold and~~
2 ~~is not a refundable credit. Tax credits allowed or allocated to a~~
3 ~~partnership, limited liability company, or “S” corporation may be~~
4 ~~allocated to the partners, members, managers, or shareholders of~~
5 ~~such entity for their use in accordance with the provisions of any~~
6 ~~agreement among such partners, members, managers, or~~
7 ~~shareholders. Such allocations shall not be considered a sale for~~
8 ~~the purposes of this section.~~

9 (4)

10 (2) (A) For purposes of this section, “committee” means the
11 California Competes Tax Credit Committee established under
12 Section 18410.2.

13 (B) For purposes of this section, “GO-Biz” means the
14 Governor’s Office of Business and Economic Development.

15 (c) Section 45D of the Internal Revenue Code is modified as
16 follows:

17 ~~(1) The references to “the Secretary” in Section 45D of the~~
18 ~~Internal Revenue Code, other than in Sections 45D(e)(1)(C) and~~
19 ~~45D(d)(1)(C), are modified to read “GO-Biz.”~~

20 (2)

21 (1) Section 45D(a)(2) of the Internal Revenue Code, relating to
22 applicable percentage, is modified by substituting for “(A) 5
23 percent with respect to the first 3 credit allowance dates, and (B)
24 6 percent with respect to the remainder of the credit allowance
25 dates” with the following:

26 (A) Zero percent with respect to the first two credit allowance
27 dates.

28 (B) Seven percent with respect to the third credit allowance
29 date.

30 (C) Eight percent with respect to the remainder of the credit
31 allowance dates.

32 ~~(3) Section 45D(b)(3) of the Internal Revenue Code, relating~~
33 ~~to safe harbor for determining use of cash, is modified by~~
34 ~~substituting “qualified low-income community investments in~~
35 ~~California” for “qualified low-income community investments.”~~

36 ~~(4) (A) Section 45D(e)(1) of the Internal Revenue Code is~~
37 ~~modified to additionally include:~~

38 ~~(i) A subsidiary community development entity of any such~~
39 ~~qualified community development entity.~~

1 (ii) ~~A nonprofit organization, pursuant to Section 23701,~~
 2 ~~certified by the committee as having a primary mission of serving~~
 3 ~~or providing investment capital in low-income communities and~~
 4 ~~the entity maintains accountability to residents of low-income~~
 5 ~~communities through their representation on any governing board~~
 6 ~~of the entity or on an advisory board of the entity. GO-Biz shall~~
 7 ~~establish guidelines for certifying nonprofit organizations pursuant~~
 8 ~~to this subparagraph. GO-Biz may include reasonable conditions~~
 9 ~~on the certification to effectuate the intent of this section and may~~
 10 ~~suspend or revoke a certification, after affording the nonprofit~~
 11 ~~organization notice and the opportunity to appeal and be heard by~~
 12 ~~the committee, if GO-Biz finds that the nonprofit organization no~~
 13 ~~longer meets the requirements for certification. Such nonprofit~~
 14 ~~organization is not subject to the requirement of subparagraph (B).~~

15 ~~(B)~~

16 (2) (A) Section 45D(c)(1) of the Internal Revenue Code is
 17 modified to only include a qualified community development entity
 18 *entity, that is certified by the Secretary of the Treasury*, and its
 19 subsidiary qualified community development entities that have
 20 entered into an allocation agreement with the Community
 21 Development Financial Institutions Fund of the United States
 22 Treasury Department, with respect to credits authorized by Section
 23 45D of the Internal Revenue Code, that includes California within
 24 the service area and is dated on or after January 1, 2012.

25 ~~(5)~~

26 ~~(B)~~ Section ~~45D(d)(1)(A)~~ 45D(c)(2) of the Internal Revenue
 27 Code is modified to only include ~~any capital or equity investment~~
 28 ~~in, or loan to, a qualified active low-income community business:~~
 29 *a specialized small business investment company or community*
 30 *development financial institution that entered into an allocation*
 31 *agreement with the Community Development Financial Institutions*
 32 *Fund of the United States Treasury Department, with respect to*
 33 *credits authorized by Section 45D of the Internal Revenue Code,*
 34 *that includes California within the service area and is dated on*
 35 *or after January 1, 2012.*

36 ~~(6)~~

37 (3) The term “qualified active low-income community business,”
 38 as defined in Section 45D(d)(2) of the Internal Revenue Code, is
 39 modified as follows:

1 ~~(A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code is~~
2 ~~modified by~~ By substituting “any low-income community in
3 California” for “any low-income community.” *community* every
4 place it appears in Section 45D of the Internal Revenue Code.

5 ~~(B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is~~
6 ~~modified as follows:~~

7 ~~(i) Substituting “any low-income community in California” for~~
8 ~~“any low-income community.”~~

9 ~~(ii) In determining whether the qualified active low-income~~
10 ~~community business uses a substantial portion of its tangible~~
11 ~~personal property within any low-income community, the term~~
12 ~~“substantial portion” shall mean “at least 40 percent” as calculated~~
13 ~~by the average value of the tangible property owned or leased and~~
14 ~~used within a California low-income community by the entity~~
15 ~~divided by the average value of the total tangible property owned~~
16 ~~or leased and used by the entity in California during the taxable~~
17 ~~year. The value assigned to the leased property by the entity must~~
18 ~~be reasonable.~~

19 ~~(iii) Adding the provision that if the business meets the~~
20 ~~requirements of a qualified low-income community business at~~
21 ~~the time the investment is made, the business shall be treated as~~
22 ~~satisfying the requirements of Section 45D(d)(2)(A)(ii) for the~~
23 ~~duration of the investment.~~

24 ~~(C) An entity complies with Section 45D(d)(2)(A)(i) of the~~
25 ~~Internal Revenue Code if, as calculated in subparagraph (B), it~~
26 ~~uses 50 percent of its tangible property, whether owned or leased,~~
27 ~~within any low-income community for any taxable year.~~

28 ~~(D)~~

29 ~~(B) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code is~~
30 ~~modified to allow the services of employees of a service-based~~
31 ~~qualified active low-income community business to be performed~~
32 ~~outside the low-income community. A service-based qualified~~
33 ~~active low-income community business is a business that primarily~~
34 ~~earns revenue through providing intangible products and services~~
35 ~~and leases or owns real property in the low-income community~~
36 ~~that is used for the operation of the business.~~

37 ~~(E) (i)~~

38 ~~(C) A qualified active low-income community business shall~~
39 ~~not include any business that derives, or projects to derive, 15~~
40 ~~percent or more of its annual revenue from the rental or sale of~~

1 real estate. This exclusion does not apply to a business that is
2 controlled by, or under common control with, another business if
3 the second business: (I) does not derive or project to derive 15
4 percent or more of its annual revenue from the rental or sale of
5 real estate; and (II) is the primary tenant of the real estate leased
6 from the first business.

7 (ii)

8 (D) A qualified active low-income community business shall
9 only include a business that, at the time the initial investment is
10 made, has 250 or fewer employees and is located in ~~a one or more~~
11 California low-income ~~community~~ *communities*. The operating
12 business shall meet all other conditions of a qualified active
13 low-income community business, except as modified by this
14 paragraph ~~and paragraph (7)~~.

15 (iii)

16 (E) A qualified active low-income community business shall
17 only include a business located in census tracts with a poverty rate
18 greater than 30 percent, or census tracts, if located within a
19 non-metropolitan area, with a median family income that does not
20 exceed 60 percent of median family income for the State of
21 California, or census tracts, if located within a metropolitan area,
22 with a median family income that does not exceed 60 percent of
23 the greater of the California median family income or the
24 metropolitan area median family income, or census tracts with
25 unemployment rates at least 1.5 times the national average.

26 (iv)

27 (F) A qualified active low-income community business shall
28 not include any business that operates or derives revenues from
29 the operation of a country club, gaming establishment, massage
30 parlor, liquor store, or golf course.

31 (v)

32 (G) A qualified active low-income community business shall
33 not include a sexually oriented business. A “sexually oriented
34 business” means a nightclub, bar, restaurant, or similar commercial
35 enterprise that provides for an audience of two or more individuals
36 live nude entertainment or live nude performances where the nudity
37 is a function of everyday business operations and where nudity is
38 a planned and intentional part of the entertainment or performance.
39 “Nude” means clothed in a manner that leaves uncovered or visible,
40 through less than fully opaque clothing, any portion of the genitals

1 or, in the case of a female, any portion of the breasts below the
2 top of the areola of the breasts.

3 (vi)

4 (H) A qualified active low-income community business shall
5 not include a charter school.

6 ~~(7) Section 45D(e)(1) of the Internal Revenue Code is modified~~
7 ~~to add the following: “When the United States Census Bureau~~
8 ~~discontinues using the decennial census to report median family~~
9 ~~income on a census tract basis, census block group data shall be~~
10 ~~used based on the American Community Survey.”~~

11 ~~(8) The following shall apply in lieu of the provisions of Section~~

12 ~~(4) Section 45D(f) of the Internal Revenue Code, relating to~~
13 ~~national limitation on amount of investments designated: “The~~
14 ~~designated, is modified as follows:~~

15 ~~(A) The following shall apply in lieu of the provisions of Section~~
16 ~~45D(f)(1) of the Internal Revenue Code: “The aggregate amount~~
17 ~~of credit qualified equity investments that may be allocated in any~~
18 ~~calendar year pursuant to for purposes of this section, Section~~
19 ~~17053.9, and Section 23622.9 shall be an amount equal to as~~
20 ~~determined by GO-Biz in consultation with the Department of~~
21 ~~Finance based upon any unused portion of the one hundred million~~
22 ~~dollars (\$100,000,000) in exclusions, authorized pursuant to~~
23 ~~Section 6010.8, as determined by the California Alternative Energy~~
24 ~~and Advanced Transportation Financing Authority and reported~~
25 ~~to the committee, not to exceed an amount based upon a credit of~~
26 ~~forty million dollars (\$40,000,000). The committee shall limit the~~
27 ~~allocation of credits permitted investments that may be designated~~
28 ~~under this section, Section 17053.9, and Section 23622.9 to a~~
29 ~~cumulative total amount based on credits of no more than two~~
30 ~~hundred million dollars (\$200,000,000). Any unused credits The~~
31 ~~allocation of any undesignated qualified equity investments shall~~
32 ~~be returned to the committee by March 1 of the year following~~
33 ~~allocation and the value of the unused credit undesignated qualified~~
34 ~~equity investment shall be available for allocation in the following~~
35 ~~calendar years in accordance with the application process. Any~~
36 ~~qualified equity investment attributable to recaptured credits shall~~
37 ~~be returned available to the committee by on March 1 of the year~~
38 ~~following recapture and the value of the recaptured credit shall be~~
39 ~~available for allocation in the following calendar years in~~
40 ~~accordance with subparagraph (B) of paragraph—(9) (5).~~

1 ~~Reallocation credits and~~ *Reallocated qualified equity investments*
2 *attributable to* recapture credits shall not count against the ~~forty~~
3 ~~million dollars (\$40,000,000)~~ annual limit or the ~~two hundred~~
4 ~~million dollars (\$200,000,000)~~ cumulative limit.”

5 (B) *The references to “the Secretary” in Section 45D(f)(2) of*
6 *the Internal Revenue Code, relating to allocation of limitation, is*
7 *modified to read “GO-Biz.”*

8 (C) *The last sentence of Section 45D(f)(3) of the Internal*
9 *Revenue Code, relating to carryover of unused limitation, shall*
10 *not apply.*

11 ~~(9)~~
12 (5) Section 45D(g)(3) of the Internal Revenue Code, relating
13 to recapture event, ~~does not apply and is replaced with the~~
14 ~~following:~~ *is modified to add the following:*

15 (A) (i) *The qualified community development entity fails to*
16 *comply with subparagraph (D) of paragraph (5) of subdivision*
17 *(d). In this case, recapture shall be 100 percent of the credit. The*
18 *qualified community development entity shall send notice to GO-Biz*
19 *within 30 calendar days of the close of any calendar year in which*
20 *the qualified community development entity has failed to invest at*
21 *least 15 percent of the purchase price of the qualified equity*
22 *investment in satisfaction of the requirements of subparagraph*
23 *(D) of paragraph (5) of subdivision (d).*

24 (ii) *The qualified community development entity made an*
25 *investment without performing a revenue impact assessment that*
26 *satisfies subparagraph (J) of paragraph (5) of subdivision (d). In*
27 *this case, recapture shall be 100 percent of the credit, unless*
28 *GO-Biz has approved a waiver pursuant to clause (ii) of*
29 *subparagraph (J) of paragraph (5) of subdivision (d). The qualified*
30 *community development entity shall send notice to GO-Biz within*
31 *30 calendar days of the close of any calendar year in which the*
32 *qualified community development entity has made an investment*
33 *that fails to meet the requirements set forth in subparagraph (J)*
34 *of paragraph (5) of subdivision (d).*

35 ~~(A)~~
36 (B) GO-Biz shall establish a process, in consultation with the
37 Department of Insurance, for the recapture of credits allowed under
38 this section from the entity that claimed the credit on a return. ~~The~~
39 ~~recapture process shall be applied if any of the following conditions~~
40 ~~set forth occur:~~

1 (i) ~~Any amount of a federal tax credit available with respect to~~
2 ~~a qualified equity investment that is eligible for a credit under this~~
3 ~~section is recaptured under Section 45D of the Internal Revenue~~
4 ~~Code. The qualified community development entity shall send~~
5 ~~notice to GO-Biz within 30 calendar days of being notified by the~~
6 ~~United States Treasury that any amount of a federal tax credit~~
7 ~~available with respect to a qualified equity investment that is~~
8 ~~eligible for a credit under this section is recaptured. The committee~~
9 ~~shall send written acknowledgment within five calendar days of~~
10 ~~receipt of the qualified community development entity's notice of~~
11 ~~potential noncompliance. In such case the recapture shall be~~
12 ~~proportionate to the federal recapture with respect to such qualified~~
13 ~~equity investment.~~

14 (ii) ~~The qualified community development entity redeems a~~
15 ~~qualified equity investment prior to the seventh anniversary of the~~
16 ~~issuance of such qualified equity investment. The qualified~~
17 ~~community development entity shall send notice to GO-Biz within~~
18 ~~30 calendar days of redeeming a qualified equity investment prior~~
19 ~~to the seventh anniversary of the issuance of such qualified equity~~
20 ~~investment. GO-Biz shall send written acknowledgment within~~
21 ~~five calendar days of receipt of the qualified community~~
22 ~~development entity's notice of potential noncompliance. In such~~
23 ~~case GO-Biz's recapture shall be proportionate to the amount of~~
24 ~~the redemption of such qualified equity investment.~~

25 (iii) ~~The qualified community development entity fails to invest~~
26 ~~an amount equal to at least 85 percent of the purchase price of the~~
27 ~~qualified equity investment in qualified low-income community~~
28 ~~investments in California within 12 months of the issuance of the~~
29 ~~qualified equity investment and maintain at least 85 percent of~~
30 ~~such level of investment in qualified low-income community~~
31 ~~investments in California until the last credit allowance date for~~
32 ~~the qualified equity investment. For purposes of this section, an~~
33 ~~investment shall be considered held by a qualified community~~
34 ~~development entity even if the investment has been sold or repaid~~
35 ~~if the qualified community development entity reinvests an amount~~
36 ~~equal to the capital returned to, or recovered by, the qualified~~
37 ~~community development entity from the original investment,~~
38 ~~exclusive of any profits realized, in another qualified low-income~~
39 ~~community investment within 12 months of the receipt of such~~
40 ~~capital. The qualified community development entity shall send~~

1 notice to GO-Biz within 30 calendar days of the 12-month deadline
 2 for the reinvestment if the entity fails to meet any of the
 3 reinvestment requirements. GO-Biz shall send written
 4 acknowledgment within five calendar days of receipt of the
 5 qualified community development entity's notice of potential
 6 noncompliance. A qualified community development entity shall
 7 not be required to reinvest capital returned from qualified
 8 low-income community investments after the sixth anniversary of
 9 the issuance of the qualified equity investment, and the qualified
 10 low-income community investment shall be considered held by
 11 the qualified community development entity through the seventh
 12 anniversary of the qualified equity investment's issuance.

13 ~~(B)~~

14 (C) Recaptured tax credits and the related qualified equity
 15 investment authority investments revert back to GO-Biz and shall
 16 be reissued. The reissue shall not count toward the annual
 17 allocation limitation of forty million dollars (\$40,000,000) or
 18 overall credit allocation limitation of two hundred million dollars
 19 (\$200,000,000) in paragraph (8) of subdivision (e) or cumulative
 20 allocation limitation. The reissue shall be done in the following
 21 order:

22 (i) First, pro rata to applicants whose qualified equity investment
 23 allocations were reduced pursuant to subparagraph ~~(B)~~ (F) of
 24 paragraph (5) of subdivision (d) by the *annual* allocation limitation
 25 of forty million dollars (\$40,000,000) in paragraph (8) of
 26 subdivision (e): *limitation*.

27 (ii) Thereafter, in accordance with the application process.

28 ~~(C)~~

29 (D) (i) Enforcement of each of the recapture provisions shall
 30 be subject to a six-month cure period. Recapture shall not occur
 31 until the qualified community development entity gives notice of
 32 potential noncompliance to GO-Biz and is afforded six months
 33 from the date of such notice to cure the noncompliance. The
 34 six-month cure period shall begin on the day GO-Biz sends written
 35 acknowledgment of the qualified community development entity's
 36 notice of the potential noncompliance. The qualified community
 37 development entity is responsible for addressing the circumstances
 38 of the potential noncompliance and providing all documentation
 39 to GO-Biz necessary to demonstrate, to GO-Biz's satisfaction, that
 40 those conditions no longer exist.

1 (ii) In an instance where a qualified community development
2 entity fails to send the required notice of potential noncompliance
3 or GO-Biz has information from the annual report or other sources
4 that indicates that the entity is in potential noncompliance, GO-Biz
5 shall send the notice. The date GO-Biz sends the notice of potential
6 noncompliance shall begin the six-month cure period.

7 (ii)

8 (iii) Not more than 45 calendar days following the close of the
9 cure period, GO-Biz shall make a final determination as to whether
10 the credit is to be recaptured *noncompliance has been cured*. This
11 determination shall be based on the review of the notice,
12 information submitted by the qualified community development
13 entity, and any other information GO-Biz deems relevant to this
14 determination. *Within 30 calendar days of making the final*
15 *determination, GO-Biz shall notify the Department of Insurance*
16 *and the Franchise Tax Board of the determination and other*
17 *related information including, but not limited to, the tax*
18 *identification number of the qualified community development*
19 *entity.*

20 (iii) ~~GO-Biz~~

21 (iv) *GO-Biz shall post, and update monthly, a tally of returned*
22 *credits undesignated qualified equity investments, pursuant to*
23 *paragraph (8) (4), and recaptured credits pursuant to this paragraph.*
24 ~~Within 30 calendar days of making the final determination that~~
25 ~~the credit is to be recaptured, GO-Biz shall notify the Department~~
26 ~~of Insurance of the determination including, but not limited to, the~~
27 ~~tax identification number of the taxpayer.~~

28 (10)

29 (6) Section 45D(h) of the Internal Revenue Code, relating to
30 basis reduction, shall not apply.

31 (11) ~~Section 45D(i) of the Internal Revenue Code, relating to~~
32 ~~regulations, shall not apply.~~

33 (12)

34 (7) If a qualified community development entity makes a capital
35 or equity investment or a loan with respect to a qualified
36 low-income building under the state Low-Income Housing Tax
37 Credit Program, the investment or loan is not a qualified
38 low-income community investment under this section.

39 (d) (1) GO-Biz shall adopt guidelines necessary or appropriate
40 to carry out the purposes of this section and meet the requirements

1 of Section 45D of the Internal Revenue Code, as modified by this
2 section. In promulgating guidelines GO-Biz shall look for guidance
3 in the rules and regulations adopted under Section 45D of the
4 Internal Revenue Code to the extent that those rules and regulations
5 are consistent with this section. The guidelines shall not disqualify
6 a low-income community investment for the single reason that
7 public or private incentives, loans, equity investments, technical
8 assistance, or other forms of support have been or continue to be
9 provided. *its responsibilities with respect to the allocation of the*
10 *qualified equity investments and recapture of credit allowed by*
11 *this section.* The adoption of the guidelines shall not be subject to
12 the rulemaking provisions of the Administrative Procedure Act of
13 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
14 3 of Title 2 of the Government Code.

15 (2) (A) GO-Biz shall establish and impose reasonable fees upon
16 entities that apply for the allocation pursuant to this subdivision
17 that in the aggregate defray the cost of ~~administering~~ *reviewing*
18 *applications* for the program. *GO-Biz may impose other reasonable*
19 *fees upon entities that receive the allocation pursuant to this*
20 *subdivision that in the aggregate defray the cost of administering*
21 *the program.*

22 (B) The fees collected shall be deposited in the California New
23 Markets Tax Credit Fund established in Section 18410.3.

24 (3) In developing guidelines GO-Biz shall adopt an allocation
25 process that does all of the following:

26 (A) Creates an equitable distribution process that ensures that
27 ~~low-income communities~~ *community populations* across the state
28 *are engaged and* have an opportunity to benefit from the program.

29 (B) Sets minimum organizational capacity standards that
30 applicants must meet in order to receive an allocation of ~~credits~~
31 *authority to designate qualified equity investments* including, but
32 not limited to, its business strategy, targeted community outcomes,
33 capitalization strategy, and management capacity.

34 (C) Considers the qualified community development entity's
35 prior qualified low-income community investments under Section
36 45D of the Internal Revenue Code.

37 (D) Considers the qualified community development entity's
38 prior qualified low-income community investments under this
39 section, including subparagraph (D) of paragraph (5).

1 (E) Does not require the qualified community development
2 entity to identify the qualified active low-income community
3 businesses in which the qualified community development entity
4 will invest in an application for qualified equity investment
5 allocation.

6 (F) *Does not disqualify a low-income community investment*
7 *for the single reason that public or private incentives, loans, equity*
8 *investments, technical assistance, or other forms of support have*
9 *been or continue to be provided.*

10 (4) (A) GO-Biz shall begin accepting applications on or before
11 May 15, 2015, and shall award ~~credits~~ *authority to designate*
12 *qualified equity investments* annually through 2019, to the extent
13 that allocations are available pursuant to Section 26011.9 of the
14 Public Resources Code. To the extent reasonable and consistent
15 in carrying out the purposes of this section, GO-Biz shall consider
16 how the timing of the state allocation rounds correspond with the
17 allocation schedule of the federal New Markets Tax Credit
18 Program.

19 (B) Within 20 calendar days after receipt of an application
20 GO-Biz shall determine whether the application is complete or
21 whether additional information is necessary in order to fully
22 evaluate the application. If additional information is requested and
23 the qualified community development entity provides that
24 information within five business days, the application shall be
25 considered completed as of the original date of receipt. If the
26 qualified community development entity fails to provide the
27 information within the five-business-day period, the application
28 shall be denied and must be resubmitted in full with a new receipt
29 date.

30 (C) Within 20 calendar days after receipt of an application
31 determined to be complete by GO-Biz, the committee shall grant
32 or deny the application in full or in part. If the committee denies
33 any part of the application, it shall inform the qualified community
34 development entity of the grounds for the denial.

35 (5) (A) ~~The~~ *In the 2015 awards cycle, the committee shall*
36 ~~award tax credits~~ *authority to designate qualified equity investments*
37 *to qualified community development entities described in*
38 ~~subparagraph (B) of paragraph (4)~~ *paragraph (3) of subdivision*
39 *(c) in the order applications are received by the committee, subject*
40 ~~to clause (i) or on a competitive basis, pursuant to clause (ii).~~

1 *committee. Applications received on the same day shall be deemed*
2 *to have been received simultaneously.*

3 ~~(i) (I) In 2015, the committee shall only award tax credits to~~
4 ~~a qualified community development entity in the order applications~~
5 ~~are received by the committee. In~~

6 ~~(B) In the 2016 to 2019 award cycles, inclusive, at least 60~~
7 ~~percent of the credit allocation authority to designate qualified~~
8 ~~equity investments shall be awarded in the order applications are~~
9 ~~received by the committee to a qualified community development~~
10 ~~entity pursuant to subparagraph (A). Applications received on the~~
11 ~~same day shall be deemed to have been received simultaneously.~~
12 ~~At the committee's discretion, a higher percentage of credits~~
13 ~~authority to designate qualified equity investments may be awarded~~
14 ~~pursuant to the first sentence in this subparagraph subparagraph~~
15 ~~(A). Qualified community development entities that receive tax~~
16 ~~credit awards pursuant to this clause shall commit to making~~
17 ~~investments in a manner that engages community-based~~
18 ~~partnerships and local grassroots stakeholders.~~

19 ~~(H) An entity described in clause (ii) of subparagraph (A) of~~
20 ~~paragraph (4) of subdivision (c) shall not receive a tax credit award~~
21 ~~pursuant to this clause.~~

22 ~~(ii)~~

23 ~~(C) The committee shall award up to 40 percent of the credit~~
24 ~~allocation authority to designate qualified equity investments in~~
25 ~~the 2016 to 2019, inclusive, award cycles, to a qualified community~~
26 ~~development entity, as described in clause (ii) of subparagraph~~
27 ~~(A) of paragraph (4) of subdivision (c) and subparagraph (B) of~~
28 ~~paragraph (4) of subdivision (c); entities on a competitive basis~~
29 ~~using blind scoring and a review committee that is comprised of~~
30 ~~community development finance practitioners and members having~~
31 ~~demonstrated experience in assessing organizational business~~
32 ~~strategy, community outcomes, capitalization strategy, and~~
33 ~~management capacity. A member of the review committee shall~~
34 ~~not have a financial interest, which includes, but is not limited to,~~
35 ~~asking, consenting, or agreeing to receive any commission,~~
36 ~~emolument, gratuity, money, property, or thing of value for his or~~
37 ~~her own use, benefit, or personal advantage for procuring or~~
38 ~~endeavoring to procure for any person, partnership, joint venture,~~
39 ~~association, or corporation any tax credit qualified equity~~
40 ~~investment or other assistance from any applicant.~~

1 (D) (i) For qualified equity investments derived from the 2015
2 to 2019, inclusive, awards cycles, pursuant to subparagraphs (A),
3 (B) and (C), a qualified community development entity shall invest
4 at least 15 percent of the qualified equity investment in a qualified
5 low-income community business in consultation or in partnership
6 with either of the following:

7 (I) A qualified community development entity certified under
8 Section 45D of the Internal Revenue Code that has not received a
9 federal New Markets Tax Credit allocation on or after January 1,
10 2012, and has either a local service area that includes one or more
11 California communities or a California statewide service area,
12 but excluding qualified community development entities with a
13 national service area.

14 (II) A nonprofit organization certified by GO-Biz, pursuant to
15 clause (iii).

16 (ii) The 15-percent investment shall be calculated by multiplying
17 the total purchase price of the qualified equity investments issued
18 by the qualified community development entity by 15 percent. Each
19 community development entity application shall indicate how the
20 qualified community development entity will meet this requirement.

21 (iii) GO-Biz shall establish guidelines for certifying a nonprofit
22 organization pursuant to this subparagraph. A nonprofit
23 organization shall meet the requirements of Section 23701 and be
24 certified by GO-Biz as having a primary mission of serving or
25 providing investment capital in low-income communities in
26 California. The nonprofit organization shall maintain
27 accountability to residents of low-income communities through
28 their representation on any governing board or on an advisory
29 board of the nonprofit organization. GO-Biz may include
30 reasonable conditions on the certification to effectuate the intent
31 of this section and may suspend or revoke a certification, after
32 affording the nonprofit organization notice and the opportunity
33 to appeal and be heard by the committee, if GO-Biz finds that the
34 nonprofit organization no longer meets the requirements for
35 certification.

36 ~~(iii) In awarding credits on a~~

37 (E) In making competitive ~~basis~~, awards of authority to
38 designate qualified equity investments, priority shall be given to
39 applications that can demonstrate that the ~~credits~~ qualified equity
40 investment authority will allow the qualified community

1 *development* entity to undertake qualified low-income community
 2 investments in rural, suburban, or urban areas that have been
 3 historically underserved and result in the greatest benefit to the
 4 hardest to serve and undercapitalized lower income populations,
 5 or in newly established businesses, or in activities that support
 6 neighborhood revitalization strategies driven by local grassroots
 7 stakeholders in multiple low-income communities across one or
 8 more regions or the state for the purpose of scaling economic
 9 development activities that compliment regional industry clusters
 10 that result in the greatest benefit to the largest number of lower
 11 income individuals. ~~All competitive applications shall demonstrate~~
 12 ~~strong linkages with communities and neighborhoods in California~~
 13 ~~low-income neighborhoods.~~

14 ~~(B)~~

15 ~~(F) (i) For applications described in clause (i) of subparagraph~~
 16 ~~(A), in the event tax credit requests for authority to designate~~
 17 ~~qualified equity investments exceed the applicable annual allocation~~
 18 ~~limitation of up to forty million dollars (\$40,000,000) in paragraph~~
 19 ~~(8) of subdivision (c), the committee limitation, GO-Biz shall~~
 20 certify, consistent with remaining qualified equity investment
 21 capacity, qualified equity investments of applicants in proportionate
 22 percentages based upon the ratio of the amount of qualified equity
 23 investments requested in such applications to the total amount of
 24 qualified equity investments requested in all such applications
 25 received on the same day.

26 ~~(C)~~

27 ~~(ii) If a pending request cannot be fully certified due to this~~
 28 ~~limit, the committee GO-Biz shall certify the portion that may be~~
 29 certified unless the qualified community development entity elects
 30 to withdraw its request rather than receive partial certification.

31 ~~(D)~~

32 ~~(G) An approved applicant may transfer all or a portion of its~~
 33 certified qualified equity investment authority to its controlling
 34 entity or any subsidiary qualified community development entity
 35 of the controlling entity, provided that the applicant and the
 36 transferee notify the committee within 30 calendar days of such
 37 transfer and include the information required in the application
 38 with respect to such transferee with such notice. *The transferee*
 39 *shall be subject to the same rules, requirements, and limitations*
 40 *applicable to the transferor.*

1 ~~(E)~~

2 (H) Within 60 calendar days of GO-Biz sending notice of
3 certification, the qualified community development entity or any
4 transferee, under subparagraph ~~(D)~~ (G), shall issue the qualified
5 equity investment and receive cash in the amount of the certified
6 amount. The qualified community development entity or transferee,
7 under subparagraph ~~(D)~~ (G), must provide GO-Biz with evidence
8 of the receipt of the cash investment within 65 calendar days of
9 the applicant receiving notice of certification. If the qualified
10 community development entity or any transferee, under
11 subparagraph ~~(D)~~ (G), does not receive the cash investment and
12 issue the qualified equity investment within 60 calendar days of
13 GO-Biz sending the certification notice, the certification shall lapse
14 and the entity may not issue the qualified equity investment without
15 reapplying to GO-Biz for certification. Lapsed certifications revert
16 back to GO-Biz and shall be reissued in the following order:

17 (i) First, pro rata to applicants whose qualified equity investment
18 allocations were reduced pursuant to subparagraph ~~(B)~~ (F) under
19 the annual allocation limitation of forty million dollars
20 (\$40,000,000) in paragraph ~~(8)~~ (5) of subdivision (c).

21 (ii) Thereafter, in accordance with the application process.

22 ~~(F)~~

23 (I) A qualified community development entity that issues
24 qualified equity investments must notify GO-Biz of the names of
25 ~~the entities taxpayers~~ that are eligible to utilize tax credits ~~under~~
26 ~~paragraph (3) of subdivision (b) pursuant to an allocation of tax~~
27 ~~credits or change in allocation of tax credits or due to a pursuant~~
28 ~~to this section and any~~ transfer of a qualified equity investment.

29 (J) (i) *A qualified community development entity shall only*
30 *make a qualified low-income community investment that*
31 *demonstrates a positive revenue impact on the state over a 10-year*
32 *period against the aggregate tax credit utilization over the same*
33 *10-year period. GO-Biz shall approve one or more nationally*
34 *recognized revenue impact assessment models that shall be used*
35 *by the qualified community development entity to demonstrate*
36 *positive revenue impact. If it is demonstrated that the qualified*
37 *low-income community investment has a positive revenue impact*
38 *on the state at the time the investment is made, it shall be treated*
39 *as if the investment continues to meet the requirement of this*
40 *subparagraph for the duration of the seven-year program period.*

1 (ii) Upon application and approval by GO-Biz, the requirement
2 of this subparagraph may be waived.

3 (6) (A) A qualified community development entity that issues
4 qualified equity investments shall submit a report to GO-Biz within
5 the first five business days after the first anniversary of the initial
6 credit allowance date that provides documentation as to the
7 investment of at least 85 percent of the purchase price in qualified
8 low-income community investments in qualified active low-income
9 community businesses located in California. Such report shall
10 include all of the following:

11 (i) A bank statement of such qualified community development
12 entity evidencing each qualified low-income community
13 investment.

14 (ii) Evidence that such business was a qualified active
15 low-income community business at the time of such qualified
16 low-income community investment.

17 (iii) Evidence that the community development entity complied
18 with subparagraph (D) of paragraph (5).

19 (iv) Evidence that each qualified low-income community
20 investment was determined to have a positive revenue impact on
21 the state. This requirement does not apply for any qualified
22 low-income community investment for which GO-Biz approved a
23 waiver, pursuant to clause (ii) of subparagraph (J) of paragraph
24 (5) or to reinvestments of redeemed qualified low-income
25 investments.

26 ~~(iii) Any~~

27 (v) Any other information required by GO-Biz as being necessary
28 to meet the requirements of this section.

29 (B) Thereafter, the qualified community development entity
30 shall submit an annual report to GO-Biz within 60 calendar days
31 of the beginning of the calendar year during the seven years
32 following submittal of the report, pursuant to subparagraph (A).
33 No annual report shall be due prior to the first anniversary of the
34 initial credit allowance date. The report shall include, but is not
35 limited to, the following:

36 (i) The *social, environmental, and economic* impact the credit
37 had on the low-income community *during the report period and*
38 *cumulatively*.

39 (ii) The amount of moneys used for qualified low-income
40 investments in qualified low-income community businesses.

1 (iii) The number of employment positions created and retained
2 as a result of qualified low-income community investments and
3 the average annual salary of such positions.

4 (iv) The number of operating businesses assisted as a result of
5 qualified low-income community investments, by industry and
6 number of employees.

7 (v) Number of owner-occupied real estate projects ~~described in~~
8 ~~subparagraph (E) of paragraph (6) of subdivision (e).~~

9 (vi) Location of ~~the~~ *each* qualified low-income community
10 ~~businesses~~ *business assisted by a qualified low-income community*
11 *investment.*

12 (vii) *Summary of the outcomes of each of the revenue impact*
13 *assessments undertaken by the qualified community development*
14 *entity during the year.*

15 (e) (1) In the case where the credit allowed by this section
16 exceeds the tax described in Sections 12201, 12204, 12206, and
17 12209, the excess may be carried over to reduce that tax in the
18 following year, and the six succeeding years if necessary, until the
19 credit is exhausted.

20 (2) *A taxpayer allowed a credit under this section for a qualified*
21 *equity investment shall not be eligible for any other credit under*
22 *this part with respect to that investment.*

23 (f) GO-Biz shall annually report on its Internet Web site the
24 information provided by low-income community development
25 entities and on the geographic distribution of the qualified active
26 low-income community businesses assisted.

27 (g) (1) The Insurance Commissioner *and the Franchise Tax*
28 *Board* may prescribe any rules or regulations that may be necessary
29 or appropriate to implement this section. The Insurance
30 Commissioner *and the Franchise Tax Board* shall have access to
31 any documentation held by the committee relative to the application
32 and reporting of a qualified community development entity.

33 (2) A qualifying community development entity shall provide
34 GO-Biz with the name, address, and tax identification number of
35 each investor and entity for which a ~~credit~~ *qualified equity*
36 *investment was allocated* ~~designed~~ *designated* by the qualifying community
37 development entity, pursuant to ~~paragraph (3) of subdivision (b)~~
38 *this section.* GO-Biz shall provide this information to the Insurance
39 Commissioner *and the Franchise Tax Board* in a manner

1 determined by the Insurance Commissioner *and the Franchise Tax*
 2 *Board.*

3 ~~(h) The credit allowed under this section shall only be allowed~~
 4 ~~for taxable years~~ *GO-Biz and the committee shall only make awards*
 5 *pursuant to paragraph (4) of subdivision (d) in a calendar year*
 6 *in which the Legislature appropriates funds in the California New*
 7 *Markets Tax Credit Fund pursuant to subdivision (b) of Section*
 8 *18410.3.*

9 (i) This section shall remain in effect only until December 1,
 10 2028, and as of that date is repealed.

11 SEC. 4. Section 17053.9 is added to the Revenue and Taxation
 12 Code, to read:

13 17053.9. (a) There is hereby created the California New
 14 Markets Tax Credit Program as provided in this section, Section
 15 12283, and Section 23622.9. The purpose of this program is to
 16 stimulate private sector investment in lower income communities
 17 by providing a tax incentive to community and economic
 18 development entities that can be leveraged by the entity to attract
 19 private sector investment that in turn will be deployed by providing
 20 financing and technical assistance to small- and medium-size
 21 businesses and the development of commercial, industrial, and
 22 community development projects, including, but not limited to,
 23 facilities for nonprofit service organizations, light manufacturing,
 24 and mixed-use and transit-oriented development. The committee
 25 and GO-Biz shall administer this program as provided in this
 26 section, Section 12283, and Section 23622.9. *The Director of*
 27 *GO-Biz may delegate the administration of all or portions of the*
 28 *program within GO-Biz.*

29 (b) (1) For taxable years beginning on or after January 1, 2015,
 30 and before January 1, 2027, and subject to subdivision (h), there
 31 shall be allowed as a credit against the “net tax,” as defined in
 32 Section 17039, an amount determined in accordance with Section
 33 45D of the Internal Revenue Code, ~~as amended by Public Law~~
 34 ~~111-5, Public Law 111-312, and Public Law 112-240,~~ as modified
 35 as set forth in this section.

36 ~~(2) This credit shall be allowed only if the taxpayer holds the~~
 37 ~~qualified equity investment, or has been allocated a credit pursuant~~
 38 ~~to paragraph (3), on the credit allowance date and each of the six~~
 39 ~~following anniversary dates of that date.~~

1 ~~(3) A tax credit allowed under this section shall not be sold and~~
2 ~~is not a refundable credit. Tax credits allowed or allocated to a~~
3 ~~partnership, limited liability company, or “S” corporation may be~~
4 ~~allocated to the partners, members, managers, or shareholders of~~
5 ~~such entity for their use in accordance with the provisions of any~~
6 ~~agreement among such partners, members, managers, or~~
7 ~~shareholders. Such allocations shall not be considered a sale for~~
8 ~~the purposes of this section.~~

9 (2) (A) *For purposes of this section, “committee” means the*
10 *California Competes Tax Credit Committee established under*
11 *Section 18410.2.*

12 (B) *For purposes of this section, “GO-Biz” means the*
13 *Governor’s Office of Business and Economic Development.*

14 (c) Section 45D of the Internal Revenue Code is modified as
15 follows:

16 (1) ~~The references to “the Secretary” in Section 45D of the~~
17 ~~Internal Revenue Code, other than in Sections 45D(e)(1)(C) and~~
18 ~~45D(d)(1)(C), are modified to read “GO-Biz.”~~

19 (2)

20 (1) Section 45D(a)(2) of the Internal Revenue Code, relating to
21 applicable percentage, is modified by substituting for “(A) 5
22 percent with respect to the first 3 credit allowance dates, and (B)
23 6 percent with respect to the remainder of the credit allowance
24 dates” with the following:

25 (A) Zero percent with respect to the first two credit allowance
26 dates.

27 (B) Seven percent with respect to the third credit allowance
28 date.

29 (C) Eight percent with respect to the remainder of the credit
30 allowance dates.

31 (3) ~~Section 45D(b)(3) of the Internal Revenue Code, relating~~
32 ~~to safe harbor for determining use of cash, is modified by~~
33 ~~substituting “qualified low-income community investments in~~
34 ~~California” for “qualified low-income community investments.”~~

35 (4) (A) ~~Section 45D(e)(1) of the Internal Revenue Code is~~
36 ~~modified to additionally include:~~

37 (i) ~~A subsidiary community development entity of any such~~
38 ~~qualified community development entity.~~

39 (ii) ~~A nonprofit organization, pursuant to Section 23701,~~
40 ~~certified by GO-Biz as having a primary mission of serving or~~

1 providing investment capital in low-income communities and the
 2 entity maintains accountability to residents of low-income
 3 communities through their representation on any governing board
 4 of the entity or on an advisory board of the entity. GO-Biz shall
 5 establish guidelines for certifying nonprofit organizations pursuant
 6 to this subparagraph. GO-Biz may include reasonable conditions
 7 on the certification to effectuate the intent of this section and may
 8 suspend or revoke a certification, after affording the nonprofit
 9 organization notice and the opportunity to appeal and be heard by
 10 the committee, if GO-Biz finds that the nonprofit organization no
 11 longer meets the requirements for certification. Such nonprofit
 12 organization is not subject to the requirement of subparagraph (B).

13 ~~(B)~~

14 (2) (A) Section 45D(c)(1) of the Internal Revenue Code is
 15 modified to only include a qualified community development entity
 16 *entity, that is certified by the Secretary of the Treasury*, and its
 17 subsidiary qualified community development entities that have
 18 entered into an allocation agreement with the Community
 19 Development Financial Institutions Fund of the United States
 20 Treasury Department, with respect to credits authorized by Section
 21 45D of the Internal Revenue Code, that includes California within
 22 the service area and is dated on or after January 1, 2012.

23 ~~(5)~~

24 (B) Section ~~45D(d)(1)(A)~~ 45D(c)(2) of the Internal Revenue
 25 Code is modified to only include ~~any capital or equity investment~~
 26 ~~in, or loan to, a qualified active low-income community business:~~
 27 *a specialized small business investment company or community*
 28 *development financial institution that entered into an allocation*
 29 *agreement with the Community Development Financial Institutions*
 30 *Fund of the United States Treasury Department, with respect to*
 31 *credits authorized by Section 45D of the Internal Revenue Code,*
 32 *that includes California within the service area and is dated on*
 33 *or after January 1, 2012.*

34 ~~(6)~~

35 (3) The term “qualified active low-income community business,”
 36 as defined in Section 45D(d)(2) of the Internal Revenue Code, is
 37 modified as follows:

38 (A) Section ~~45D(d)(2)(A)(i)~~ of the Internal Revenue Code is
 39 ~~modified by~~ By substituting “any low-income community in

1 California” for “any low-income ~~community.”~~ *community*” every
2 *place it appears in Section 45D of the Internal Revenue Code.*

3 ~~(B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is~~
4 ~~modified as follows:~~

5 ~~(i) Substituting “any low-income community in California” for~~
6 ~~“any low-income community.”~~

7 ~~(ii) In determining whether the qualified active low-income~~
8 ~~community business uses a substantial portion of its tangible~~
9 ~~personal property within any low-income community, the term~~
10 ~~“substantial portion” shall mean “at least 40 percent” as calculated~~
11 ~~by the average value of the tangible property owned or leased and~~
12 ~~used within a California low-income community by the entity~~
13 ~~divided by the average value of the total tangible property owned~~
14 ~~or leased and used by the entity in California during the taxable~~
15 ~~year. The value assigned to the leased property by the entity must~~
16 ~~be reasonable.~~

17 ~~(iii) Adding the provision that if the business meets the~~
18 ~~requirements of a qualified low-income community business at~~
19 ~~the time the investment is made, the business shall be treated as~~
20 ~~satisfying the requirements of Section 45D(d)(2)(A)(ii) for the~~
21 ~~duration of the investment.~~

22 ~~(C) An entity complies with Section 45D(d)(2)(A)(i) of the~~
23 ~~Internal Revenue Code if, as calculated in subparagraph (B), it~~
24 ~~uses 50 percent of its tangible property, whether owned or leased,~~
25 ~~within any low-income community for any taxable year.~~

26 ~~(D)~~

27 ~~(B) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code is~~
28 ~~modified to allow the services of employees of a service-based~~
29 ~~qualified *active low-income community* business to be performed~~
30 ~~outside the low-income community. A service-based qualified~~
31 ~~*active low-income community* business is a business that primarily~~
32 ~~earns revenue through providing intangible products and services~~
33 ~~*and leases or owns real property in the low-income community*~~
34 ~~*that is used for the operation of the business.*~~

35 ~~(E) (i)~~

36 ~~(C) A qualified active low-income community business shall~~
37 ~~not include any business that derives, or projects to derive, 15~~
38 ~~percent or more of its annual revenue from the rental or sale of~~
39 ~~real estate. This exclusion does not apply to a business that is~~
40 ~~controlled by, or under common control with, another business if~~

1 the second business: (I) does not derive or project to derive 15
2 percent or more of its annual revenue from the rental or sale of
3 real estate; and (II) is the primary tenant of the real estate leased
4 from the first business.

5 (ii)

6 (D) A qualified active low-income community business shall
7 only include a business that, at the time the initial investment is
8 made, has 250 or fewer employees and is located in ~~a~~ *one or more*
9 California low-income ~~community~~ *communities*. The operating
10 business shall meet all other conditions of a qualified active
11 low-income community business, except as modified by this
12 paragraph ~~and paragraph (7)~~.

13 ~~(iii) A~~

14 (E) A qualified active low-income community business shall
15 only include a business located in census tracts with a poverty rate
16 greater than 30 percent, or census tracts, if located within a
17 non-metropolitan area, with a median family income that does not
18 exceed 60 percent of median family income for the State of
19 California, or census tracts, if located within a metropolitan area,
20 with a median family income that does not exceed 60 percent of
21 the greater of the California median family income or the
22 metropolitan area median family income, or census tracts with
23 unemployment rates at least 1.5 times the national average.

24 (iv)

25 (F) A qualified active low-income community business shall
26 not include any business that operates or derives revenues from
27 the operation of a country club, gaming establishment, massage
28 parlor, liquor store, or golf course.

29 (v)

30 (G) A qualified active low-income community business shall
31 not include a sexually oriented business. A “sexually oriented
32 business” means a nightclub, bar, restaurant, or similar commercial
33 enterprise that provides for an audience of two or more individuals
34 live nude entertainment or live nude performances where the nudity
35 is a function of everyday business operations and where nudity is
36 a planned and intentional part of the entertainment or performance.
37 “Nude” means clothed in a manner that leaves uncovered or visible,
38 through less than fully opaque clothing, any portion of the genitals
39 or, in the case of a female, any portion of the breasts below the
40 top of the areola of the breasts.

1 (vi)

2 (H) A qualified active low-income community business shall
3 not include a charter school.

4 ~~(7) Section 45D(e)(1) of the Internal Revenue Code is modified~~
5 ~~to add the following: “When the United States Census Bureau~~
6 ~~discontinues using the decennial census to report median family~~
7 ~~income on a census tract basis, census block group data shall be~~
8 ~~used based on the American Community Survey.”~~

9 ~~(8) The following shall apply in lieu of the provisions of Section~~
10 ~~(4) Section 45D(f) of the Internal Revenue Code, relating to~~
11 ~~national limitation on amount of investments designated: “The~~
12 ~~designated, is modified as follows:~~

13 ~~(A) The following shall apply in lieu of the provisions of Section~~
14 ~~45D(f)(1) of the Internal Revenue Code: “The aggregate amount~~
15 ~~of credit qualified equity investments that may be allocated in any~~
16 ~~calendar year pursuant to for purposes of this section, Section~~
17 ~~12283, and Section 23622.9 shall be an amount equal to as~~
18 ~~determined by GO-Biz in consultation with the Department of~~
19 ~~Finance based upon any unused portion of the one hundred million~~
20 ~~dollars (\$100,000,000) in exclusions, authorized pursuant to~~
21 ~~Section 6010.8, as determined by the California Alternative Energy~~
22 ~~and Advanced Transportation Financing Authority and reported~~
23 ~~to the committee, not to exceed an amount based upon a credit of~~
24 ~~forty million dollars (\$40,000,000). The committee shall limit the~~
25 ~~allocation of credits permitted investments that may be designated~~
26 ~~under this section, Section 12283, and Section 23622.9 to a~~
27 ~~cumulative total amount based on credits of no more than two~~
28 ~~hundred million dollars (\$200,000,000). Any unused credits The~~
29 ~~allocation of any undesignated qualified equity investments shall~~
30 ~~be returned to the committee by March 1 of the year following~~
31 ~~allocation and the value of the unused credit undesignated qualified~~
32 ~~equity investment shall be available for allocation in the following~~
33 ~~calendar years in accordance with the application process. Any~~
34 ~~qualified equity investment attributable to recaptured credits shall~~
35 ~~be returned available to the committee by on March 1 of the year~~
36 ~~following recapture and the value of the recaptured credit shall be~~
37 ~~available for allocation in the following calendar years in~~
38 ~~accordance with clause (ii) of subparagraph (B) of paragraph (9)~~
39 ~~(5).—Reallocation credits and Reallocated qualified equity~~
40 ~~investments attributable to recapture credits shall not count against~~

1 the forty million dollars (\$40,000,000) annual limit or the two
 2 hundred million dollars (\$200,000,000) cumulative limit.”

3 (B) The references to “the Secretary” in Section 45D(f)(2) of
 4 the Internal Revenue Code, relating to allocation of limitation, is
 5 modified to read “GO-Biz.”

6 (C) The last sentence of Section 45D(f)(3) of the Internal
 7 Revenue Code, relating to carryover of unused limitation, shall
 8 not apply.

9 ~~(9)~~

10 (5) (A) Section 45D(g)(2)(B) of the Internal Revenue Code,
 11 relating to credit recapture amount, is modified to substitute
 12 “Section 19101 of this code” for “section 6621”.

13 (B) Section 45D(g)(3) of the Internal Revenue Code, relating
 14 to recapture event, ~~does not apply and is replaced with the~~
 15 ~~following:~~ is modified to add the following:

16 (i) (I) The qualified community development entity fails to
 17 comply with subparagraph (D) of paragraph (5) of subdivision
 18 (d). In this case, recapture shall be 100 percent of the credit. The
 19 qualified community development entity shall send notice to GO-Biz
 20 within 30 calendar days of the close of any calendar year in which
 21 the qualified community development entity has failed to invest at
 22 least 15 percent of the purchase price of the qualified equity
 23 investment in satisfaction of the requirements of subparagraph
 24 (D) of paragraph (5) of subdivision (d).

25 (II) The qualified community development entity made an
 26 investment without performing a revenue impact assessment that
 27 satisfies subparagraph (J) of paragraph (5) of subdivision (d). In
 28 this case, recapture shall be 100 percent of the credit, unless
 29 GO-Biz has approved a waiver pursuant to clause (ii) of
 30 subparagraph (J) of paragraph (5) of subdivision (d). The qualified
 31 community development entity shall send notice to GO-Biz within
 32 30 calendar days of the close of any calendar year in which the
 33 qualified community development entity has made an investment
 34 that fails to meet the requirements set forth in subparagraph (J)
 35 of paragraph (5) of subdivision (d).

36 ~~(i)~~

37 (ii) GO-Biz shall establish a process, in consultation with the
 38 Franchise Tax Board, for the recapture of credits allowed under
 39 this section from the entity that claimed the credit on a return. ~~The~~

1 recapture process shall be applied if any of the following conditions
2 set forth occur.

3 (I) ~~Any amount of a federal tax credit available with respect to~~
4 ~~a qualified equity investment that is eligible for a credit under this~~
5 ~~section is recaptured under Section 45D of the Internal Revenue~~
6 ~~Code. The qualified community development entity shall send~~
7 ~~notice to GO-Biz within 30 calendar days of being notified by the~~
8 ~~United States Treasury that any amount of a federal tax credit~~
9 ~~available with respect to a qualified equity investment that is~~
10 ~~eligible for a credit under this section is recaptured. GO-Biz shall~~
11 ~~send written acknowledgment within five calendar days of receipt~~
12 ~~of the qualified community development entity's notice of potential~~
13 ~~noncompliance. In such case the recapture shall be proportionate~~
14 ~~to the federal recapture with respect to such qualified equity~~
15 ~~investment.~~

16 (H) ~~The qualified community development entity redeems a~~
17 ~~qualified equity investment prior to the seventh anniversary of the~~
18 ~~issuance of such qualified equity investment. The qualified~~
19 ~~community development entity shall send notice to GO-Biz within~~
20 ~~30 calendar days of redeeming a qualified equity investment prior~~
21 ~~to the seventh anniversary of the issuance of such qualified equity~~
22 ~~investment. GO-Biz shall send written acknowledgment within~~
23 ~~five calendar days of receipt of the qualified community~~
24 ~~development entity's notice of potential noncompliance. In such~~
25 ~~case GO-Biz's recapture shall be proportionate to the amount of~~
26 ~~the redemption of such qualified equity investment.~~

27 (III) ~~The qualified community development entity fails to invest~~
28 ~~an amount equal to at least 85 percent of the purchase price of the~~
29 ~~qualified equity investment in qualified low-income community~~
30 ~~investments in California within 12 months of the issuance of the~~
31 ~~qualified equity investment and maintain at least 85 percent of~~
32 ~~such level of investment in qualified low-income community~~
33 ~~investments in California until the last credit allowance date for~~
34 ~~the qualified equity investment. For purposes of this section, an~~
35 ~~investment shall be considered held by a qualified community~~
36 ~~development entity even if the investment has been sold or repaid~~
37 ~~if the qualified community development entity reinvests an amount~~
38 ~~equal to the capital returned to, or recovered by, the qualified~~
39 ~~community development entity from the original investment,~~
40 ~~exclusive of any profits realized, in another qualified low-income~~

1 community investment within 12 months of the receipt of such
 2 capital. The qualified community development entity shall send
 3 notice to GO-Biz within 30 calendar days of the 12-month deadline
 4 for the reinvestment if the entity fails to meet any of the
 5 reinvestment requirements. GO-Biz shall send written
 6 acknowledgment within five calendar days of receipt of the
 7 qualified community development entity's notice of potential
 8 noncompliance. A qualified community development entity shall
 9 not be required to reinvest capital returned from qualified
 10 low-income community investments after the sixth anniversary of
 11 the issuance of the qualified equity investment, and the qualified
 12 low-income community investment shall be considered held by
 13 the qualified community development entity through the seventh
 14 anniversary of the qualified equity investment's issuance.

15 (ii)

16 (iii) Recaptured tax credits and the related qualified equity
 17 investment authority investments revert back to GO-Biz and shall
 18 be reissued. The reissue shall not count toward the annual
 19 allocation limitation of forty million dollars (\$40,000,000) or
 20 overall credit allocation limitation of two hundred million dollars
 21 (\$200,000,000) in paragraph (8) of subdivision (c) or cumulative
 22 allocation limitation. The reissue shall be done in the following
 23 order:

24 (I) First, pro rata to applicants whose qualified equity
 25 investment allocations were reduced pursuant to subparagraph (B)
 26 (F) of paragraph (5) of subdivision (d) by the annual allocation
 27 limitation of forty million dollars (\$40,000,000) in paragraph (8)
 28 of subdivision (c). limitation.

29 (II) Thereafter, in accordance with the application process.

30 (iii) (I) Enforcement

31 (iv) (I) Enforcement of each of the recapture provisions shall
 32 be subject to a six-month cure period. Recapture shall not occur
 33 until the qualified community development entity gives notice of
 34 potential noncompliance to GO-Biz and is afforded six months
 35 from the date of such notice to cure the noncompliance. The
 36 six-month cure period shall begin on the day GO-Biz sends written
 37 acknowledgment of the qualified community development entity's
 38 notice of the potential noncompliance. The qualified community
 39 development entity is responsible for addressing the circumstances
 40 of the potential noncompliance and providing all documentation

1 to GO-Biz necessary to demonstrate, to GO-Biz’s satisfaction, that
2 those conditions no longer exist.

3 (II) *In an instance where a qualified community development*
4 *entity fails to send the required notice of potential noncompliance*
5 *or GO-Biz has information from the annual report or other sources*
6 *that indicates that the entity is in potential noncompliance, GO-Biz*
7 *shall send the notice. The date GO-Biz sends the notice of potential*
8 *noncompliance shall begin the six-month cure period.*

9 (H)

10 (III) Not more than 45 calendar days following the close of the
11 cure period, GO-Biz shall make a final determination as to whether
12 ~~the credit is to be recaptured~~ *noncompliance has been cured.* This
13 determination shall be based on the review of the notice,
14 information submitted by the qualified community development
15 entity, and any other information GO-Biz deems relevant to this
16 determination. *Within 30 calendar days of making the final*
17 *determination, GO-Biz shall notify the Franchise Tax Board of*
18 *the determination and other related information including, but not*
19 *limited to, the tax identification number of the qualified community*
20 *development entity.*

21 (HH) ~~GO-Biz~~

22 (IV) ~~GO-Biz~~ shall post, and update monthly, a tally of ~~returned~~
23 ~~credits~~ *undesignated qualified equity investments*, pursuant to
24 ~~paragraph (8) (4), and recaptured credits pursuant to this paragraph.~~
25 ~~Within 30 calendar days of making the final determination that~~
26 ~~the credit is to be recaptured, GO-Biz shall notify the Department~~
27 ~~of Insurance of the determination including, but not limited to, the~~
28 ~~tax identification number of the taxpayer.~~

29 ~~(10) Section 45D(i) of the Internal Revenue Code, relating to~~
30 ~~regulations, shall not apply.~~

31 (I)

32 (6) If a qualified community development entity makes a capital
33 or equity investment or a loan with respect to a qualified
34 low-income building under the state Low-Income Housing Tax
35 Credit Program, the investment or loan is not a qualified
36 low-income community investment under this section.

37 (d) (1) GO-Biz shall adopt guidelines necessary or appropriate
38 to carry out the purposes of this section and meet the requirements
39 of Section 45D of the Internal Revenue Code, as modified by this
40 section. In promulgating guidelines GO-Biz shall look for guidance

1 in the rules and regulations adopted under Section 45D of the
 2 Internal Revenue Code to the extent that those rules and regulations
 3 are consistent with this section. The guidelines shall not disqualify
 4 a low-income community investment for the single reason that
 5 public or private incentives, loans, equity investments, technical
 6 assistance, or other forms of support have been or continue to be
 7 provided. *its responsibilities with respect to the allocation of the*
 8 *qualified equity investments and recapture of credit allowed by*
 9 *this section.* The adoption of the guidelines shall not be subject to
 10 the rulemaking provisions of the Administrative Procedure Act of
 11 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
 12 3 of Title 2 of the Government Code.

13 (2) (A) GO-Biz shall establish and impose reasonable fees upon
 14 entities that apply for the allocation pursuant to this subdivision
 15 that in the aggregate defray the cost of ~~administering~~ *reviewing*
 16 *applications* for the program. *GO-Biz may impose other reasonable*
 17 *fees upon entities that receive the allocation pursuant to this*
 18 *subdivision that in the aggregate defray the cost of administering*
 19 *the program.*

20 (B) The fees collected shall be deposited in the California New
 21 Markets Tax Credit Fund established in Section 18410.3.

22 (3) In developing guidelines GO-Biz shall adopt an allocation
 23 process that does all of the following:

24 (A) Creates an equitable distribution process that ensures that
 25 ~~low-income communities~~ *community populations* across the state
 26 *are engaged and* have an opportunity to benefit from the program.

27 (B) Sets minimum organizational capacity standards that
 28 applicants must meet in order to receive an allocation of ~~credits~~
 29 *authority to designate qualified equity investments* including, but
 30 not limited to, its business strategy, targeted community outcomes,
 31 capitalization strategy, and management capacity.

32 (C) Considers the qualified community development entity's
 33 prior qualified low-income community investments under Section
 34 45D of the Internal Revenue Code.

35 (D) Considers the qualified community development entity's
 36 prior qualified low-income community investments under this
 37 section, including subparagraph (D) of paragraph (5).

38 (E) Does not require the qualified community development
 39 entity to identify the qualified active low-income community
 40 businesses in which the qualified community development entity

1 will invest in an application for qualified equity investment
2 allocation.

3 *(F) Does not disqualify a low-income community investment*
4 *for the single reason that public or private incentives, loans, equity*
5 *investments, technical assistance, or other forms of support have*
6 *been or continue to be provided.*

7 (4) (A) GO-Biz shall begin accepting applications on or before
8 May 15, 2015, and shall award ~~credits authority to designate~~
9 *qualified equity investments* annually through 2019, to the extent
10 that allocations are available pursuant to Section 26011.9 of the
11 Public Resources Code. To the extent reasonable and consistent
12 in carrying out the purposes of this section, GO-Biz shall consider
13 how the timing of the state allocation rounds correspond with the
14 allocation schedule of the federal New Markets Tax Credit
15 Program.

16 (B) Within 20 calendar days after receipt of an application
17 GO-Biz shall determine whether the application is complete or
18 whether additional information is necessary in order to fully
19 evaluate the application. If additional information is requested and
20 the qualified community development entity provides that
21 information within five business days, the application shall be
22 considered completed as of the original date of receipt. If the
23 qualified community development entity fails to provide the
24 information within the five-business-day period, the application
25 shall be denied and must be resubmitted in full with a new receipt
26 date.

27 (C) Within 20 calendar days after receipt of an application
28 determined to be complete by GO-Biz, the committee shall grant
29 or deny the application in full or in part. If the committee denies
30 any part of the application, it shall inform the qualified community
31 development entity of the grounds for the denial.

32 (5) (A) ~~The~~ *In the 2015 awards cycle, the committee shall*
33 ~~award tax credits authority to designate qualified equity investments~~
34 *to qualified community development entities described in*
35 ~~subparagraph (B) of paragraph (4) paragraph (3) of subdivision~~
36 *(c) in the order applications are received by the committee, subject*
37 ~~to clause (i) or on a competitive basis, pursuant to clause (ii).~~
38 *committee. Applications received on the same day shall be deemed*
39 *to have been received simultaneously.*

1 ~~(i) (I) In 2015, the committee shall only award tax credits to a~~
 2 ~~qualified community development entity in the order applications~~
 3 ~~are received by the committee. In~~
 4 ~~(B) In the 2016 to 2019 award cycles, inclusive, at least 60~~
 5 ~~percent of the credit allocation authority to designate qualified~~
 6 ~~equity investments shall be awarded in the order applications are~~
 7 ~~received by the committee to a qualified community development~~
 8 ~~entity. Applications received on the same day shall be deemed to~~
 9 ~~have been received simultaneously. pursuant to subparagraph (A).~~
 10 At the committee’s discretion, a higher percentage of credits
 11 ~~authority to designate qualified equity investments may be awarded~~
 12 ~~pursuant to the first sentence in this subparagraph. Qualified~~
 13 ~~community development entities that receive tax credit awards~~
 14 ~~pursuant to this clause shall commit to making investments in a~~
 15 ~~manner that engages community-based partnerships and local~~
 16 ~~grassroots stakeholders. subparagraph (A).~~
 17 ~~(H) An entity described in clause (ii) of subparagraph (A) of~~
 18 ~~paragraph (4) of subdivision (c) shall not receive a tax credit award~~
 19 ~~pursuant to this clause.~~
 20 ~~(ii)~~
 21 ~~(C) The committee shall award up to 40 percent of the credit~~
 22 ~~allocation authority to designate qualified equity investments in~~
 23 ~~the 2016 to 2019, inclusive, award cycles, to a qualified community~~
 24 ~~development entity, as described in clause (ii) of subparagraph~~
 25 ~~(A) of paragraph (4) of subdivision (c) and subparagraph (B) of~~
 26 ~~paragraph (4) of subdivision (c); entities on a competitive basis~~
 27 ~~using blind scoring and a review committee that is comprised of~~
 28 ~~community development finance practitioners and members having~~
 29 ~~demonstrated experience in assessing organizational business~~
 30 ~~strategy, community outcomes, capitalization strategy, and~~
 31 ~~management capacity. A member of the review committee shall~~
 32 ~~not have a financial interest, which includes, but is not limited to,~~
 33 ~~asking, consenting, or agreeing to receive any commission,~~
 34 ~~emolument, gratuity, money, property, or thing of value for his or~~
 35 ~~her own use, benefit, or personal advantage for procuring or~~
 36 ~~endeavoring to procure for any person, partnership, joint venture,~~
 37 ~~association, or corporation any tax credit qualified equity~~
 38 ~~investment or other assistance from any applicant.~~
 39 ~~(D) (i) For qualified equity investments derived from the 2015~~
 40 ~~to 2019, inclusive, awards cycles, pursuant to subparagraphs (A),~~

1 (B) and (C), a qualified community development entity shall invest
2 at least 15 percent of the qualified equity investment in a qualified
3 low-income community business in consultation or in partnership
4 with either of the following:

5 (I) A qualified community development entity certified under
6 Section 45D of the Internal Revenue Code that has not received a
7 federal New Markets Tax Credit allocation on or after January 1,
8 2012, and has either a local service area that includes one or more
9 California communities or a California statewide service area,
10 but excluding qualified community development entities with a
11 national service area.

12 (II) A nonprofit organization certified by GO-Biz, pursuant to
13 clause (iii).

14 (ii) The 15-percent investment shall be calculated by multiplying
15 the total purchase price of the qualified equity investments issued
16 by the qualified community development entity by 15 percent. Each
17 community development entity application shall indicate how the
18 qualified community development entity will meet this requirement.

19 (iii) GO-Biz shall establish guidelines for certifying a nonprofit
20 organization pursuant to this subparagraph. A nonprofit
21 organization shall meet the requirements of Section 23701 and be
22 certified by GO-Biz as having a primary mission of serving or
23 providing investment capital in low-income communities in
24 California. The nonprofit organization shall maintain
25 accountability to residents of low-income communities through
26 their representation on any governing board or on an advisory
27 board of the nonprofit organization. GO-Biz may include
28 reasonable conditions on the certification to effectuate the intent
29 of this section and may suspend or revoke a certification, after
30 affording the nonprofit organization notice and the opportunity
31 to appeal and be heard by the committee, if GO-Biz finds that the
32 nonprofit organization no longer meets the requirements for
33 certification.

34 ~~(iii) In awarding credits on a~~

35 (E) In making competitive-basis awards of authority to
36 designate qualified equity investments, priority shall be given to
37 applications that can demonstrate that the ~~credits~~ qualified equity
38 investment authority will allow the qualified community
39 development entity to undertake qualified low-income community
40 investments in rural, suburban, or urban areas that have been

1 historically underserved and result in the greatest benefit to the
 2 hardest to serve and undercapitalized lower income populations,
 3 or in newly established businesses, or in activities that support
 4 neighborhood revitalization strategies driven by local grassroots
 5 stakeholders in multiple low-income communities across one or
 6 more regions or the state for the purpose of scaling economic
 7 development activities that compliment regional industry clusters
 8 that result in the greatest benefit to the largest number of lower
 9 income individuals. ~~All competitive applications shall demonstrate~~
 10 ~~strong linkages with communities and neighborhoods in California~~
 11 ~~low-income neighborhoods.~~

12 ~~(B)~~

13 (F) (i) For applications described in ~~clause (i)~~ of subparagraph
 14 (A), in the event ~~tax credit~~ requests *for authority to designate*
 15 *qualified equity investments* exceed the applicable annual allocation
 16 ~~limitation of up to forty million dollars (\$40,000,000) in paragraph~~
 17 ~~(8) of subdivision (c), the committee limitation, GO-Biz~~ shall
 18 certify, consistent with remaining qualified equity investment
 19 capacity, qualified equity investments of applicants in proportionate
 20 percentages based upon the ratio of the amount of qualified equity
 21 investments requested in such applications to the total amount of
 22 qualified equity investments requested in all such applications
 23 received on the same day.

24 ~~(C)~~

25 (ii) If a pending request cannot be fully certified due to this
 26 limit, ~~the committee GO-Biz~~ shall certify the portion that may be
 27 certified unless the qualified community development entity elects
 28 to withdraw its request rather than receive partial certification.

29 ~~(D)~~

30 (G) An approved applicant may transfer all or a portion of its
 31 certified qualified equity investment authority to its controlling
 32 entity or any subsidiary qualified community development entity
 33 of the controlling entity, provided that the applicant and the
 34 transferee notify the committee within 30 calendar days of such
 35 transfer and include the information required in the application
 36 with respect to such transferee with such notice. *The transferee*
 37 *shall be subject to the same rules, requirements, and limitations*
 38 *applicable to the transferor.*

39 ~~(E)~~

1 (H) Within 60 calendar days of GO-Biz sending notice of
2 certification, the qualified community development entity or any
3 transferee, under subparagraph-~~(D)~~ (G), shall issue the qualified
4 equity investment and receive cash in the amount of the certified
5 amount. The qualified community development entity or transferee,
6 under subparagraph-~~(D)~~ (G), must provide GO-Biz with evidence
7 of the receipt of the cash investment within 65 calendar days of
8 the applicant receiving notice of certification. If the qualified
9 community development entity or any transferee, under
10 subparagraph-~~(D)~~ (G), does not receive the cash investment and
11 issue the qualified equity investment within 60 calendar days of
12 GO-Biz sending the certification notice, the certification shall lapse
13 and the entity may not issue the qualified equity investment without
14 reapplying to GO-Biz for certification. Lapsed certifications revert
15 back to GO-Biz and shall be reissued in the following order:

16 (i) First, pro rata to applicants whose qualified equity investment
17 allocations were reduced pursuant to subparagraph-~~(B)~~ (F) under
18 the annual allocation limitation of forty million dollars
19 (\$40,000,000) in paragraph-~~(8)~~ (5) of subdivision (c).

20 (ii) Thereafter, in accordance with the application process.

21 ~~(F)~~

22 (I) A qualified community development entity that issues
23 qualified equity investments must notify GO-Biz of the names of
24 ~~the entities taxpayers~~ that are eligible to utilize tax credits ~~under~~
25 ~~paragraph (3) of subdivision (b) pursuant to an allocation of tax~~
26 ~~credits or change in allocation of tax credits or due to a~~ *pursuant*
27 *to this section and any transfer of a qualified equity investment.*

28 (J) (i) *A qualified community development entity shall only*
29 *make a qualified low-income community investment that*
30 *demonstrates a positive revenue impact on the state over a 10-year*
31 *period against the aggregate tax credit utilization over the same*
32 *10-year period. GO-Biz shall approve one or more nationally*
33 *recognized revenue impact assessment models that shall be used*
34 *by the qualified community development entity to demonstrate*
35 *positive revenue impact. If it is demonstrated that the qualified*
36 *low-income community investment has a positive revenue impact*
37 *on the state at the time the investment is made, it shall be treated*
38 *as if the investment continues to meet the requirement of this*
39 *subparagraph for the duration of the seven-year program period.*

- 1 (ii) *Upon application and approval by GO-Biz, the requirement*
 2 *of this subparagraph may be waived.*
- 3 (6) (A) A qualified community development entity that issues
 4 qualified equity investments shall submit a report to GO-Biz within
 5 the first five business days after the first anniversary of the initial
 6 credit allowance date that provides documentation as to the
 7 investment of at least 85 percent of the purchase price in qualified
 8 low-income community investments in qualified active low-income
 9 community businesses located in California. Such report shall
 10 include all of the following:
- 11 (i) A bank statement of such qualified community development
 12 entity evidencing each qualified low-income community
 13 investment.
- 14 (ii) Evidence that such business was a qualified active
 15 low-income community business at the time of such qualified
 16 low-income community investment.
- 17 (iii) *Evidence that the community development entity complied*
 18 *with subparagraph (D) of paragraph (5).*
- 19 (iv) *Evidence that each qualified low-income community*
 20 *investment was determined to have a positive revenue impact on*
 21 *the state. This requirement does not apply for any qualified*
 22 *low-income community investment for which GO-Biz approved a*
 23 *waiver, pursuant to clause (ii) of subparagraph (J) of paragraph*
 24 *(5) or to reinvestments of redeemed qualified low-income*
 25 *investments.*
- 26 ~~(iii) Any~~
- 27 (v) *Any other information required by GO-Biz as being necessary*
 28 *to meet the requirements of this section.*
- 29 (B) Thereafter, the qualified community development entity
 30 shall submit an annual report to GO-Biz within 60 calendar days
 31 of the beginning of the calendar year during the seven years
 32 following submittal of the report, pursuant to subparagraph (A).
 33 No annual report shall be due prior to the first anniversary of the
 34 initial credit allowance date. The report shall include, but is not
 35 limited to, the following:
- 36 (i) *The social, environmental, and economic impact the credit*
 37 *had on the low-income community during the report period and*
 38 *cumulatively.*
- 39 (ii) The amount of moneys used for qualified low-income
 40 investments in qualified low-income community businesses.

1 (iii) The number of employment positions created and retained
2 as a result of qualified low-income community investments and
3 the average annual salary of such positions.

4 (iv) The number of operating businesses assisted as a result of
5 qualified low-income community investments, by industry and
6 number of employees.

7 (v) Number of owner-occupied real estate projects ~~described in~~
8 ~~subparagraph (E) of paragraph (6) of subdivision (e).~~

9 (vi) Location of ~~the each~~ qualified low-income community
10 ~~businesses~~ *business assisted by a qualified low-income community*
11 *investment.*

12 (vii) *Summary of the outcomes of each of the revenue impact*
13 *assessments undertaken by the qualified community development*
14 *entity during the year.*

15 (e) (1) In the case where the credit allowed by this section
16 exceeds the “net tax,” the excess may be carried over to reduce
17 the “net tax” in the following year, and the six succeeding years
18 if necessary, until the credit is exhausted.

19 (2) *A taxpayer allowed a credit under this section for a qualified*
20 *equity investment shall not be eligible for any other credit under*
21 *this part with respect to that investment.*

22 (f) GO-Biz shall annually report on its Internet Web site the
23 information provided by low-income community development
24 entities and on the geographic distribution of the qualified active
25 low-income community businesses assisted.

26 (g) (1) The Franchise Tax Board may prescribe any rules or
27 regulations that may be necessary or appropriate to implement this
28 section. The Franchise Tax Board shall have access to any
29 documentation held by the committee relative to the application
30 and reporting of a qualified community development entity.

31 (2) A qualifying community development entity shall provide
32 GO-Biz with the name, address, and tax identification number of
33 each investor and entity for which a ~~credit~~ *qualified equity*
34 *investment was allocated designated by the qualifying community*
35 *development entity, pursuant to paragraph (3) of subdivision (b)*
36 *this section.* GO-Biz shall provide this information to the Franchise
37 Tax Board in a manner determined by the Franchise Tax Board.

38 (h) ~~The credit allowed under this section shall only be allowed~~
39 ~~for taxable years~~ *GO-Biz and the committee shall only make awards*
40 *pursuant to paragraph (4) of subdivision (d) in a calendar year*

1 in which the Legislature appropriates funds in the California New
2 Markets Tax Credit Fund pursuant to subdivision (b) of Section
3 18410.3.

4 (i) This section shall remain in effect only until December 1,
5 2028, and as of that date is repealed.

6 SEC. 5. Section 18410.3 is added to the Revenue and Taxation
7 Code, to read:

8 18410.3. (a) The California New Markets Tax Credit Fund is
9 hereby established in the State Treasury.

10 (b) Upon appropriation, moneys in the fund shall be used for
11 the purposes described in subdivision (d) of Section 12283,
12 subdivision (d) of Section 17053.9, and subdivision (d) of Section
13 23622.9.

14 SEC. 6. Section 23622.9 is added to the Revenue and Taxation
15 Code, to read:

16 23622.9. (a) There is hereby created the California New
17 Markets Tax Credit Program as provided in this section, Section
18 12283, and Section 17053.9. The purpose of this program is to
19 stimulate private sector investment in lower income communities
20 by providing a tax incentive to community and economic
21 development entities that can be leveraged by the entity to attract
22 private sector investment that in turn will be deployed by providing
23 financing and technical assistance to small- and medium-size
24 businesses and the development of commercial, industrial, and
25 community development projects, including, but not limited to,
26 facilities for nonprofit service organizations, light manufacturing,
27 and mixed-use and transit-oriented development. The committee
28 and GO-Biz shall administer this program as provided in this
29 section, Section 12283, and Section 17053.9. *The Director of*
30 *GO-Biz may delegate the administration of all or portions of the*
31 *program within GO-Biz.*

32 (b) (1) For taxable years beginning on or after January 1, 2015,
33 and before January 1, 2027, and subject to subdivision (h), there
34 shall be allowed as a credit against the “tax,” as defined in Section
35 23036, an amount determined in accordance with Section 45D of
36 the Internal Revenue Code, ~~as amended by Public Law 111-5,~~
37 ~~Public Law 111-312, and Public Law 112-240,~~ as modified as set
38 forth in this section.

39 ~~(2) This credit shall be allowed only if the taxpayer holds the~~
40 ~~qualified equity investment, or has been allocated a credit pursuant~~

1 to paragraph (3), on the credit allowance date and each of the six
2 following anniversary dates of that date.

3 ~~(3) A tax credit allowed under this section shall not be sold and~~
4 ~~is not a refundable credit. Tax credits allowed or allocated to a~~
5 ~~partnership, limited liability company, or “S” corporation may be~~
6 ~~allocated to the partners, members, managers, or shareholders of~~
7 ~~such entity for their use in accordance with the provisions of any~~
8 ~~agreement among such partners, members, managers, or~~
9 ~~shareholders. Such allocations shall not be considered a sale for~~
10 ~~the purposes of this section.~~

11 (2) (A) For purposes of this section, “committee” means the
12 California Competes Tax Credit Committee established under
13 Section 18410.2.

14 (B) For purposes of this section, “GO-Biz” means the
15 Governor’s Office of Business and Economic Development.

16 (c) Section 45D of the Internal Revenue Code is modified as
17 follows:

18 ~~(1) The references to “the Secretary” in Section 45D of the~~
19 ~~Internal Revenue Code, other than in Sections 45D(e)(1)(C) and~~
20 ~~45D(d)(1)(C), are modified to read “GO-Biz.”~~

21 ~~(2)~~

22 (1) Section 45D(a)(2) of the Internal Revenue Code, relating to
23 applicable percentage, is modified by substituting for “(A) 5
24 percent with respect to the first 3 credit allowance dates, and (B)
25 6 percent with respect to the remainder of the credit allowance
26 dates” with the following:

27 (A) Zero percent with respect to the first two credit allowance
28 dates.

29 (B) Seven percent with respect to the third credit allowance
30 date.

31 (C) Eight percent with respect to the remainder of the credit
32 allowance dates.

33 ~~(3) Section 45D(b)(3) of the Internal Revenue Code, relating~~
34 ~~to safe harbor for determining use of cash, is modified by~~
35 ~~substituting “qualified low-income community investments in~~
36 ~~California” for “qualified low-income community investments.”~~

37 (4) (A) Section 45D(e)(1) of the Internal Revenue Code is
38 modified to additionally include:

39 (i) ~~A subsidiary community development entity of any such~~
40 ~~qualified community development entity.~~

1 (ii) ~~A nonprofit organization, pursuant to Section 23701,~~
 2 ~~certified by GO-Biz as having a primary mission of serving or~~
 3 ~~providing investment capital in low-income communities and the~~
 4 ~~entity maintains accountability to residents of low-income~~
 5 ~~communities through their representation on any governing board~~
 6 ~~of the entity or on an advisory board of the entity. GO-Biz shall~~
 7 ~~establish guidelines for certifying nonprofit organizations pursuant~~
 8 ~~to this subparagraph. GO-Biz may include reasonable conditions~~
 9 ~~on the certification to effectuate the intent of this section and may~~
 10 ~~suspend or revoke a certification, after affording the nonprofit~~
 11 ~~organization notice and the opportunity to appeal and be heard by~~
 12 ~~the committee, if GO-Biz finds that the nonprofit organization no~~
 13 ~~longer meets the requirements for certification. Such nonprofit~~
 14 ~~organization is not subject to the requirement of subparagraph (B).~~

15 ~~(B)~~

16 (2) (A) Section 45D(c)(1) of the Internal Revenue Code is
 17 modified to only include a qualified community development entity
 18 *entity, that is certified by the Secretary of the Treasury*, and its
 19 subsidiary qualified community development entities that have
 20 entered into an allocation agreement with the Community
 21 Development Financial Institutions Fund of the United States
 22 Treasury Department, with respect to credits authorized by Section
 23 45D of the Internal Revenue Code, that includes California within
 24 the service area and is dated on or after January 1, 2012.

25 ~~(5)~~

26 ~~(B)~~ Section ~~45D(d)(1)(A)~~ *45D(c)(2)* of the Internal Revenue
 27 Code is modified to only include ~~any capital or equity investment~~
 28 ~~in, or loan to, a qualified active low-income community business:~~
 29 *a specialized small business investment company or a community*
 30 *development financial institution that have entered into an*
 31 *allocation agreement with the Community Development Financial*
 32 *Institutions Fund of the United States Treasury Department, with*
 33 *respect to credits authorized by Section 45D of the Internal*
 34 *Revenue Code, that includes California within the service area*
 35 *and is dated on or after January 1, 2012.*

36 ~~(6)~~

37 (3) The term “qualified active low-income community business,”
 38 as defined in Section 45D(d)(2) of the Internal Revenue Code, is
 39 modified as follows:

1 ~~(A) Section 45D(d)(2)(A)(i) of the Internal Revenue Code is~~
2 ~~modified by~~ By substituting “any low-income community in
3 California” for “any low-income community.” *community* every
4 place it appears in Section 45D of the Internal Revenue Code.

5 ~~(B) Section 45D(d)(2)(A)(ii) of the Internal Revenue Code is~~
6 ~~modified as follows:~~

7 ~~(i) Substituting “any low-income community in California” for~~
8 ~~“any low-income community.”~~

9 ~~(ii) In determining whether the qualified active low-income~~
10 ~~community business uses a substantial portion of its tangible~~
11 ~~personal property within any low-income community, the term~~
12 ~~“substantial portion” shall mean “at least 40 percent” as calculated~~
13 ~~by the average value of the tangible property owned or leased and~~
14 ~~used within a California low-income community by the entity~~
15 ~~divided by the average value of the total tangible property owned~~
16 ~~or leased and used by the entity in California during the taxable~~
17 ~~year. The value assigned to the leased property by the entity must~~
18 ~~be reasonable.~~

19 ~~(iii) Adding the provision that if the business meets the~~
20 ~~requirements of a qualified low-income community business at~~
21 ~~the time the investment is made, the business shall be treated as~~
22 ~~satisfying the requirements of Section 45D(d)(2)(A)(ii) for the~~
23 ~~duration of the investment.~~

24 ~~(C) An entity complies with Section 45D(d)(2)(A)(i) of the~~
25 ~~Internal Revenue Code if, as calculated in subparagraph (B), it~~
26 ~~uses 50 percent of its tangible property, whether owned or leased,~~
27 ~~within any low-income community for any taxable year.~~

28 ~~(D)~~

29 ~~(B) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code is~~
30 ~~modified to allow the services of employees of a service-based~~
31 ~~qualified active low-income community business to be performed~~
32 ~~outside the low-income community. A service-based qualified~~
33 ~~active low-income community business is a business that primarily~~
34 ~~earns revenue through providing intangible products and services~~
35 ~~and leases or owns real property in the low-income community~~
36 ~~that is used for the operation of the business.~~

37 ~~(E) (i)~~

38 ~~(C) A qualified active low-income community business shall~~
39 ~~not include any business that derives, or projects to derive, 15~~
40 ~~percent or more of its annual revenue from the rental or sale of~~

1 real estate. This exclusion does not apply to a business that is
2 controlled by, or under common control with, another business if
3 the second business: (I) does not derive or project to derive 15
4 percent or more of its annual revenue from the rental or sale of
5 real estate; and (II) is the primary tenant of the real estate leased
6 from the first business.

7 (ii)

8 (D) A qualified active low-income community business shall
9 only include a business that, at the time the initial investment is
10 made, has 250 or fewer employees and is located in ~~a one or more~~
11 California low-income ~~community~~ communities. The operating
12 business shall meet all other conditions of a qualified active
13 low-income community business, except as modified by this
14 paragraph ~~and paragraph (7)~~.

15 (iii) ~~A~~

16 (E) A qualified active low-income community business shall
17 only include a business located in census tracts with a poverty rate
18 greater than 30 percent, or census tracts, if located within a
19 non-metropolitan area, with a median family income that does not
20 exceed 60 percent of median family income for the State of
21 California, or census tracts, if located within a metropolitan area,
22 with a median family income that does not exceed 60 percent of
23 the greater of the California median family income or the
24 metropolitan area median family income, or census tracts with
25 unemployment rates at least 1.5 times the national average.

26 (iv)

27 (F) A qualified active low-income community business shall
28 not include any business that operates or derives revenues from
29 the operation of a country club, gaming establishment, massage
30 parlor, liquor store, or golf course.

31 (v)

32 (G) A qualified active low-income community business shall
33 not include a sexually oriented business. A “sexually oriented
34 business” means a nightclub, bar, restaurant, or similar commercial
35 enterprise that provides for an audience of two or more individuals
36 live nude entertainment or live nude performances where the nudity
37 is a function of everyday business operations and where nudity is
38 a planned and intentional part of the entertainment or performance.
39 “Nude” means clothed in a manner that leaves uncovered or visible,
40 through less than fully opaque clothing, any portion of the genitals

1 or, in the case of a female, any portion of the breasts below the
2 top of the areola of the breasts.

3 (vi)

4 (H) A qualified active low-income community business shall
5 not include a charter school.

6 ~~(7) Section 45D(e)(1) of the Internal Revenue Code is modified~~
7 ~~to add the following: “When the United States Census Bureau~~
8 ~~discontinues using the decennial census to report median family~~
9 ~~income on a census tract basis, census block group data shall be~~
10 ~~used based on the American Community Survey.”~~

11 ~~(8) The following shall apply in lieu of the provisions of Section~~
12 ~~(4) Section 45D(f) of the Internal Revenue Code, relating to~~
13 ~~national limitation on amount of investments designated: “The~~
14 ~~designated, is modified as follows:~~

15 ~~(A) The following shall apply in lieu of the provisions of Section~~
16 ~~45D(f)(1) of the Internal Revenue Code: “The aggregate amount~~
17 ~~of credit qualified equity investments that may be allocated in any~~
18 ~~calendar year pursuant to for purposes of this section, Section~~
19 ~~12283, and Section 17053.9 shall be an amount equal to as~~
20 ~~determined by GO-Biz in consultation with the Department of~~
21 ~~Finance based upon any unused portion of the one hundred million~~
22 ~~dollars (\$100,000,000) in exclusions, authorized pursuant to~~
23 ~~Section 6010.8, as determined by the California Alternative Energy~~
24 ~~and Advanced Transportation Financing Authority and reported~~
25 ~~to the committee, not to exceed an amount based upon a credit of~~
26 ~~forty million dollars (\$40,000,000). The committee shall limit the~~
27 ~~allocation of credits permitted investments that may be designated~~
28 ~~under this section, Section 12283, and Section 17053.9 to a~~
29 ~~cumulative total amount based on credits of no more than two~~
30 ~~hundred million dollars (\$200,000,000). Any unused credits The~~
31 ~~allocation of any undesignated qualified equity investments shall~~
32 ~~be returned to the committee by March 1 of the year following~~
33 ~~allocation and the value of the unused credit undesignated qualified~~
34 ~~equity investment shall be available for allocation in the following~~
35 ~~calendar years in accordance with the application process. Any~~
36 ~~qualified equity investment attributable to recaptured credits shall~~
37 ~~be returned available to the committee by on March 1 of the year~~
38 ~~following recapture and the value of the recaptured credit shall be~~
39 ~~available for allocation in the following calendar years in~~
40 ~~accordance with clause (ii) of subparagraph (B) of paragraph (9)~~

1 (5).—~~Reallocation credits and~~ *Reallocated qualified equity*
 2 *investments attributable to* recapture credits shall not count against
 3 ~~the forty million dollars (\$40,000,000) annual limit or the two~~
 4 ~~hundred million dollars (\$200,000,000) cumulative limit.”~~

5 (B) *The references to “the Secretary” in Section 45D(f)(2) of*
 6 *the Internal Revenue Code, relating to allocation of limitation, is*
 7 *modified to read “GO-Biz.”*

8 (C) *The last sentence of Section 45D(f)(3) of the Internal*
 9 *Revenue Code, relating to carryover of unused limitation, shall*
 10 *not apply.*

11 (9)
 12 (5) (A) Section 45D(g)(2)(B) of the Internal Revenue Code,
 13 relating to credit recapture amount, is modified to substitute
 14 “Section 19101 of this code” for “section 6621”.

15 (B) Section 45D(g)(3) of the Internal Revenue Code, relating
 16 to recapture event, ~~does not apply and is replaced with the~~
 17 ~~following~~; *is modified to add the following:*

18 (i) (I) *The qualified community development entity fails to*
 19 *comply with subparagraph (D) of paragraph (5) of subdivision*
 20 *(d). In this case, recapture shall be 100 percent of the credit. The*
 21 *qualified community development entity shall send notice to GO-Biz*
 22 *within 30 calendar days of the close of any calendar year in which*
 23 *the qualified community development entity has failed to invest at*
 24 *least 15 percent of the purchase price of the qualified equity*
 25 *investment in satisfaction of the requirements of subparagraph*
 26 *(D) of paragraph (5) of subdivision (d).*

27 (II) *The qualified community development entity made an*
 28 *investment without performing a revenue impact assessment that*
 29 *satisfies subparagraph (J) of paragraph (5) of subdivision (d). In*
 30 *this case, recapture shall be 100 percent of the credit, unless*
 31 *GO-Biz has approved a waiver pursuant to clause (ii) of*
 32 *subparagraph (J) of paragraph (5) of subdivision (d). The qualified*
 33 *community development entity shall send notice to GO-Biz within*
 34 *30 calendar days of the close of any calendar year in which the*
 35 *qualified community development entity has made an investment*
 36 *that fails to meet the requirements set forth in subparagraph (J)*
 37 *of paragraph (5) of subdivision (d).*

38 (i)
 39 (ii) GO-Biz shall establish a process, in consultation with the
 40 Franchise Tax Board, for the recapture of credits allowed under

1 this section from the entity that claimed the credit on a return. The
2 recapture process shall be applied if any of the following conditions
3 set forth occur.

4 ~~(I) Any amount of a federal tax credit available with respect to
5 a qualified equity investment that is eligible for a credit under this
6 section is recaptured under Section 45D of the Internal Revenue
7 Code. The qualified community development entity shall send
8 notice to GO-Biz within 30 calendar days of being notified by the
9 United States Treasury that any amount of a federal tax credit
10 available with respect to a qualified equity investment that is
11 eligible for a credit under this section is recaptured. GO-Biz shall
12 send written acknowledgment within five calendar days of receipt
13 of the qualified community development entity's notice of potential
14 noncompliance. In such case the recapture shall be proportionate
15 to the federal recapture with respect to such qualified equity
16 investment.~~

17 ~~(II) The qualified community development entity redeems a
18 qualified equity investment prior to the seventh anniversary of the
19 issuance of such qualified equity investment. The qualified
20 community development entity shall send notice to GO-Biz within
21 30 calendar days of redeeming a qualified equity investment prior
22 to the seventh anniversary of the issuance of such qualified equity
23 investment. GO-Biz shall send written acknowledgment within
24 five calendar days of receipt of the qualified community
25 development entity's notice of potential noncompliance. In such
26 case GO-Biz's recapture shall be proportionate to the amount of
27 the redemption of such qualified equity investment.~~

28 ~~(III) The qualified community development entity fails to invest
29 an amount equal to at least 85 percent of the purchase price of the
30 qualified equity investment in qualified low-income community
31 investments in California within 12 months of the issuance of the
32 qualified equity investment and maintain at least 85 percent of
33 such level of investment in qualified low-income community
34 investments in California until the last credit allowance date for
35 the qualified equity investment. For purposes of this section, an
36 investment shall be considered held by a qualified community
37 development entity even if the investment has been sold or repaid
38 if the qualified community development entity reinvests an amount
39 equal to the capital returned to, or recovered by, the qualified
40 community development entity from the original investment,~~

1 exclusive of any profits realized, in another qualified low-income
2 community investment within 12 months of the receipt of such
3 capital. The qualified community development entity shall send
4 notice to GO-Biz within 30 calendar days of the 12-month deadline
5 for the reinvestment if the entity fails to meet any of the
6 reinvestment requirements. GO-Biz shall send written
7 acknowledgment within five calendar days of receipt of the
8 qualified community development entity's notice of potential
9 noncompliance. A qualified community development entity shall
10 not be required to reinvest capital returned from qualified
11 low-income community investments after the sixth anniversary of
12 the issuance of the qualified equity investment, and the qualified
13 low-income community investment shall be considered held by
14 the qualified community development entity through the seventh
15 anniversary of the qualified equity investment's issuance.

16 ~~(ii)~~

17 ~~(iii)~~ Recaptured tax credits and the related qualified equity
18 investment authority investments revert back to GO-Biz and shall
19 be reissued. The reissue shall not count toward the annual
20 allocation limitation of forty million dollars (\$40,000,000) or
21 overall credit allocation limitation of two hundred million dollars
22 (\$200,000,000) in paragraph (8) of subdivision (e) or cumulative
23 allocation limitation. The reissue shall be done in the following
24 order:

25 (I) First, pro rata to applicants whose qualified equity investment
26 allocations were reduced pursuant to subparagraph ~~(B)~~ (F) of
27 paragraph (5) of subdivision (d) by the *annual* allocation limitation
28 of forty million dollars (\$40,000,000) in paragraph (8) of
29 subdivision (e): *limitation*.

30 (II) Thereafter, in accordance with the application process.

31 ~~(iii)~~ ~~(I)~~ Enforcement

32 ~~(iv)~~ (I) *Enforcement* of each of the recapture provisions shall
33 be subject to a six month cure period. Recapture shall not occur
34 until the qualified community development entity gives notice of
35 potential noncompliance to GO-Biz and is afforded six months
36 from the date of such notice to cure the noncompliance. The
37 six-month cure period shall begin on the day GO-Biz sends written
38 acknowledgment of the qualified community development entity's
39 notice of the potential noncompliance. The qualified community
40 development entity is responsible for addressing the circumstances

1 of the potential noncompliance and providing all documentation
2 to GO-Biz necessary to demonstrate, to the GO-Biz's satisfaction,
3 that those conditions no longer exist.

4 (II) *In an instance where a qualified community development*
5 *entity fails to send the required notice of potential noncompliance*
6 *or GO-Biz has information from the annual report or other sources*
7 *that indicates that the entity is in potential noncompliance, GO-Biz*
8 *shall send the notice. The date GO-Biz sends the notice of potential*
9 *noncompliance shall begin the six-month cure period.*

10 ~~(H)~~

11 (III) Not more than 45 calendar days following the close of the
12 cure period, GO-Biz shall make a final determination as to whether
13 ~~the credit is to be recaptured~~ *noncompliance has been cured.* This
14 determination shall be based on the review of the notice,
15 information submitted by the qualified community development
16 entity, and any other information GO-Biz deems relevant to this
17 determination. *Within 30 calendar days of making the final*
18 *determination, GO-Biz shall notify the Franchise Tax Board of*
19 *the determination and other related information including, but not*
20 *limited to, the tax identification number of the taxpayer.*

21 ~~(HH) GO-Biz~~

22 (IV) *GO-Biz shall post, and update monthly, a tally of returned*
23 *credits undesignated qualified equity investments, pursuant to*
24 *paragraph (8) (4), and recaptured credits pursuant to this paragraph.*
25 ~~Within 30 calendar days of making the final determination that~~
26 ~~the credit is to be recaptured, GO-Biz shall notify the Department~~
27 ~~of Insurance of the determination including, but not limited to, the~~
28 ~~tax identification number of the taxpayer.~~

29 ~~(10) Section 45D(i) of the Internal Revenue Code, relating to~~
30 ~~regulations, shall not apply.~~

31 ~~(H)~~

32 (6) If a qualified community development entity makes a capital
33 or equity investment or a loan with respect to a qualified
34 low-income building under the state Low-Income Housing Tax
35 Credit Program, the investment or loan is not a qualified
36 low-income community investment under this section.

37 (d) (1) GO-Biz shall adopt guidelines necessary or appropriate
38 to carry out the purposes of this section and meet the requirements
39 of Section 45D of the Internal Revenue Code, as modified by this
40 section. In promulgating guidelines GO-Biz shall look for guidance

1 in the rules and regulations adopted under Section 45D of the
2 Internal Revenue Code to the extent that those rules and regulations
3 are consistent with this section. The guidelines shall not disqualify
4 a low-income community investment for the single reason that
5 public or private incentives, loans, equity investments, technical
6 assistance, or other forms of support have been or continue to be
7 provided. *its responsibilities with respect to the allocation of the*
8 *qualified equity investments and recapture of credit allowed by*
9 *this section.* The adoption of the guidelines shall not be subject to
10 the rulemaking provisions of the Administrative Procedure Act of
11 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
12 3 of Title 2 of the Government Code.

13 (2) (A) GO-Biz shall establish and impose reasonable fees upon
14 entities that apply for the allocation pursuant to this subdivision
15 that in the aggregate defray the cost of ~~administering~~ *reviewing*
16 *applications* for the program. *GO-Biz may impose other reasonable*
17 *fees upon entities that receive the allocation pursuant to this*
18 *subdivision that in the aggregate defray the cost of administering*
19 *the program.*

20 (B) The fees collected shall be deposited in the California New
21 Markets Tax Credit Fund established in Section 18410.3.

22 (3) In developing guidelines GO-Biz shall adopt an allocation
23 process that does all of the following:

24 (A) Creates an equitable distribution process that ensures that
25 ~~low-income communities~~ *community populations* across the state
26 *are engaged and* have an opportunity to benefit from the program.

27 (B) Sets minimum organizational capacity standards that
28 applicants must meet in order to receive an allocation of ~~credits~~
29 *authority to designate qualified equity investments* including, but
30 not limited to, its business strategy, targeted community outcomes,
31 capitalization strategy, and management capacity.

32 (C) Considers the qualified community development entity's
33 prior qualified low-income community investments under Section
34 45D of the Internal Revenue Code.

35 (D) Considers the qualified community development entity's
36 prior qualified low-income community investments under this
37 section, including subparagraph (D) of paragraph (5).

38 (E) Does not require the qualified community development
39 entity to identify the qualified active low-income community
40 businesses in which the qualified community development entity

1 will invest in an application for qualified equity investment
2 allocation.

3 *(F) Does not disqualify a low-income community investment*
4 *for the single reason that public or private incentives, loans, equity*
5 *investments, technical assistance, or other forms of support have*
6 *been or continue to be provided.*

7 (4) (A) GO-Biz shall begin accepting applications on or before
8 May 15, 2015, and shall award ~~credits authority to designate~~
9 *qualified equity investments* annually through 2019, to the extent
10 that allocations are available pursuant to Section 26011.9 of the
11 Public Resources Code. To the extent reasonable and consistent
12 in carrying out the purposes of this section, GO-Biz shall consider
13 how the timing of the state allocation rounds correspond with the
14 allocation schedule of the federal New Markets Tax Credit
15 Program.

16 (B) Within 20 calendar days after receipt of an application
17 GO-Biz shall determine whether the application is complete or
18 whether additional information is necessary in order to fully
19 evaluate the application. If additional information is requested and
20 the qualified community development entity provides that
21 information within five business days, the application shall be
22 considered completed as of the original date of receipt. If the
23 qualified community development entity fails to provide the
24 information within the five-business-day period, the application
25 shall be denied and must be resubmitted in full with a new receipt
26 date.

27 (C) Within 20 calendar days after receipt of an application
28 determined to be complete by GO-Biz, the committee shall grant
29 or deny the application in full or in part. If the committee denies
30 any part of the application, it shall inform the qualified community
31 development entity of the grounds for the denial.

32 (5) (A) ~~The~~ *In the 2015 awards cycle, the committee shall*
33 *award ~~tax credits~~ authority to designate qualified equity investments*
34 *to qualified community development entities described in*
35 *subparagraph (B) of paragraph (4) paragraph (3) of subdivision*
36 *(c) in the order applications are received by the committee, subject*
37 *to clause (i) or on a competitive basis, pursuant to clause (ii)*
38 *committee. Applications received on the same day shall be deemed*
39 *to have been received simultaneously.*

1 (i) ~~(I) In 2015, the committee shall only award tax credits to a~~
 2 ~~qualified community development entity in the order applications~~
 3 ~~are received by the committee. In~~

4 (B) ~~In the 2016 to 2019 award cycles, inclusive, at least 60~~
 5 ~~percent of the credit allocation authority to designate qualified~~
 6 ~~equity investments shall be awarded in the order applications are~~
 7 ~~received by the committee to a qualified community development~~
 8 ~~entity. Applications received on the same day shall be deemed to~~
 9 ~~have been received simultaneously. pursuant to subparagraph (A).~~

10 At the committee’s discretion, a higher percentage of credits
 11 ~~authority to designate qualified equity investments may be awarded~~
 12 ~~pursuant to the first sentence in this subparagraph. Qualified~~
 13 ~~community development entities that receive tax credit awards~~
 14 ~~pursuant to this clause shall commit to making investments in a~~
 15 ~~manner that engages community-based partnerships and local~~
 16 ~~grassroots stakeholders. subparagraph (A).~~

17 ~~(H) An entity described in clause (ii) of subparagraph (A) of~~
 18 ~~paragraph (4) of subdivision (c) shall not receive a tax credit award~~
 19 ~~pursuant to this clause.~~

20 (ii)

21 (C) The committee shall award up to 40 percent of the credit
 22 ~~allocation authority to designate qualified equity investments in~~
 23 ~~the 2016 to 2019, inclusive, award cycles, to a qualified community~~
 24 ~~development entity, as described in clause (ii) of subparagraph~~
 25 ~~(A) of paragraph (4) of subdivision (c) and subparagraph (B) of~~
 26 ~~paragraph (4) of subdivision (c); entities on a competitive basis~~
 27 ~~using blind scoring and a review committee that is comprised of~~
 28 ~~community development finance practitioners and members having~~
 29 ~~demonstrated experience in assessing organizational business~~
 30 ~~strategy, community outcomes, capitalization strategy, and~~
 31 ~~management capacity. A member of the review committee shall~~
 32 ~~not have a financial interest, which includes, but is not limited to,~~
 33 ~~asking, consenting, or agreeing to receive any commission,~~
 34 ~~emolument, gratuity, money, property, or thing of value for his or~~
 35 ~~her own use, benefit, or personal advantage for procuring or~~
 36 ~~endeavoring to procure for any person, partnership, joint venture,~~
 37 ~~association, or corporation any tax credit qualified equity~~
 38 ~~investment or other assistance from any applicant.~~

39 (D) (i) ~~For qualified equity investments derived from the 2015~~
 40 ~~to 2019, inclusive, awards cycles, pursuant to subparagraphs (A),~~

1 (B) and (C), a qualified community development entity shall invest
2 at least 15 percent of the qualified equity investment in a qualified
3 low-income community business in consultation or in partnership
4 with either of the following:

5 (I) A qualified community development entity certified under
6 Section 45D of the Internal Revenue Code that has not received a
7 federal New Markets Tax Credit allocation on or after January 1,
8 2012, and has either a local service area that includes one or more
9 California communities or a California statewide service area,
10 but excluding qualified community development entities with a
11 national service area.

12 (II) A nonprofit organization certified by GO-Biz, pursuant to
13 clause (iii).

14 (ii) The 15-percent investment shall be calculated by multiplying
15 the total purchase price of the qualified equity investments issued
16 by the qualified community development entity by 15 percent. Each
17 community development entity application shall indicate how the
18 qualified community development entity will meet this requirement.

19 (iii) GO-Biz shall establish guidelines for certifying a nonprofit
20 organization pursuant to this subparagraph. A nonprofit
21 organization shall meet the requirements of Section 23701 and be
22 certified by GO-Biz as having a primary mission of serving or
23 providing investment capital in low-income communities in
24 California. The nonprofit organization shall maintain
25 accountability to residents of low-income communities through
26 their representation on any governing board or on an advisory
27 board of the nonprofit organization. GO-Biz may include
28 reasonable conditions on the certification to effectuate the intent
29 of this section and may suspend or revoke a certification, after
30 affording the nonprofit organization notice and the opportunity
31 to appeal and be heard by the committee, if GO-Biz finds that the
32 nonprofit organization no longer meets the requirements for
33 certification.

34 ~~(iii) In awarding credits on a~~

35 (E) In making competitive ~~basis~~, awards of authority to
36 designate qualified equity investments, priority shall be given to
37 applications that can demonstrate that the ~~credits~~ qualified equity
38 investment authority will allow the qualified community
39 development entity to undertake qualified low-income community
40 investments in rural, suburban, or urban areas that have been

1 historically underserved and result in the greatest benefit to the
 2 hardest to serve and undercapitalized lower income populations,
 3 or in newly established businesses, or in activities that support
 4 neighborhood revitalization strategies driven by local grassroots
 5 stakeholders in multiple low-income communities across one or
 6 more regions or the state for the purpose of scaling economic
 7 development activities that compliment regional industry clusters
 8 that result in the greatest benefit to the largest number of lower
 9 income individuals. ~~All competitive applications shall demonstrate~~
 10 ~~strong linkages with communities and neighborhoods in California~~
 11 ~~low-income neighborhoods.~~

12 ~~(B)~~

13 (F) (i) For applications described in ~~clause (i) of~~ subparagraph
 14 (A), in the event ~~tax credit~~ requests *for authority to designate*
 15 *qualified equity investments* exceed the applicable annual allocation
 16 ~~limitation of up to forty million dollars (\$40,000,000) in paragraph~~
 17 ~~(8) of subdivision (c), the committee limitation, GO-Biz~~ shall
 18 certify, consistent with remaining qualified equity investment
 19 capacity, qualified equity investments of applicants in proportionate
 20 percentages based upon the ratio of the amount of qualified equity
 21 investments requested in such applications to the total amount of
 22 qualified equity investments requested in all such applications
 23 received on the same day.

24 ~~(C)~~

25 (ii) If a pending request cannot be fully certified due to this
 26 limit, ~~the committee GO-Biz~~ shall certify the portion that may be
 27 certified unless the qualified community development entity elects
 28 to withdraw its request rather than receive partial certification.

29 ~~(D)~~

30 (G) An approved applicant may transfer all or a portion of its
 31 certified qualified equity investment authority to its controlling
 32 entity or any subsidiary qualified community development entity
 33 of the controlling entity, provided that the applicant and the
 34 transferee notify the committee within 30 calendar days of such
 35 transfer and include the information required in the application
 36 with respect to such transferee with such notice. *The transferee*
 37 *shall be subject to the same rules, requirements, and limitations*
 38 *applicable to the transferor.*

39 ~~(E)~~

1 (H) Within 60 calendar days of GO-Biz sending notice of
2 certification, the qualified community development entity or any
3 transferee, under subparagraph-~~(D)~~ (G), shall issue the qualified
4 equity investment and receive cash in the amount of the certified
5 amount. The qualified community development entity or transferee,
6 under subparagraph-~~(D)~~ (G), must provide GO-Biz with evidence
7 of the receipt of the cash investment within 65 calendar days of
8 the applicant receiving notice of certification. If the qualified
9 community development entity or any transferee, under
10 subparagraph-~~(D)~~ (G), does not receive the cash investment and
11 issue the qualified equity investment within 60 calendar days of
12 GO-Biz sending the certification notice, the certification shall lapse
13 and the entity may not issue the qualified equity investment without
14 reapplying to GO-Biz for certification. Lapsed certifications revert
15 back to GO-Biz and shall be reissued in the following order:

16 (i) First, pro rata to applicants whose qualified equity investment
17 allocations were reduced pursuant to subparagraph-~~(B)~~ of paragraph
18 ~~(5)~~ (F) under the annual allocation limitation of forty million
19 dollars (\$40,000,000) in paragraph-~~(8)~~ (5) of subdivision (c).

20 (ii) Thereafter, in accordance with the application process.

21 ~~(F)~~

22 (I) A qualified community development entity that issues
23 qualified equity investments must notify GO-Biz of the names of
24 the ~~entities~~ taxpayers that are eligible to utilize tax credits ~~under~~
25 paragraph (3) of subdivision (b) pursuant to an allocation of tax
26 credits or change in allocation of tax credits or due to a pursuant
27 to this section and any transfer of a qualified equity investment.

28 (J) (i) A qualified community development entity shall only
29 make a qualified low-income community investment that
30 demonstrates a positive revenue impact on the state over a 10-year
31 period against the aggregate tax credit utilization over the same
32 10-year period. GO-Biz shall approve one or more nationally
33 recognized revenue impact assessment models that shall be used
34 by the qualified community development entity to demonstrate
35 positive revenue impact. If it is demonstrated that the qualified
36 low-income community investment has a positive revenue impact
37 on the state at the time the investment is made, it shall be treated
38 as if the investment continues to meet the requirement of this
39 subparagraph for the duration of the seven-year program period.

- 1 (ii) *Upon application and approval by GO-Biz, the requirement*
 2 *of this subparagraph may be waived.*
- 3 (6) (A) A qualified community development entity that issues
 4 qualified equity investments shall submit a report to GO-Biz within
 5 the first five business days after the first anniversary of the initial
 6 credit allowance date that provides documentation as to the
 7 investment of at least 85 percent of the purchase price in qualified
 8 low-income community investments in qualified active low-income
 9 community businesses located in California. Such report shall
 10 include all of the following:
- 11 (i) A bank statement of such qualified community development
 12 entity evidencing each qualified low-income community
 13 investment.
- 14 (ii) Evidence that such business was a qualified active
 15 low-income community business at the time of such qualified
 16 low-income community investment.
- 17 (iii) *Evidence that the community development entity complied*
 18 *with subparagraph (D) of paragraph (5).*
- 19 (iv) *Evidence that each qualified low-income community*
 20 *investment was determined to have a positive revenue impact on*
 21 *the state. This requirement does not apply for any qualified*
 22 *low-income community investment for which GO-Biz approved a*
 23 *waiver, pursuant to clause (ii) of subparagraph (J) of paragraph*
 24 *(5) or to reinvestments of redeemed qualified low-income*
 25 *investments.*
- 26 ~~(iii) Any~~
- 27 (v) *Any other information required by GO-Biz as being necessary*
 28 *to meet the requirements of this section.*
- 29 (B) Thereafter, the qualified community development entity
 30 shall submit an annual report to GO-Biz within 60 calendar days
 31 of the beginning of the calendar year during the seven years
 32 following submittal of the report, pursuant to subparagraph (A).
 33 No annual report shall be due prior to the first anniversary of the
 34 initial credit allowance date. The report shall include, but is not
 35 limited to, the following:
- 36 (i) *The social, environmental, and economic impact the credit*
 37 *had on the low-income community during the report period and*
 38 *cumulatively.*
- 39 (ii) The amount of moneys used for qualified low-income
 40 investments in qualified low-income community businesses.

1 (iii) The number of employment positions created and retained
2 as a result of qualified low-income community investments and
3 the average annual salary of such positions.

4 (iv) The number of operating businesses assisted as a result of
5 qualified low-income community investments, by industry and
6 number of employees.

7 (v) Number of owner-occupied real estate projects ~~described in~~
8 ~~subparagraph (E) of paragraph (6) of subdivision (e).~~

9 (vi) Location of ~~the each~~ qualified low-income community
10 ~~businesses~~ *business assisted by a qualified low-income community*
11 *investment.*

12 (vii) *Summary of the outcomes of each of the revenue impact*
13 *assessments undertaken by the qualified community development*
14 *entity during the year.*

15 (e) (1) In the case where the credit allowed by this section
16 exceeds the “tax,” the excess may be carried over to reduce the
17 “tax” in the following year, and the six succeeding years if
18 necessary, until the credit is exhausted.

19 (2) *A taxpayer allowed a credit under this section for a qualified*
20 *equity investment shall not be eligible for any other credit under*
21 *this part with respect to that investment.*

22 (f) GO-Biz shall annually report on its Internet Web site the
23 information provided by low-income community development
24 entities and on the geographic distribution of the qualified active
25 low-income community businesses assisted.

26 (g) (1) The Franchise Tax Board may prescribe any rules or
27 regulations that may be necessary or appropriate to implement this
28 section. The Franchise Tax Board shall have access to any
29 documentation held by the committee relative to the application
30 and reporting of a qualified community development entity.

31 (2) A qualifying community development entity shall provide
32 GO-Biz with the name, address, and tax identification number of
33 each investor and entity for which a ~~credit~~ *qualified equity*
34 *investment was allocated designated by the qualifying community*
35 *development entity, pursuant to paragraph (3) of subdivision (b)*
36 *this section.* GO-Biz shall provide this information to the Franchise
37 Tax Board in a manner determined by the Franchise Tax Board.

38 (h) ~~The credit allowed under this section shall only be allowed~~
39 ~~for taxable years~~ *GO-Biz and the committee shall only make awards*
40 *pursuant to paragraph (4) of subdivision (d) in a calendar year*

1 in which the Legislature appropriates funds in the California New
2 Markets Tax Credit Fund pursuant to subdivision (b) of Section
3 18410.3.

4 (i) This section shall remain in effect only until December 1,
5 2028, and as of that date is repealed.

6 *SEC. 7. The provisions of this act are severable. If any*
7 *provision of this act or its application is held invalid, that invalidity*
8 *shall not affect other provisions or applications that can be given*
9 *effect without the invalid provision or application.*

10 ~~SEC. 7.~~

11 *SEC. 8.* This act provides for a tax levy within the meaning of
12 Article IV of the Constitution and shall go into immediate effect.

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