

SENATE BILL No. 521

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-34.

Synopsis: Indiana new markets job act. Provides for an Indiana new markets tax credit similar to the federal new markets tax credit. Requires a qualified community development entity to pay the state a conditionally refundable fee of \$500,000 and a nonrefundable application fee of \$5,000 for each qualified equity investment that the qualified community development entity seeks to have approved by the Indiana economic development corporation (IEDC). Provides that the IEDC may not approve more than \$20,000,000 of qualified equity investments that are eligible for the Indiana new markets tax credit per state fiscal year. Provides that the department of state revenue is required to issue letter rulings requested by taxpayers, similar to private letter rulings issued by the Internal Revenue Service at the federal level, regarding the Indiana new markets tax credit.

Effective: January 1, 2013 (retroactive).

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January 14, 2013, read first time and referred to Committee on Tax and Fiscal Policy.

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First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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SENATE BILL No. 521



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-34 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2013 (RETROACTIVE)];

4 **Chapter 34. Indiana New Markets Job Act**

5 **Sec. 1. This chapter applies only to taxable years beginning after**
6 **December 31, 2012.**

7 **Sec. 2. The following definitions apply throughout this chapter:**

8 (1) "Applicable percentage" means:

9 (A) zero percent (0%) for the first two (2) credit allowance
10 dates;

11 (B) seven percent (7%) for the third credit allowance date;
12 and

13 (C) eight percent (8%) for the next four (4) credit
14 allowance dates.

15 (2) "Credit allowance date" means, with respect to any
16 qualified equity investment:

17 (A) the date on which the investment is initially made; and



- 1 (B) each of the six (6) anniversary dates immediately
2 following the date specified in clause (A).
- 3 (3) "IEDC" refers to the Indiana economic development
4 corporation.
- 5 (4) "Long term debt security" means any debt instrument
6 issued by a qualified community development entity, at par
7 value or a premium, with an original maturity date at least
8 seven (7) years after the date the debt instrument is issued,
9 with no acceleration of repayment, amortization, or
10 prepayment features before the original maturity date. The
11 qualified community development entity that issues the debt
12 instrument may not make cash interest payments on the debt
13 instrument during the period beginning on the date of
14 issuance and ending on the final credit allowance date in an
15 amount that exceeds the cumulative operating income, as
16 defined by regulations adopted under Section 45D of the
17 Internal Revenue Code of the qualified community
18 development entity for that period before giving effect to the
19 expense of the cash interest payments. The foregoing does not
20 limit the holder's ability to accelerate payments on the debt
21 instrument if the issuer has defaulted on covenants designed
22 to ensure compliance with this chapter or Section 45D of the
23 Internal Revenue Code.
- 24 (5) "Low income community" means:
- 25 (A) "low income community" as defined in Section 45D of
26 the Internal Revenue Code; or
- 27 (B) any Indiana county where the average annual
28 unemployment rate when an initial qualified low income
29 community investment is made in a qualified low income
30 community business is higher than the Indiana statewide
31 average unemployment rate.
- 32 (6) "Purchase price" means the amount paid to an issuer of a
33 qualified equity investment for the qualified equity
34 investment.
- 35 (7) "Qualified active low income community business" has the
36 meaning set forth in Section 45D of the Internal Revenue
37 Code, and 26 CFR 1.45D-1. A business is considered a
38 qualified active low income community business for the
39 duration of the qualified community development entity's
40 investment in, or loan to, the business if the qualified
41 community development entity reasonably expects, at the time
42 the qualified community development entity makes the

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1 investment or loan, that the business will continue to satisfy
 2 the requirements for being a qualified active low income
 3 community business, throughout the entire period of the
 4 investment or loan. The term excludes any business that
 5 derives or projects to derive fifteen percent (15%) or more of
 6 the business's annual revenue from the rental or sale of real
 7 estate. This exclusion does not apply to a business that is
 8 controlled by, or under common control with, another
 9 business, if the second business:

10 (A) does not derive, or project to derive, fifteen percent
 11 (15%) or more of its annual revenue from the rental or
 12 sale of real estate and is the primary tenant of the real
 13 estate leased from the first business; or

14 (B) is primarily engaged in the business of primary,
 15 secondary, or higher education.

16 (8) "Qualified community development entity" has the
 17 meaning set forth in Section 45D of the Internal Revenue
 18 Code, for any period during which an allocation agreement is
 19 in effect between the entity and the Community Development
 20 Financial Institutions Fund of the U.S. Treasury Department
 21 with respect to credits authorized by Section 45D of the
 22 Internal Revenue Code that includes the state of Indiana
 23 within the service area described in the allocation agreement.
 24 The term includes a subsidiary community development
 25 entity of a qualified community development entity.

26 (9) "Qualified equity investment" means any equity
 27 investment in, or long term debt security issued by, a qualified
 28 community development entity:

29 (A) that is made or acquired after December 31, 2012, at
 30 its original issuance solely in exchange for cash;

31 (B) of which at least eighty-five percent (85%) of the cash
 32 purchase price is used by the issuing qualified community
 33 development entity before the first anniversary of the
 34 initial credit allowance date to make qualified low income
 35 community investments in qualified active low income
 36 community businesses located in Indiana;

37 (C) that is designated by the issuing qualified community
 38 development entity as a qualified equity investment; and

39 (D) that is certified by the IEDC under section 7 of this
 40 chapter.

41 The term includes any qualified equity investment that does
 42 not meet the condition specified in clause (A) if the investment

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1 was a qualified equity investment in the hands of a previous
2 holder.

3 (10) "Qualified low income community investment" means
4 any capital or equity investment in, or loan to, any qualified
5 active low income community business.

6 (11) "State tax liability" means a person's total tax liability
7 that is incurred under:

8 (A) IC 6-3-1 through IC 6-3-7 (the adjusted gross income
9 tax);

10 (B) IC 6-5.5 (the financial institutions tax); and

11 (C) IC 27-1-18-2 (the insurance premiums tax);

12 as computed after the application of the credits that under
13 IC 6-3.1-1-2 are to be applied before the credit provided by
14 this chapter.

15 (12) "Taxpayer" means an individual, a corporation, a
16 partnership, or another person or entity that has state tax
17 liability.

18 **Sec. 3.** Any entity that makes a qualified equity investment earns
19 a vested right to a credit against the entity's state tax liability that
20 may be utilized as follows:

21 (1) For each taxable year that includes a credit allowance date
22 of the qualified equity investment, the entity, or subsequent
23 holder of the qualified equity investment, is entitled to claim
24 part of the credit against the entity's or the subsequent
25 holder's state tax liability for the taxable year.

26 (2) Each taxable year, subject to subdivision (3), the credit
27 amount equals:

28 (A) the applicable percentage associated with the credit
29 allowance date that occurs during the taxable year;
30 multiplied by

31 (B) the purchase price paid to the issuer of the qualified
32 equity investment.

33 (3) The amount of the tax credit claimed may not exceed the
34 amount of the taxpayer's state tax liability for the taxable
35 year for which the tax credit is claimed.

36 **Sec. 4. (a) If:**

37 (1) a pass through entity does not have state tax liability
38 against which the tax credit provided by this chapter may be
39 applied; and

40 (2) the pass through entity would be eligible for the tax credit
41 if the pass through entity were a taxpayer;

42 a shareholder, partner, or member of the pass through entity is

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1 entitled to a tax credit under this chapter.

2 (b) Tax credits earned by a pass through entity may be allocated
3 to the partners, members, or shareholders of the pass through
4 entity for their direct use in accordance with the provisions of any
5 agreement among the partners, members, or shareholders.

6 Sec. 5. (a) If the amount of a tax credit for a taxpayer in a
7 taxable year exceeds the taxpayer's state tax liability for that
8 taxable year, the taxpayer may carry the excess over to a
9 subsequent taxable year. The amount of the tax credit carryover
10 from a taxable year is reduced each taxable year thereafter to the
11 extent that the carryover is used by the taxpayer to obtain a tax
12 credit under this chapter for any subsequent taxable year.

13 (b) A taxpayer is not entitled to a carryback or refund of an
14 unused tax credit.

15 Sec. 6. The tax credit provided by this chapter is not saleable on
16 the open market.

17 Sec. 7. (a) After July 31, 2013, a qualified community
18 development entity may apply to have an equity investment or a
19 long term debt security designated as a qualified equity investment
20 that meets the requirements for the tax credit provided by this
21 chapter. An application submitted under this subsection must
22 include the following:

23 (1) Evidence of the applicant's certification as a qualified
24 community development entity, including evidence that the
25 applicant's service area includes the state of Indiana.

26 (2) A copy of an allocation agreement executed by the
27 applicant, or its controlling entity, and the Community
28 Development Financial Institutions Fund.

29 (3) A certificate executed by an executive officer of the
30 applicant attesting that the allocation agreement remains in
31 effect and has not been revoked or canceled by the
32 Community Development Financial Institutions Fund.

33 (4) A description of the proposed amount, structure, and
34 purchaser of the qualified equity investment.

35 (5) Identifying information for any entity that will earn tax
36 credits as a result of the issuance of the qualified equity
37 investment.

38 (6) Examples of the types of qualified active low income
39 businesses in which the applicant, its controlling entity, or
40 affiliates of its controlling entity have invested under the
41 federal new markets tax credit program. An applicant is not
42 required when submitting an application to identify a

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1 qualified active low income community business in which the
2 applicant will invest.

3 (7) A nonrefundable application fee of five thousand dollars
4 (\$5,000). This fee shall be paid to the IEDC and shall be
5 required of each application submitted.

6 (8) The refundable performance fee of five hundred thousand
7 dollars (\$500,000) required by section 11(a) of this chapter.

8 (b) After July 31, 2013, the IEDC shall begin accepting
9 applications submitted to the IEDC under subsection (a). Within
10 thirty (30) days after receipt of an application submitted under
11 subsection (a), including the payment of the application fee and the
12 refundable performance fee, the IEDC shall grant or deny the
13 application in full or in part. If the IEDC denies any part of the
14 application, the IEDC shall inform the qualified community
15 development entity of the grounds for the denial. If the qualified
16 community development entity provides any additional
17 information required by the IEDC or otherwise completes the
18 application within fifteen (15) days of the notice of denial, the
19 application is considered completed as of the original date of
20 submission. If the qualified community development entity fails to
21 provide the information or complete the application within the
22 fifteen (15) day period, the application remains denied and must be
23 resubmitted in full with a new submission date.

24 (c) Subject to subsection (d), if the application is complete, the
25 IEDC shall certify the proposed equity investment or long term
26 debt security as a qualified equity investment that is eligible for tax
27 credits under this chapter. The IEDC shall provide written notice
28 of the certification to the qualified community development entity
29 and to the department. The notice must include the names of those
30 entities who earned the credits and their respective credit amounts.
31 If the names of the entities that are eligible to utilize the credits
32 change due to a transfer of a qualified equity investment, the
33 qualified community development entity shall notify the IEDC of
34 the change. The IEDC shall then notify the department.

35 (d) The IEDC shall certify qualified equity investments in the
36 order applications are received by the IEDC. Applications received
37 on the same day are considered to have been received
38 simultaneously. If the sum of the amounts of the proposed qualified
39 equity investments submitted in applications received on the same
40 day would cause the limitation specified in subsection (e) to be
41 exceeded, the IEDC shall ask each applicant that submitted an
42 application that day whether the applicant is willing to accept a

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1 partial certification of the applicant's proposed qualified equity
2 investment or would instead prefer to withdraw its application. If
3 the sum of the proposed qualified equity investments of the
4 applicants that have not withdrawn their applications would not
5 cause the limit specified in subsection (e) to be exceeded, the IEDC
6 shall certify each proposed qualified equity investment of the
7 applicants that have not withdrawn their applications in full. If the
8 sum of the proposed qualified equity investments of the applicants
9 that have not withdrawn their applications would cause the limit
10 specified in subsection (e) to be exceeded, the IEDC shall certify a
11 fractional amount of each proposed qualified equity investment
12 described in applications that were received that day and not
13 withdrawn equal to:

14 (1) the remaining amount of the limitation specified in
15 subsection (e) at the conclusion of the previous day; multiplied
16 by

17 (2) the ratio of the amount of the proposed qualified equity
18 investment requested in an application to the total amount of
19 proposed qualified equity investments requested in all
20 applications received that day.

21 (e) The IEDC may not certify more than twenty million dollars
22 (\$20,000,000) of qualified equity investments under this chapter
23 during any state fiscal year.

24 (f) An approved applicant may transfer all or a portion of its
25 certified qualified equity investment authority to its controlling
26 entity or any subsidiary qualified community development entity
27 of the controlling entity, provided that the applicant provides the
28 information required in the application with respect to the
29 transferee and the applicant notifies the IEDC of the transfer
30 within thirty (30) days of the transfer.

31 (g) Within thirty (30) days of the applicant receiving notice of
32 certification, the qualified community development entity or any
33 transferee under subsection (f) shall issue the qualified equity
34 investment and receive cash in the amount of the certified amount.
35 The qualified community development entity or transferee under
36 subsection (f) must provide the IEDC with evidence of the receipt
37 of the cash investment within ten (10) business days after receipt.
38 If the qualified community development entity or any transferee
39 under subsection (f) does not receive the cash investment and issue
40 the qualified equity investment within thirty (30) days following
41 receipt of the certification notice, the certification lapses and the
42 entity may not issue the qualified equity investment without

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1 reapplying to the IEDC for certification. A lapsed certification
2 reverts back to the IEDC and may be reissued, first, if applicable,
3 to applicants that received a reduced certification of a qualified
4 equity investment under subsection (d), and, thereafter, if any part
5 of the lapsed certification remains, to applicants in accordance
6 with subsection (c).

7 (h) The IEDC shall transfer the nonrefundable application fees
8 collected by the IEDC under subsection (a)(7) to the treasurer of
9 state. The treasurer of state shall deposit the nonrefundable
10 application fees received from the IEDC under this section in the
11 state general fund.

12 **Sec. 8.** The department shall recapture part of the credit
13 provided by this chapter from an entity that claims the credit on a
14 return, to the extent any of the following apply:

15 (1) Any amount of a federal tax credit available with respect
16 to a qualified equity investment that is eligible for a credit
17 under this chapter is recaptured under Section 45D of the
18 Internal Revenue Code. If this subdivision applies, the
19 recapture amount is proportionate to the federal recapture
20 amount with respect to the qualified equity investment.

21 (2) The issuer redeems or makes principal repayment with
22 respect to a qualified equity investment prior to the seventh
23 anniversary on which the qualified equity investment is made.
24 If this subdivision applies, the recapture amount is
25 proportionate to the amount of the redemption or repayment
26 with respect to the qualified equity investment.

27 (3) The issuer fails to invest an amount equal to eighty-five
28 percent (85%) of the purchase price of the qualified equity
29 investment in qualified low income community investments in
30 Indiana within twelve (12) months of the issuance of the
31 qualified equity investment and maintain at least eighty-five
32 percent (85%) of the level of investment in qualified low
33 income community investments in Indiana until the last credit
34 allowance date for the qualified equity investment. For
35 purposes of this subdivision, an investment is considered held
36 by an issuer even if the investment has been sold or repaid if
37 the issuer reinvests an amount equal to the capital returned to
38 or recovered by the issuer from the original investment,
39 exclusive of any profits realized, in another qualified low
40 income community investment within twelve (12) months of
41 the receipt of the capital. An issuer is not required to reinvest
42 capital returned from qualified low income community

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1 investments after the sixth anniversary of the issuance of the
 2 qualified equity investment, the proceeds of which were used
 3 to make the qualified low income community investment, and
 4 the qualified low income community investment is considered
 5 held by the issuer through the seventh anniversary of the
 6 qualified equity investment's issuance.

7 (4) At any time before the final credit allowance date of a
 8 qualified equity investment, the issuer uses the cash proceeds
 9 of the qualified equity investment to make qualified low
 10 income community investments in any one (1) qualified active
 11 low income community business, including affiliated qualified
 12 active low income community businesses, in excess of ten
 13 million dollars (\$10,000,000) of cash proceeds of the qualified
 14 equity investment, exclusive of reinvestments of capital
 15 returned or repaid with respect to earlier investments in the
 16 qualified active low income community business and its
 17 affiliates.

18 **Sec. 9.** A recapture provision described in section 8 of this
 19 chapter is subject to a six (6) month cure period. The department
 20 may not take action to recapture part of the credit provided by this
 21 chapter in a circumstance described in section 8 of this chapter
 22 until the qualified community development entity is given notice of
 23 noncompliance and afforded six (6) months from the date of the
 24 notice to cure the noncompliance.

25 **Sec. 10. (a)** As used in this section, "fund" refers to the new
 26 markets performance guarantee fund established in subsection (b).

27 (b) The new markets performance guarantee fund is established
 28 within the state treasury.

29 (c) The fund consists of fees paid under this chapter by qualified
 30 community development entities to the state under section 11 of
 31 this chapter.

32 (d) The treasurer of state shall administer the fund.

33 (e) Money in the fund at the end of a state fiscal year does not
 34 revert to the state general fund.

35 (f) The treasurer of state shall hold a fee deposited in the fund
 36 until a determination is made whether a qualified community
 37 development entity that paid the fee has complied with the
 38 requirements of section 11(b) of this chapter. If the treasurer of
 39 state receives notice from the department under section 11(d) of
 40 this chapter that a qualified community development entity is no
 41 longer eligible for a refund of the fee, the treasurer of state shall
 42 transfer the qualified community development entity's fee from the

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fund to the state general fund.

Sec. 11. (a) A qualified community development entity seeking to have an equity investment or long term debt security designated as a qualified equity investment that is eligible for tax credits under this chapter must pay a fee in the amount of five hundred thousand dollars (\$500,000) to the IEDC. The IEDC shall transfer a fee payable under this subsection to the treasurer of state for deposit in the new markets performance guarantee fund.

(b) A qualified community development entity that has had an equity investment or long term debt security designated as a qualified equity investment eligible for tax credits under this chapter must meet the following requirements:

(1) The qualified community development entity and its subsidiary qualified community development entities must:

(A) issue the total amount of qualified equity investments certified by the IEDC under this chapter; and

(B) receive cash in the total amount certified under section 7(c) of this chapter.

(2) The qualified community development entity or any subsidiary qualified community development entity that issues a qualified equity investment certified under this chapter must meet the investment requirement under section 8(3) of this chapter before the second credit allowance date of the qualified equity investment.

(c) If the department determines that a qualified community development entity has met the conditions specified in subsection (b), the department shall notify the qualified community development entity and the auditor of state that the qualified community development entity is entitled to a refund of the fee paid under subsection (a). The auditor of state shall then issue a warrant to the qualified community development entity for the amount of the fee paid by the qualified community development entity under subsection (a).

(d) If the department determines that a qualified community development entity has failed to meet the conditions specified in subsection (b), the department shall notify the qualified community development entity. The qualified community development entity then has six (6) months from the date the notice is issued to cure the qualified community development entity's noncompliance with the conditions specified in subsection (b). If at the end of the six (6) month cure period, the department determines that the qualified community development entity has met the conditions specified in

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1 subsection (b), the department shall proceed as directed in
 2 subsection (c). If at the end of the six (6) month cure period, the
 3 department determines that the qualified community development
 4 entity has failed to meet the conditions specified in subsection (b),
 5 the department shall notify the qualified community development
 6 entity, the treasurer of state, and the auditor of state that the
 7 qualified community development entity is no longer eligible for a
 8 refund of the fee.

9 Sec. 12. (a) As used in this section, "letter ruling" means a
 10 written interpretation of law as applied to a specific set of facts
 11 submitted by an entity requesting the interpretation.

12 (b) The IEDC shall issue letter rulings regarding the credit
 13 provided by this chapter, subject to the terms and conditions set
 14 forth in this section.

15 (c) The IEDC shall respond to a request for a letter ruling
 16 within sixty (60) days after receiving the request. The applicant
 17 may provide a draft letter ruling for the IEDC's consideration. The
 18 applicant may withdraw the request for a letter ruling, in writing,
 19 prior to the issuance of the letter ruling. The IEDC may refuse to
 20 issue a letter ruling for good cause, but must state the specific
 21 reasons for refusing to issue the letter ruling. Good cause includes
 22 the following:

- 23 (1) The applicant is requesting that the IEDC determine
 24 whether a statute is constitutional or a regulation is lawful.
- 25 (2) The request involves a hypothetical situation or alternative
 26 plans.
- 27 (3) The facts or issues presented in the request are unclear,
 28 overbroad, insufficient, or otherwise inappropriate as a basis
 29 upon which to issue a letter ruling.
- 30 (4) The issue is currently being considered in a rulemaking
 31 procedure, contested case, or other agency or judicial
 32 proceeding that may definitely resolve the issue.

33 (d) Letter rulings bind the IEDC, its agents and their successors,
 34 and the department until after the entity or its shareholders,
 35 members, or partners, as applicable, claim all of the credits on an
 36 Indiana tax return, subject to the terms and conditions set forth in
 37 properly published regulations. A letter ruling applies only to the
 38 applicant for the letter ruling.

39 (e) In rendering letter rulings and making other determinations
 40 under this chapter, to the extent applicable, the IEDC shall look for
 41 guidance to Section 45D of the Internal Revenue Code and the
 42 regulations issued under Section 45D of the Internal Revenue

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1 **Code.**
2 **Sec. 13. An entity claiming a credit under this chapter is not**
3 **required to pay any additional tax as a result of claiming the credit,**
4 **including the tax levied under IC 27-1-20-12.**
5 **SECTION 2. An emergency is declared for this act.**

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