

By: Senator(s) Fillingane, Horhn

To: Finance

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2373

1 AN ACT TO AMEND SECTION 57-105-1, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE CREDIT ALLOWANCE DATE FOR THE INCOME TAX AND  
3 INSURANCE PREMIUM TAX CREDITS FOR TAXPAYERS HOLDING CERTAIN  
4 QUALIFIED INVESTMENTS; TO INCREASE FROM 60 TO 120 DAYS THE PERIOD  
5 OF TIME AFTER THE MISSISSIPPI DEVELOPMENT AUTHORITY HAS ALLOCATED  
6 SUCH CREDITS TO A QUALIFIED COMMUNITY DEVELOPMENT ENTITY THAT THE  
7 CORRESPONDING QUALIFIED LOW-INCOME COMMUNITY INVESTMENT MUST BE  
8 ISSUED; TO EXTEND UNTIL JANUARY 1, 2018, THE DATE AFTER WHICH THE  
9 MISSISSIPPI DEVELOPMENT AUTHORITY SHALL NOT ALLOCATE SUCH CREDITS;  
10 TO MAKE IT CLEAR THAT MUNICIPAL AIRPORT AUTHORITIES ARE INCLUDED  
11 WITHIN THE DEFINITION OF THE TERM "PUBLIC ENTITY" OR "PUBLIC  
12 ENTITIES" FOR PURPOSES OF THE PROVISION THAT AUTHORIZES THE  
13 CREATION OF PUBLIC BENEFIT CORPORATIONS UNDER THIS SECTION; AND  
14 FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** Section 57-105-1, Mississippi Code of 1972, is  
17 amended as follows:

18 57-105-1. (1) As used in this section:

19 (a) "Adjusted purchase price" means the investment in  
20 the qualified community development entity for the qualified  
21 equity investment, substantially all of the proceeds of which are  
22 used to make qualified low-income community investments in  
23 Mississippi.



24 For the purposes of calculating the amount of qualified  
25 low-income community investments held by a qualified community  
26 development entity, an investment will be considered held by a  
27 qualified community development entity even if the investment has  
28 been sold or repaid; provided that the qualified community  
29 development entity reinvests an amount equal to the capital  
30 returned to or recovered by the qualified community development  
31 entity from the original investment, exclusive of any profits  
32 realized, in another qualified low-income community investment in  
33 Mississippi, including any federal Indian reservation located  
34 within the geographical boundary of Mississippi within twelve (12)  
35 months of the receipt of such capital. A qualified community  
36 development entity will not be required to reinvest capital  
37 returned from the qualified low-income community investments after  
38 the sixth anniversary of the issuance of the qualified equity  
39 investment, the proceeds of which were used to make the qualified  
40 low-income community investment, and the qualified low-income  
41 community investment will be considered held by the qualified  
42 community development entity through the seventh anniversary of  
43 the qualified equity investment's issuance.

44 (b) "Applicable percentage" means:

45 (i) For any equity investment issued prior to July  
46 1, 2008, four percent (4%) for each of the second through seventh  
47 credit allowance dates for purposes of the taxes imposed by  
48 Section 27-7-5 and one and one-third percent (1-1/3%) for each of



49 the second through seventh credit allowance dates for purposes of  
50 the taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123.

51 (ii) For any equity investment issued from and  
52 after July 1, 2008, eight percent (8%) for each of the first  
53 through third credit allowance dates for purposes of the taxes  
54 imposed by Section 27-7-5 or the taxes imposed by Sections  
55 27-15-103, 27-15-109 and 27-15-123.

56 (c) "Credit allowance date" means, with respect to any  
57 qualified equity investment:

58 (i) The later of:

59 1. The date upon which the qualified equity  
60 investment is initially made; or

61 2. \* \* \* The date \* \* \* upon which the  
62 Mississippi Development Authority issues a certificate under  
63 subsection (4) of this section \* \* \*; and

64 (ii) 1. For equity investments issued prior to  
65 July 1, 2008, each of the subsequent six (6) anniversary dates of  
66 the date upon which the investment is initially made; or

67 2. For equity investments issued from and  
68 after July 1, 2008, each of the subsequent two (2) anniversary  
69 dates of the date \* \* \* determined as provided for in subparagraph  
70 (i) of this paragraph.

71 (d) "Qualified community development entity" shall have  
72 the meaning ascribed to such term in Section 45D of the Internal  
73 Revenue Code of 1986, as amended, if the entity has entered into



74 an Allocation Agreement with the Community Development Financial  
75 Institutions Fund of the United States Department of the Treasury  
76 with respect to credits authorized by Section 45D of the Internal  
77 Revenue Code of 1986, as amended.

78 (e) "Qualified active low-income community business"  
79 shall have the meaning ascribed to such term in Section 45D of the  
80 Internal Revenue Code of 1986, as amended.

81 (f) "Qualified equity investment" shall have the  
82 meaning ascribed to such term in Section 45D of the Internal  
83 Revenue Code of 1986, as amended. The investment does not have to  
84 be designated as a qualified equity investment by the Community  
85 Development Financial Institutions Fund of the United States  
86 Treasury to be considered a qualified equity investment under this  
87 section but otherwise must meet the definition under the Internal  
88 Revenue Code. In addition to meeting the definition in Section  
89 45D of the Internal Revenue Code such investment must also:

90 (i) Have been acquired after January 1, 2007, at  
91 its original issuance solely in exchange for cash; and

92 (ii) Have been allocated by the Mississippi  
93 Development Authority.

94 For the purposes of this section, such investment shall be  
95 deemed a qualified equity investment on the later of the date such  
96 qualified equity investment is made or the date on which the  
97 Mississippi Development Authority issues a certificate under



98 subsection (4) of this section allocating credits based on such  
99 investment.

100 (g) "Qualified low-income community investment" shall  
101 have the meaning ascribed to such term in Section 45D of the  
102 Internal Revenue Code of 1986, as amended; provided, however, that  
103 the maximum amount of qualified low-income community investments  
104 issued for a single qualified active low-income community  
105 business, on an aggregate basis with all of its affiliates, that  
106 may be included for purposes of allocating any credits under this  
107 section shall not exceed Ten Million Dollars (\$10,000,000.00), in  
108 the aggregate, whether issued by one (1) or several qualified  
109 community development entities.

110 (2) A taxpayer that holds a qualified equity investment on  
111 the credit allowance date \* \* \* shall be entitled to a credit  
112 applicable against the taxes imposed by Sections 27-7-5,  
113 27-15-103, 27-15-109 and 27-15-123 during the taxable year that  
114 includes the credit allowance date. The amount of the credit  
115 shall be equal to the applicable percentage of the adjusted  
116 purchase price paid to the qualified community development entity  
117 for the qualified equity investment. The amount of the credit  
118 that may be utilized in any one (1) tax year shall be limited to  
119 an amount not greater than the total tax liability of the taxpayer  
120 for the taxes imposed by the above-referenced sections. The  
121 credit shall not be refundable or transferable. Any unused  
122 portion of the credit may be carried forward for seven (7) taxable



123 years beyond the credit allowance date on which the credit was  
124 earned. The maximum aggregate amount of qualified equity  
125 investments that may be allocated by the Mississippi Development  
126 Authority may not exceed an amount that would result in taxpayers  
127 claiming in any one (1) state fiscal year credits in excess of  
128 Fifteen Million Dollars (\$15,000,000.00), exclusive of credits  
129 that might be carried forward from previous taxable years;  
130 however, a maximum of one-third (1/3) of this amount may be  
131 allocated as credits for taxes imposed by Sections 27-15-103,  
132 27-15-109 and 27-15-123. Any taxpayer claiming a credit under  
133 this section against the taxes imposed by Sections 27-7-5,  
134 27-15-103, 27-15-109 and 27-15-123 shall not be required to pay  
135 any additional tax under Section 27-15-123 as a result of claiming  
136 such credit. The Mississippi Development Authority shall allocate  
137 credits within this limit as provided for in subsection (4) of  
138 this section.

139 (3) Tax credits authorized by this section that are earned  
140 by a partnership, limited liability company, S corporation or  
141 other similar pass-through entity, shall be allocated among all  
142 partners, members or shareholders, respectively, either in  
143 proportion to their ownership interest in such entity or as the  
144 partners, members or shareholders mutually agree as provided in an  
145 executed document. Such allocation shall be made each taxable  
146 year of such pass-through entity which contains a credit allowance  
147 date.



148           (4) The qualified community development entity shall apply  
149 for credits with the Mississippi Development Authority on forms  
150 prescribed by the Mississippi Development Authority. The  
151 qualified community development entity must pay an application fee  
152 of One Thousand Dollars (\$1,000.00) to the Mississippi Development  
153 Authority at the time the application is submitted. In the  
154 application the qualified community development entity shall  
155 certify to the Mississippi Development Authority the dollar amount  
156 of the qualified equity investments made or to be made in this  
157 state, including in any federal Indian reservation located within  
158 the state's geographical boundary, during the first twelve-month  
159 period following the initial credit allowance date. The  
160 Mississippi Development Authority shall allocate credits based on  
161 the dollar amount of qualified equity investments as certified in  
162 the application. Once the Mississippi Development Authority has  
163 allocated credits to a qualified community development entity, if  
164 the corresponding qualified equity investment has not been issued  
165 as of the date of such allocation, then the corresponding  
166 qualified equity investment must be issued not later than \* \* \*  
167 one hundred twenty (120) days from the date of such allocation.  
168 If the qualified equity investment is not issued within such time  
169 period, the allocation shall be cancelled and returned to the  
170 Mississippi Development Authority for reallocation. Upon final  
171 documentation of the qualified low-income community investments,  
172 if the actual dollar amount of the investments is lower than the



173 amount estimated, the Mississippi Development Authority shall  
174 adjust the tax credit allowed under this section. The Department  
175 of Revenue may recapture all of the credit allowed under this  
176 section if:

177 (a) Any amount of federal tax credits available with  
178 respect to a qualified equity investment that is eligible for a  
179 tax credit under this section is recaptured under Section 45D of  
180 the Internal Revenue Code of 1986, as amended; or

181 (b) The qualified community development entity redeems  
182 or makes any principal repayment with respect to a qualified  
183 equity investment prior to the seventh anniversary of the issuance  
184 of the qualified equity investment; or

185 (c) The qualified community development entity fails to  
186 maintain at least eighty-five percent (85%) of the proceeds of the  
187 qualified equity investment in qualified low-income community  
188 investments in Mississippi at any time prior to the seventh  
189 anniversary of the issuance of the qualified equity investment.

190 Any credits that are subject to recapture under this  
191 subsection shall be recaptured from the taxpayer that actually  
192 claimed the credit.

193 The Mississippi Development Authority shall not allocate any  
194 credits under this section after January 1, \* \* \* 2018.

195 (5) Each qualified community development entity that  
196 receives qualified equity investments to make qualified low-income  
197 community investments in Mississippi must annually report to the





198 Mississippi Development Authority the North American Industry  
199 Classification System Code, the county, the dollars invested, the  
200 number of jobs assisted and the number of jobs assisted with wages  
201 over one hundred percent (100%) of the federal poverty level for a  
202 family of four (4) of each qualified low-income community  
203 investment.

204 (6) The Mississippi Development Authority shall file an  
205 annual report on all qualified low-income community investments  
206 with the Governor, the Clerk of the House of Representatives, the  
207 Secretary of the Senate and the Secretary of State describing the  
208 North American Industry Classification System Code, the county,  
209 the dollars invested, the number of jobs assisted and the number  
210 of jobs assisted with wages over one hundred percent (100%) of the  
211 federal poverty level for a family of four (4) of each qualified  
212 low-income community investment. The annual report will be posted  
213 on the Mississippi Development Authority's Internet website.

214 (7) (a) The purpose of this subsection is to authorize the  
215 creation and establishment of public benefit corporations for  
216 financing arrangements regarding public property and facilities.

217 (b) As used in this subsection:

218 (i) "New Markets Tax Credit transaction" means any  
219 financing transaction which utilizes either this section or  
220 Section 45D of the Internal Revenue Code of 1986, as amended.



221 (ii) "Public benefit corporation" means a  
222 nonprofit corporation formed or designated by a public entity to  
223 carry out the purposes of this subsection.

224 (iii) "Public entity or public entities" includes  
225 utility districts, regional solid waste authorities, regional  
226 utility authorities, community hospitals, regional airport  
227 authorities, municipal airport authorities, community and junior  
228 colleges, educational building corporations established by or on  
229 behalf of the state institutions of higher learning, school  
230 districts, planning and development districts, county economic  
231 development districts, urban renewal agencies, any other regional  
232 or local economic development authority, agency or governmental  
233 entity, and any other regional or local industrial development  
234 authority, agency or governmental entity.

235 (iv) "Public property or facilities" means any  
236 property or facilities owned or leased by a public entity or  
237 public benefit corporation.

238 ( \* \* \*c) Notwithstanding any other provision of law to  
239 the contrary, public entities are authorized pursuant to this  
240 subsection to create one or more public benefit corporations or  
241 designate an existing corporation as a public benefit corporation  
242 for the purpose of entering into financing agreements and engaging  
243 in New Markets Tax Credit transactions, which shall include,  
244 without limitation, arrangements to plan, acquire, renovate,  
245 construct, lease, sublease, manage, operate and/or improve new or



246 existing public property or facilities located within the  
247 boundaries or service area of the public entity. Any financing  
248 arrangement authorized under this subsection shall further any  
249 purpose of the public entity and may include a term of up to fifty  
250 (50) years.

251 (d) Notwithstanding any other provision of law to the  
252 contrary and in order to facilitate the acquisition, renovation,  
253 construction, leasing, subleasing, management, operating and/or  
254 improvement of new or existing public property or facilities to  
255 further any purpose of a public entity, public entities are  
256 authorized to enter into financing arrangements in order to  
257 transfer public property or facilities to and/or from public  
258 benefit corporations, including, without limitation, sales,  
259 sale-leasebacks, leases and lease-leasebacks, provided such  
260 transfer is related to any New Markets Tax Credit transaction  
261 furthering any purpose of the public entity. Any such transfer  
262 under this paragraph (d) and the public property or facilities  
263 transferred in connection therewith shall be exempted from any  
264 limitation or requirements with respect to leasing, acquiring,  
265 and/or constructing public property or facilities.

266 (e) With respect to a New Markets Tax Credit  
267 transaction, public entities and public benefit corporations are  
268 authorized to enter into financing arrangements with any  
269 governmental, nonprofit or for-profit entity in order to leverage  
270 funds not otherwise available to public entities for the



271 acquisition, construction and/or renovation of properties  
272 transferred to such public benefit corporations. The use of any  
273 funds loaned by or contributed by a public benefit corporation or  
274 borrowed by or otherwise made available to a public benefit  
275 corporation in such financing arrangement shall be dedicated  
276 solely to (i) the development of new properties or facilities  
277 and/or the renovation of existing properties or facilities or  
278 operation of properties or facilities, and/or (ii) the payment of  
279 costs and expenditures related to any such financing arrangements  
280 including, but not limited to, funding any reserves required in  
281 connection therewith, the repayment of any indebtedness incurred  
282 in connection therewith, and the payment of fees and expenses  
283 incurred in connection with the closing, administration,  
284 accounting and/or compliance with respect to the New Markets Tax  
285 Credit transaction.

286 (f) A public benefit corporation created pursuant to  
287 this subsection shall not be a political subdivision of the state  
288 but shall be a nonprofit corporation organized and governed under  
289 the provisions of the laws of this state and shall be a special  
290 purpose corporation established to facilitate New Markets Tax  
291 Credit transactions consistent with the requirements of this  
292 section.

293 (g) Neither this subsection nor anything herein  
294 contained is or shall be construed as a restriction or limitation  
295 upon any powers which the public entity or public benefit



296 corporation might otherwise have under any laws of this state, and  
297 this subsection is cumulative to any such powers. This subsection  
298 does and shall be construed to provide a complete additional and  
299 alternative method for the doing of the things authorized thereby  
300 and shall be regarded as supplemental and additional to powers  
301 conferred by other laws.

302 (8) The Mississippi Development Authority shall promulgate  
303 rules and regulations to implement the provisions of this section.

304 **SECTION 2.** This act shall take effect and be in force from  
305 and after January 1, 2014.

