

By: Representative Lamar

To: Ways and Means

HOUSE BILL NO. 1242

1 AN ACT TO AMEND SECTION 57-105-1, MISSISSIPPI CODE OF 1972,
2 TO EXTEND UNTIL JULY 1, 2029, THE DATE AFTER WHICH THE MISSISSIPPI
3 DEVELOPMENT AUTHORITY SHALL NOT ALLOCATE INCOME TAX AND INSURANCE
4 PREMIUM TAX CREDITS FOR TAXPAYERS HOLDING CERTAIN QUALIFIED
5 INVESTMENTS; AND FOR RELATED PURPOSES.

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

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

9 57-105-1. (1) As used in this section:

10 (a) "Adjusted purchase price" means the investment in
11 the qualified community development entity for the qualified
12 equity investment, substantially all of the proceeds of which are
13 used to make qualified low-income community investments in
14 Mississippi.

15 For the purposes of calculating the amount of qualified
16 low-income community investments held by a qualified community
17 development entity, an investment will be considered held by a
18 qualified community development entity even if the investment has
19 been sold or repaid; provided that the qualified community



development entity reinvests an amount equal to the capital returned to or recovered by the qualified community development entity from the original investment, exclusive of any profits realized, in another qualified low-income community investment in Mississippi, including any federal Indian reservation located within the geographical boundary of Mississippi within twelve (12) months of the receipt of such capital. A qualified community development entity will not be required to reinvest capital returned from the qualified low-income community investments after the sixth anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment will be considered held by the qualified community development entity through the seventh anniversary of the qualified equity investment's issuance.

(b) "Applicable percentage" means:

(i) For any equity investment issued prior to July 1, 2008, four percent (4%) for each of the second through seventh credit allowance dates for purposes of the taxes imposed by Section 27-7-5 and one and one-third percent (1-1/3%) for each of the second through seventh credit allowance dates for purposes of the taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123.

(ii) For any equity investment issued from and after July 1, 2008, eight percent (8%) for each of the first through third credit allowance dates for purposes of the taxes



imposed by Section 27-7-5 or the taxes imposed by Sections
27-15-103, 27-15-109 and 27-15-123.

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

(i) The later of:

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

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

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

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

(d) "Qualified community development entity" shall have
the meaning ascribed to such term in Section 45D of the Internal
Revenue Code of 1986, as amended, if the entity has entered into
an Allocation Agreement with the Community Development Financial
Institutions Fund of the United States Department of the Treasury
with respect to credits authorized by Section 45D of the Internal
Revenue Code of 1986, as amended.



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

72 (f) "Qualified equity investment" shall have the
73 meaning ascribed to such term in Section 45D of the Internal
74 Revenue Code of 1986, as amended. The investment does not have to
75 be designated as a qualified equity investment by the Community
76 Development Financial Institutions Fund of the United States
77 Treasury to be considered a qualified equity investment under this
78 section but otherwise must meet the definition under the Internal
79 Revenue Code. In addition to meeting the definition in Section
80 45D of the Internal Revenue Code such investment must also:

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

83 (ii) Have been allocated by the Mississippi
84 Development Authority.

85 For the purposes of this section, such investment shall be
86 deemed a qualified equity investment on the later of the date such
87 qualified equity investment is made or the date on which the
88 Mississippi Development Authority issues a certificate under
89 subsection (4) of this section allocating credits based on such
90 investment.

91 (g) "Qualified low-income community investment" shall
92 have the meaning ascribed to such term in Section 45D of the
93 Internal Revenue Code of 1986, as amended; provided, however, that



94 the maximum amount of qualified low-income community investments
95 issued for a single qualified active low-income community
96 business, on an aggregate basis with all of its affiliates, that
97 may be included for purposes of allocating any credits under this
98 section shall not exceed Ten Million Dollars (\$10,000,000.00), in
99 the aggregate, whether issued by one (1) or several qualified
100 community development entities.

101 (2) A taxpayer that holds a qualified equity investment on
102 the credit allowance date shall be entitled to a credit applicable
103 against the taxes imposed by Sections 27-7-5, 27-15-103, 27-15-109
104 and 27-15-123 during the taxable year that includes the credit
105 allowance date. The amount of the credit shall be equal to the
106 applicable percentage of the adjusted purchase price paid to the
107 qualified community development entity for the qualified equity
108 investment. The amount of the credit that may be utilized in any
109 one (1) tax year shall be limited to an amount not greater than
110 the total tax liability of the taxpayer for the taxes imposed by
111 the above-referenced sections. The credit shall not be refundable
112 or transferable. Any unused portion of the credit may be carried
113 forward for seven (7) taxable years beyond the credit allowance
114 date on which the credit was earned. The maximum aggregate amount
115 of qualified equity investments that may be allocated by the
116 Mississippi Development Authority may not exceed an amount that
117 would result in taxpayers claiming in any one (1) state fiscal
118 year credits in excess of Fifteen Million Dollars



(\$15,000,000.00), exclusive of credits that might be carried forward from previous taxable years; however, a maximum of one-third (1/3) of this amount may be allocated as credits for taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123. Any taxpayer claiming a credit under this section against the taxes imposed by Sections 27-7-5, 27-15-103, 27-15-109 and 27-15-123 shall not be required to pay any additional tax under Section 27-15-123 as a result of claiming such credit. The Mississippi Development Authority shall allocate credits within this limit as provided for in subsection (4) of this section.

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

(4) The qualified community development entity shall apply for credits with the Mississippi Development Authority on forms prescribed by the Mississippi Development Authority. The qualified community development entity must pay an application fee of One Thousand Dollars (\$1,000.00) to the Mississippi Development Authority at the time the application is submitted. In the



144 application the qualified community development entity shall
145 certify to the Mississippi Development Authority the dollar amount
146 of the qualified equity investments made or to be made in this
147 state, including in any federal Indian reservation located within
148 the state's geographical boundary, during the first twelve-month
149 period following the initial credit allowance date. The
150 Mississippi Development Authority shall allocate credits based on
151 the dollar amount of qualified equity investments as certified in
152 the application. Once the Mississippi Development Authority has
153 allocated credits to a qualified community development entity, if
154 the corresponding qualified equity investment has not been issued
155 as of the date of such allocation, then the corresponding
156 qualified equity investment must be issued not later than one
157 hundred twenty (120) days from the date of such allocation. If
158 the qualified equity investment is not issued within such time
159 period, the allocation shall be cancelled and returned to the
160 Mississippi Development Authority for reallocation. Upon final
161 documentation of the qualified low-income community investments,
162 if the actual dollar amount of the investments is lower than the
163 amount estimated, the Mississippi Development Authority shall
164 adjust the tax credit allowed under this section. The Department
165 of Revenue may recapture all of the credit allowed under this
166 section if:

167 (a) Any amount of federal tax credits available with
168 respect to a qualified equity investment that is eligible for a



tax credit under this section is recaptured under Section 45D of the Internal Revenue Code of 1986, as amended; or

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

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

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

The Mississippi Development Authority shall not allocate any credits under this section after July 1, * * *2029.

(5) Each qualified community development entity that receives qualified equity investments to make qualified low-income community investments in Mississippi must annually report to the Mississippi Development Authority the North American Industry Classification System Code, the county, the dollars invested, the number of jobs assisted and the number of jobs assisted with wages over one hundred percent (100%) of the federal poverty level for a family of four (4) of each qualified low-income community investment.



194 (6) The Mississippi Development Authority shall file an
195 annual report on all qualified low-income community investments
196 with the Governor, the Clerk of the House of Representatives, the
197 Secretary of the Senate and the Secretary of State describing the
198 North American Industry Classification System Code, the county,
199 the dollars invested, the number of jobs assisted and the number
200 of jobs assisted with wages over one hundred percent (100%) of the
201 federal poverty level for a family of four (4) of each qualified
202 low-income community investment. The annual report will be posted
203 on the Mississippi Development Authority's Internet website.

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

207 (b) As used in this subsection:

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

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

214 (iii) "Public entity or public entities" includes
215 utility districts, regional solid waste authorities, regional
216 utility authorities, community hospitals, regional airport
217 authorities, municipal airport authorities, community and junior
218 colleges, educational building corporations established by or on



219 behalf of the state institutions of higher learning, school
220 districts, planning and development districts, county economic
221 development districts, urban renewal agencies, any other regional
222 or local economic development authority, agency or governmental
223 entity, and any other regional or local industrial development
224 authority, agency or governmental entity.

225 (iv) "Public property or facilities" means any
226 property or facilities owned or leased by a public entity or
227 public benefit corporation.

228 (c) Notwithstanding any other provision of law to the
229 contrary, public entities are authorized pursuant to this
230 subsection to create one or more public benefit corporations or
231 designate an existing corporation as a public benefit corporation
232 for the purpose of entering into financing agreements and engaging
233 in New Markets Tax Credit transactions, which shall include,
234 without limitation, arrangements to plan, acquire, renovate,
235 construct, lease, sublease, manage, operate and/or improve new or
236 existing public property or facilities located within the
237 boundaries or service area of the public entity. Any financing
238 arrangement authorized under this subsection shall further any
239 purpose of the public entity and may include a term of up to fifty
240 (50) years.

241 (d) Notwithstanding any other provision of law to the
242 contrary and in order to facilitate the acquisition, renovation,
243 construction, leasing, subleasing, management, operating and/or



244 improvement of new or existing public property or facilities to
245 further any purpose of a public entity, public entities are
246 authorized to enter into financing arrangements in order to
247 transfer public property or facilities to and/or from public
248 benefit corporations, including, without limitation, sales,
249 sale-leasebacks, leases and lease-leasebacks, provided such
250 transfer is related to any New Markets Tax Credit transaction
251 furthering any purpose of the public entity. Any such transfer
252 under this paragraph (d) and the public property or facilities
253 transferred in connection therewith shall be exempted from any
254 limitation or requirements with respect to leasing, acquiring,
255 and/or constructing public property or facilities.

256 (e) With respect to a New Markets Tax Credit
257 transaction, public entities and public benefit corporations are
258 authorized to enter into financing arrangements with any
259 governmental, nonprofit or for-profit entity in order to leverage
260 funds not otherwise available to public entities for the
261 acquisition, construction and/or renovation of properties
262 transferred to such public benefit corporations. The use of any
263 funds loaned by or contributed by a public benefit corporation or
264 borrowed by or otherwise made available to a public benefit
265 corporation in such financing arrangement shall be dedicated
266 solely to (i) the development of new properties or facilities
267 and/or the renovation of existing properties or facilities or
268 operation of properties or facilities, and/or (ii) the payment of



costs and expenditures related to any such financing arrangements, including, but not limited to, funding any reserves required in connection therewith, the repayment of any indebtedness incurred in connection therewith, and the payment of fees and expenses incurred in connection with the closing, administration, accounting and/or compliance with respect to the New Markets Tax Credit transaction.

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

(g) Neither this subsection nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the public entity or public benefit corporation might otherwise have under any laws of this state, and this subsection is cumulative to any such powers. This subsection does and shall be construed to provide a complete additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws.

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



294 **SECTION 2.** This act shall take effect and be in force from
295 and after its passage.

