

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 341

BY SENATORS FERNS, PALUMBO, PLYMALE, MULLINS,

STOLLINGS, TAKUBO, CLINE, MARONEY AND UNGER

[Originating in the Committee on Finance; reported on

March 17, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5 and §31-15D-6;
3 and to amend said code by adding thereto a new section, designated §33-3-14e, all
4 relating to establishing a West Virginia business growth in low-income communities tax
5 credit; providing title; defining terms; establishing amount of credit allowed; transferability;
6 certification of qualified equity investment; recapture of tax credits; notice of
7 noncompliance; letter rulings; new capital requirement; and reporting.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §31-15D-1, §31-15D-2, §31-15D-3, §31-15D-4, §31-15D-5 and §31-15D-6;
3 and to amend said code by adding thereto a new section, designated §33-3-14e, all to read as
4 follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 15D. WEST VIRGINIA BUSINESS GROWTH IN LOW-INCOME COMMUNITIES TAX CREDIT.

§31-15D-1. Title.

1 The provisions of this article shall be known as, and may be cited as, the West Virginia
2 New Markets Jobs Act.

§31-15D-2. Definitions.

1 (a) Any term used in this article has the meaning ascribed by this section unless a different
2 meaning is clearly required by the context of its use or by definition in this article.

3 (b) For purposes of this article, the term:

4 (1) "Affiliate" means an entity that directly or indirectly through one or more intermediaries
5 controls, or is controlled by, or is under common control with the entity specified;

6 (2) “Applicable percentage” means zero percent for the first three credit allowance dates
7 and fifteen percent of the qualified equity investment for the next four credit allowance dates;

8 (3) “Authority” means the West Virginia Economic Development Authority as provided in
9 section four, article fifteen of this chapter;

10 (4) “Compliance period” means the period beginning on the date the qualified equity
11 investment is initially made and ending on the sixth anniversary of the date of the qualified equity
12 investment;

13 (5) “Credit allowance date” means with respect to any qualified equity investment:

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

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

16 (6) “Insurance Commissioner” means the Insurance Commissioner of West Virginia or his
17 or her designee as provided in section four, article one, chapter fifteen of this code;

18 (7) “Long-term debt security” means any debt instrument issued by a qualified community
19 development entity with an original maturity date of at least seven years from the date of its
20 issuance, with no repayment, amortization or prepayment features prior to its original maturity
21 date. The qualified community development entity that issues the debt instrument may not make
22 cash interest payments on the debt instrument during the period beginning on the date of issuance
23 and ending on the final credit allowance date in an amount that exceeds the cumulative operating
24 income, as defined by regulations adopted under 26 U. S. C. § 45D, as amended, of the qualified
25 community development entity for that period prior to giving effect to the interest expense of such
26 long-term debt security. The foregoing shall in no way limit the holder’s ability to accelerate
27 payments on the debt instrument in situations where the qualified community development entity
28 has defaulted on covenants designed to ensure compliance with this 26 U. S. C. § 45D, as
29 amended;

30 (8) "Purchase price" means the amount paid to the qualified community development
31 entity for a qualified equity investment, which may not exceed the amount of qualified equity
32 investment authority certified pursuant to section four of this article;

33 (9) "Qualified active low-income community business" has the meaning given such term
34 in 26 U. S. C. § 45D, as amended, and 26 C. F. R. Sec. 1.45D-1. Any business that is nonprofit
35 or derives, or projects to derive, fifteen percent or more of its annual revenue from the rental or
36 sale of real estate is not considered to be a qualified active low-income community business. The
37 real estate exception does not apply to a business that is controlled by or under common control
38 with another business if the second business: (i) Does not derive or project to derive fifteen
39 percent or more of its annual revenue from the rental or sale of real estate; and (ii) is the primary
40 tenant of the real estate leased from the initial business. A business shall be considered a qualified
41 active low-income community business for the duration of the qualified community development
42 entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes
43 the investment or loan, that the business will continue to satisfy the requirements of being a
44 qualified active low-income community business, other than the size and net income standards,
45 throughout the entire period of the investment or loan;

46 (10) "Qualified community development entity" has the meaning given such term in
47 Section 45D of the Internal Revenue Code of 1986, as amended: *Provided*, That such entity has
48 entered into an allocation agreement with the Community Development Financial Institutions
49 Fund of the U. S. Treasury Department with respect to credits authorized by Section 45D of the
50 Internal Revenue Code of 1986, as amended, which includes the State of West Virginia within the
51 service area set forth in such allocation agreement. An entity shall not be deemed to be controlled
52 by another entity solely as a result of such entity having made a direct or indirect equity investment
53 in the other entity that earns tax credits under Section 45D of the Internal Revenue Code of 1986,
54 as amended, or similar state program. The term shall include subsidiary community development

55 entities of any such qualified community development entity and transferees of qualified equity
56 investment authority pursuant to section four of this article;

57 (11) “Qualified equity investment” means any equity investment in, or long-term debt
58 security issued by, a qualified community development entity that:

59 (A) Is acquired after the effective date of this act at its original issuance solely in exchange
60 for cash;

61 (B) Has one hundred percent of its cash purchase price used by the qualified community
62 development entity to make qualified low-income community investments in qualified active low-
63 income community businesses located in this state by the first anniversary of the initial credit
64 allowance date; and

65 (C) Is designated by the qualified community development entity as a qualified equity
66 investment hereunder and is certified by the authority pursuant to section four of this article.

67 This term shall include any qualified equity investment that does not meet the provisions
68 of paragraph (A) of this subdivision if such investment was a qualified equity investment in the
69 hands of a prior holder;

70 (12) “Qualified low-income community investment” means any capital or equity investment
71 in, or loan to, any qualified active low-income community business: *Provided*, That with respect
72 to any one qualified active low-income community business, the maximum amount of qualified
73 low-income community investments made in such business, on a collective basis with all of the
74 businesses’ affiliates, with the proceeds of qualified equity investments certified under section
75 four of this article, shall be \$5 million, exclusive of qualified low-income community investments
76 made with repaid or redeemed qualified low-income community investments or interest or profits
77 realized thereon;

78 (13) “State premium tax liability” means any liability incurred by any entity under section
79 fourteen, fourteen-a, fifteen, sixteen or seventeen, article three, chapter thirty-three of this code:
80 *Provided*, That if the tax liability imposed under said sections is eliminated or reduced, the term

81 “state premium tax liability” shall also include any tax liability imposed by this state on an insurance
82 company or other person that had premium tax liability under the laws of this state for the purpose
83 of making up tax revenue lost by the state as a result of the elimination or reduction of the taxes
84 imposed under said sections.

§31-15D-3. Transferability.

1 No tax credit earned under this article shall be transferrable to another entity other than
2 an affiliate subject to state premium tax liability or saleable on the open market: *Provided*, That
3 tax credits earned by or allocated to a partnership, limited liability company or S-corporation may
4 be further allocated to the partners, members or shareholders of such entity in accordance with
5 the provisions of any agreement among such partners, members or shareholders. Such allocation
6 shall be not considered a sale for purposes of this article.

§31-15D-4. Certification of qualified equity investments.

1 (a) A qualified community development entity that seeks to have an equity investment or
2 long-term debt security designated as a qualified equity investment and eligible for tax credits
3 under this article shall first file a credit application with the authority. The authority shall begin
4 accepting applications on July 1, 2017. The application filed by the qualified community
5 development entity shall include the following:

6 (1) The amount of qualified equity investment authority requested;

7 (2) The amount of qualified equity investment authority requested that the applicant agrees
8 to designate as a federal qualified equity investment with the Community Development Financial
9 Institutions Fund;

10 (3) Evidence of the applicant’s certification as a qualified community development entity,
11 including evidence of the service area of the entity that includes this state;

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

14 (5) A certificate executed by an executive officer of the applicant attesting that the
15 allocation agreement remains in effect and has not been revoked or cancelled by the Community
16 Development Financial Institutions Fund;

17 (6) A business plan that includes a revenue impact assessment projecting state and local
18 tax revenue to be generated by the applicant's proposed qualified low-income community
19 investments prepared by a nationally recognized third-party independent economic forecasting
20 firm using a dynamic economic forecasting model that analyzes the applicant's business plan
21 over the ten years following the date the application is submitted to the authority; and

22 (7) A nonrefundable application fee of \$10,000. This fee shall be paid to the authority and
23 shall be required of each application submitted.

24 (b) Within thirty days of receipt of a completed application containing the information set
25 forth in subsection (a) of this section, the authority shall grant or deny the application in full or in
26 part. The authority shall deny an application if the business plan submitted with the application
27 does not project revenue neutrality against the proposed tax credit utilization. If the authority
28 denies any part of the application, the authority shall inform the qualified community development
29 entity of the grounds for the denial. If the qualified community development entity provides any
30 additional information required by the authority or otherwise completes its application within fifteen
31 days of the notice of denial, the application shall be considered complete as of the original date
32 of submission. If the qualified community development entity fails to provide the information or
33 complete its application within the fifteen-day period, the application remains denied and must be
34 resubmitted in full with a new submission date.

35 (c) If the application is complete, the authority shall certify the proposed equity investment
36 or long-term debt security as a qualified equity investment that is eligible for tax credits under this
37 article, subject to the limitations contained in subsection (f) of this section. The Tax Commissioner
38 shall provide written notice of the certification to the qualified community development entity.

39 (d) The authority shall certify qualified equity investments in the order applications are
40 received by the authority. Applications received on the same day shall be deemed to have been
41 received simultaneously.

42 (e) For applications that are complete and received on the same day, the authority shall
43 first certify applications by applicants that agree to designate qualified equity investments as
44 federal qualified equity investments in proportionate percentages based upon the ratio of the
45 amount of qualified equity investments requested in an application to be designated as a federal
46 qualified equity investment to the total amount of qualified equity investments to be designated
47 as federal qualified equity investments in all applications in which applicants agree to designate
48 qualified equity investments. Thereafter, the authority shall certify the qualified equity investments
49 of all other applicants, including the remaining qualified equity investment authority requested by
50 applicants not designated as federal qualified equity investments, in proportionate percentages
51 based upon the ratio of the amount of qualified equity investments not requested in an application
52 to be designated as a federal qualified equity investment to the total amount of qualified equity
53 investments not requested in applications to be designated as federal qualified equity
54 investments.

55 (f) The authority shall certify no more than \$60 million in qualified equity investments
56 pursuant to this article.

57 (g) An approved applicant may transfer all or a portion of its certified qualified equity
58 investment authority to its controlling entity or any subsidiary qualified community development
59 entity of the controlling entity: *Provided*, That the applicant and the transferee notify the authority
60 of such transfer with the notice set forth in subsection (h) of this section and include the
61 information required in the application with respect to such transferee with such notice.

62 (h) Within one calendar year of the applicant receiving notice of certification, the qualified
63 community development entity shall issue the qualified equity investment and receive cash in the
64 amount of the certified amount and, if applicable, designate the required amount of qualified equity

65 investment authority as a federal qualified equity investment. The qualified community
66 development entity must provide the authority with evidence of the receipt of the cash investment
67 and designation as a federal qualified equity investment, if applicable, within one calendar year
68 and five days of the applicant receiving notice of certification. If the qualified community
69 development entity does not receive the cash investment, issue the qualified equity investment
70 and, if applicable, designate the qualified equity investment as a federal qualified equity
71 investment within such time period following receipt of the certification notice, the certification
72 shall lapse and the entity may not issue the qualified equity investment without reapplying to the
73 authority for certification.

74 (i) Lapsed certifications revert back to the authority and shall be reissued:

75 (1) First, pro rata to applicants whose qualified equity investment allocations were reduced
76 pursuant to subsection (e) of this section with a preference to applicants who have agreed to
77 designate qualified equity investments as federal qualified equity investments; and

78 (2) Thereafter, in accordance with the provisions of this article.

79 (j) Recaptured tax credits and the related qualified equity investment authority are eligible
80 for reissuance to qualified community development entities under the provisions of this article and
81 recaptured tax credits shall be reissued:

82 (1) First, pro rata to applicants whose qualified equity investment allocations were reduced
83 pursuant to subsection (e) of this section, with a preference to applicants who agreed to designate
84 qualified equity investments as federal qualified equity investments; and

85 (2) Thereafter, in accordance with the provisions of this article.

86 (k) The authority must notify the Insurance Commissioner of the names of the entities that
87 are eligible to utilize tax credits provided under section three of this article, pursuant to an
88 allocation of tax credits or change in allocation of tax credits or due to a transfer of a qualified
89 equity investment upon such allocation, change or transfer.

§31-15D-5. New capital requirement.

1 No qualified active low-income community business that receives a qualified low-income
2 community investment from a qualified community development entity that issues qualified equity
3 investments under this article, or any affiliates of such a qualified active low-income community
4 business, may directly or indirectly: (1) Own or have the right to acquire an ownership interest in
5 a qualified community development entity or member or affiliate of a qualified community
6 development entity, including, but not limited to, a holder of a qualified equity investment issued
7 by the qualified community development entity; or (2) loan to or invest in a qualified community
8 development entity or member or affiliate of a qualified community development entity, including,
9 but not limited to, a holder of a qualified equity investment issued by a qualified community
10 development entity, where the proceeds of such loan or investment are directly or indirectly used
11 to fund or refinance the purchase of a qualified equity investment hereunder. For purposes of
12 this section, a qualified community development entity shall not be considered an affiliate of a
13 qualified active low-income community business solely as a result of its qualified low-income
14 community investment in such business.

§31-15D-6. Reporting.

1 (a) Qualified community development entities shall submit a report to the authority within
2 the first five business days after the second anniversary of the initial credit allowance date that
3 provides documentation as to the investment of one hundred percent of the purchase price of
4 such qualified equity investment in qualified low-income community investments in qualified active
5 low-income community businesses located in West Virginia. Such report shall include:

- 6 (1) The location of the qualified active low-income community business;
7 (2) A bank statement of such qualified community development entity evidencing each
8 qualified low-income community investment;
9 (3) Evidence that such business was a qualified active low-income community business
10 at the time of such qualified low-income community investment; and

11 (4) Any information regarding the recapture under Section 45D of the Internal Revenue
12 Code of 1986, as amended, of a federal tax credit available with respect to a qualified equity
13 investment that is eligible for a credit under this article.

14 (5) Any information regarding the qualified community development entity redeeming or
15 making principal repayment with respect to a qualified equity investment prior to the seventh
16 anniversary of the issuance of such qualified equity investment.

17 (6) Any information that the qualified community development entity failed to invest an
18 amount equal to one hundred percent of the purchase price of the qualified equity investment in
19 qualified low-income community investments in West Virginia within twenty-four months of the
20 issuance of the qualified equity investment and maintain such level of investment in qualified low-
21 income community investments in West Virginia until the last credit allowance date for the
22 qualified equity investment. For purposes of this article, an investment shall be considered held
23 by a qualified community development entity even if the investment has been sold or repaid, if
24 the qualified community development entity reinvests an amount equal to the capital returned to
25 or recovered by the qualified community development entity from the original investment,
26 exclusive of any profits realized, in another qualified low-income community investment within
27 twelve months of the receipt of such capital. Periodic amounts received as repayment of principal
28 pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income
29 community investment shall be treated as continuously invested in a qualified low-income
30 community investment if the amounts are reinvested in one or more qualified low-income
31 community investments by the end of the following calendar year. A qualified community
32 development entity shall not be required to reinvest capital returned from qualified low-income
33 community investments after the sixth anniversary of the issuance of the qualified equity
34 investment, and the qualified low-income community investment shall be considered held by the
35 qualified community development entity through the seventh anniversary of the qualified equity
36 investment's issuance.

37 (7) Such other information required by the authority.

38 (b) Thereafter, the qualified community development entity will submit an annual report to
39 the authority within forty-five days of the beginning of each calendar year during the compliance
40 period. No annual report shall be due prior to the first anniversary of the initial credit allowance
41 date. The report shall include, but is not limited to the following:

42 (1) Number of employment positions created and retained as a result of qualified low-
43 income community investments.

44 (2) Average annual salary of employment positions described in this subsection.

45 (3) Any information regarding the recapture under Section 45D of the Internal Revenue
46 Code of 1986, as amended, of a federal tax credit available with respect to a qualified equity
47 investment that is eligible for a credit under this article.

48 (4) Any information regarding the qualified community development entity redeeming or
49 making principal repayment with respect to a qualified equity investment prior to the seventh
50 anniversary of the issuance of such qualified equity investment.

51 (5) Any information that the qualified community development entity failed to invest an
52 amount equal to one hundred percent of the purchase price of the qualified equity investment in
53 qualified low-income community investments in West Virginia within twenty-four months of the
54 issuance of the qualified equity investment and maintain such level of investment in qualified low-
55 income community investments in West Virginia until the last credit allowance date for the
56 qualified equity investment. For purposes of this article, an investment shall be considered held
57 by a qualified community development entity even if the investment has been sold or repaid, if
58 the qualified community development entity reinvests an amount equal to the capital returned to
59 or recovered by the qualified community development entity from the original investment,
60 exclusive of any profits realized, in another qualified low-income community investment within
61 twelve months of the receipt of such capital. Periodic amounts received as repayment of principal
62 pursuant to regularly scheduled amortization payments on a loan that is a qualified low-income

63 community investment shall be treated as continuously invested in a qualified low-income
64 community investment if the amounts are reinvested in one or more qualified low-income
65 community investments by the end of the following calendar year. A qualified community
66 development entity shall not be required to reinvest capital returned from qualified low-income
67 community investments after the sixth anniversary of the issuance of the qualified equity
68 investment, and the qualified low-income community investment shall be considered held by the
69 qualified community development entity through the seventh anniversary of the qualified equity
70 investment's issuance.

71 (6) In the event the Authority is provided any information required by subdivisions (3), (4)
72 and (5) of this subsection, the authority shall provide that information to the Insurance
73 Commissioner.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14e. Credits against premium tax for investment pursuant to the West Virginia New Market Jobs Acts.

1 (a) For the purpose of this section, the term:

2 (1) "Applicable percentage" means zero percent for the first three credit allowance dates
3 and fifteen percent of the qualified equity investment for the next four credit allowance dates;

4 (2) "Compliance period" means the period beginning on the date the qualified equity
5 investment is initially made and ending on the sixth anniversary of the date of the qualified equity
6 investment;

7 (3) "Credit allowance date" means with respect to any qualified equity investment:

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

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

10 (4) "Insurance Commissioner" means the Insurance Commissioner of West Virginia or his
11 or her designee as provided in section four, article one, chapter fifteen of this code.

12 (5) “Long-term debt security” means any debt instrument issued by a qualified community
13 development entity with an original maturity date of at least seven years from the date of its
14 issuance, with no repayment, amortization or prepayment features prior to its original maturity
15 date. The qualified community development entity that issues the debt instrument may not make
16 cash interest payments on the debt instrument during the period beginning on the date of issuance
17 and ending on the final credit allowance date in an amount that exceeds the cumulative operating
18 income, as defined by regulations adopted under 26 U. S. C. § 45D, as amended, of the qualified
19 community development entity for that period prior to giving effect to the interest expense of such
20 long-term debt security. The foregoing shall in no way limit the holder’s ability to accelerate
21 payments on the debt instrument in situations where the qualified community development entity
22 has defaulted on covenants designed to ensure compliance with this 26 U. S. C. § 45D, as
23 amended;

24 (6) “Purchase price” means the amount paid to the qualified community development
25 entity for a qualified equity investment, which may not exceed the amount of qualified equity
26 investment authority certified pursuant to section four, article fifteen-d, chapter thirty-one of this
27 code;

28 (7) “Qualified active low-income community business” has the meaning given such term
29 in 26 U. S. C. § 45D, as amended, and 26 C. F. R. Sec. 1.45D-1. Any business that is a nonprofit
30 or derives or projects to derive fifteen percent or more of its annual revenue from the rental or
31 sale of real estate is not considered to be a qualified active low-income community business. The
32 real estate exception does not apply to a business that is controlled by or under common control
33 with another business if the second business: (i) Does not derive or project to derive fifteen
34 percent or more of its annual revenue from the rental or sale of real estate; and (ii) is the primary
35 tenant of the real estate leased from the initial business. A business shall be considered a qualified
36 active low-income community business for the duration of the qualified community development
37 entity’s investment in, or loan to, the business if the entity reasonably expects, at the time it makes

38 the investment or loan, that the business will continue to satisfy the requirements for being a
39 qualified active low-income community business, other than the size and net income standards,
40 throughout the entire period of the investment or loan;

41 (8) "Qualified community development entity" has the meaning given such term in Section
42 45D of the Internal Revenue Code of 1986, as amended: *Provided*, That such entity has entered
43 into an allocation agreement with the Community Development Financial Institutions Fund of the
44 U. S. Treasury Department with respect to credits authorized by Section 45D of the Internal
45 Revenue Code of 1986, as amended, which includes the State of West Virginia within the service
46 area set forth in such allocation agreement. An entity shall not be deemed to be controlled by
47 another entity solely as a result of such entity having made a direct or indirect equity investment
48 in the other entity that earns tax credits under Section 45D of the Internal Revenue Code of 1986,
49 as amended, or similar state program. The term shall include subsidiary community development
50 entities of any such qualified community development entity and transferees of qualified equity
51 investment authority pursuant to section four, article fifteen-d, chapter thirty-one of this code;

52 (9) "Qualified Equity Investment" means any equity investment in, or long-term debt
53 security issued by, a qualified community development entity that:

54 (A) Is acquired after the effective date of this act at its original issuance solely in exchange
55 for cash;

56 (B) Has one hundred percent of its cash purchase price used by the qualified community
57 development entity to make qualified low-income community investments in qualified active low-
58 income community businesses located in this state by the first anniversary of the initial credit
59 allowance date; and

60 (C) Is designated by the qualified community development entity as a qualified equity
61 investment hereunder and is certified by the Economic Development Authority pursuant to section
62 four, article fifteen-d, chapter thirty-one of this code.

63 This term shall include any qualified equity investment that does not meet the provisions
64 of paragraph (A) of this subdivision if such investment was a qualified equity investment in the
65 hands of a prior holder;

66 (10) “Qualified low-income community investment” means any capital or equity investment
67 in, or loan to, any qualified active low-income community business: *Provided*, That with respect
68 to any one qualified active low-income community business, the maximum amount of qualified
69 low-income community investments made in such business, on a collective basis with all of the
70 businesses’ affiliates, with the proceeds of qualified equity investments certified under section
71 four, article fifteen-d, chapter thirty-one of this code, shall be \$5 million, exclusive of qualified low-
72 income community investments made with repaid or redeemed qualified low-income community
73 investments or interest or profits realized thereon;

74 (11) “State premium tax liability” means any liability incurred by any entity under section
75 fourteen, fourteen-a, fifteen, sixteen or seventeen of this article: *Provided*, That if the tax liability
76 imposed under said sections is eliminated or reduced, the term “state premium tax liability” shall
77 also include any tax liability imposed by this state on an insurance company or other person that
78 had premium tax liability under the laws of this state for the purpose of making up tax revenue
79 lost by the state as a result of the elimination or reduction of the taxes imposed under said
80 sections.

81 (b) Any entity that makes a qualified equity investment pursuant to section two, article
82 fifteen-d, chapter thirty-one of this code shall be allowed an earned and vested tax credit against
83 the entity’s state premium tax liability that may be utilized as follows:

84 (1) The amount of tax credit allowable on each credit allowance date to an entity that
85 makes a qualified equity investment, or to a subsequent holder of the qualified equity investment,
86 shall be annually computed by multiplying the purchase price paid to the qualified community
87 development entity for the qualified equity investment by the applicable percentage for the credit
88 allowance date;

89 (2) The annual credit allowance, computed pursuant to subdivision (1) of this subsection,
90 may be used to offset the entity's state premium tax liability for tax periods ending on or after the
91 credit allowance date; and

92 (3) The amount of the credit claimed by an entity shall not exceed the amount of such
93 entity's state premium tax liability for the tax year for which the credit is claimed. Any amount of
94 tax credit remaining, after the credit is used as provided in this section, may be carried forward
95 for use in any subsequent taxable year.

96 (c) The Insurance Commissioner may recapture, from the entity that claimed the credit on
97 a return, the tax credit allowed under this article if:

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

102 (2) The qualified community development entity redeems or makes principal repayment
103 with respect to a qualified equity investment prior to the seventh anniversary of the issuance of
104 such qualified equity investment. In such case the Insurance Commissioner's recapture shall be
105 proportionate to the amount of the redemption or repayment with respect to such qualified equity
106 investment;

107 (3) The qualified community development entity fails to invest an amount equal to one
108 hundred percent of the purchase price of the qualified equity investment in qualified low-income
109 community investments in West Virginia within twenty-four months of the issuance of the qualified
110 equity investment and maintain such level of investment in qualified low-income community
111 investments in West Virginia until the last credit allowance date for the qualified equity investment.
112 For purposes of this article, an investment shall be considered held by a qualified community
113 development entity even if the investment has been sold or repaid, if the qualified community
114 development entity reinvests an amount equal to the capital returned to or recovered by the

115 qualified community development entity from the original investment, exclusive of any profits
116 realized, in another qualified low-income community investment within twelve months of the
117 receipt of such capital. Periodic amounts received as repayment of principal pursuant to regularly
118 scheduled amortization payments on a loan that is a qualified low-income community investment
119 shall be treated as continuously invested in a qualified low-income community investment if the
120 amounts are reinvested in one or more qualified low-income community investments by the end
121 of the following calendar year. A qualified community development entity shall not be required to
122 reinvest capital returned from qualified low-income community investments after the sixth
123 anniversary of the issuance of the qualified equity investment, and the qualified low-income
124 community investment shall be considered held by the qualified community development entity
125 through the seventh anniversary of the qualified equity investment's issuance; or

126 (4) As a result of any violation of section nine of this article.

127 (d) Recaptured tax credits and the related qualified equity investment authority are eligible
128 for reissuance to qualified community development entities under the provisions of this article and
129 recaptured tax credits shall be reissued:

130 (1) First, pro rata to applicants whose qualified equity investment allocations were reduced
131 pursuant to subsection (e), section four, article fifteen-d, chapter thirty-one of this code, with a
132 preference to applicants who agreed to designate qualified equity investments as federal qualified
133 equity investments; and

134 (2) Thereafter, in accordance with the provisions of this article.

135 (e) Enforcement of the recapture provisions set forth in this section shall be subject to a
136 six-month cure period. No recapture shall occur until the qualified community development entity
137 shall have been given notice of noncompliance and afforded six months from the date of such
138 notice to cure the noncompliance.

139 (f) In rendering letter rulings and making other determinations under this section, to the
140 extent applicable, the Insurance Commissioner shall look for guidance in Section 45D of the
141 Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder.

NOTE: The purpose of this bill is to establish a West Virginia business growth in low-income communities tax credit.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.