

By: Senator(s) Johnson

To: Finance

## SENATE BILL NO. 2829

1       AN ACT TO AMEND SECTION 57-105-1, MISSISSIPPI CODE OF 1972,  
2 TO RENEW AND EXTEND THE AUTHORITY OF THE MISSISSIPPI DEVELOPMENT  
3 AUTHORITY TO ALLOCATE INCOME AND INSURANCE PREMIUM TAX CREDITS FOR  
4 QUALIFIED EQUITY INVESTMENTS THROUGH QUALIFIED COMMUNITY  
5 DEVELOPMENT ENTITIES; 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

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

35 (b) "Applicable percentage" means:

36 (i) For any equity investment issued prior to July  
37 1, 2008, four percent (4%) for each of the second through seventh  
38 credit allowance dates for purposes of the taxes imposed by  
39 Section 27-7-5 and one and one-third percent (1-1/3%) for each of  
40 the second through seventh credit allowance dates for purposes of  
41 the taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123.

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



45 imposed by Section 27-7-5 or the taxes imposed by Sections  
46 27-15-103, 27-15-109 and 27-15-123.

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

49 (i) The later of:

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

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

55 (ii) 1. For equity investments issued prior to  
56 July 1, 2008, each of the subsequent six (6) anniversary dates of  
57 the date upon which the investment is initially made; or  
58 2. For equity investments issued from and  
59 after July 1, 2008, each of the subsequent two (2) anniversary  
60 dates of the date determined as provided for in subparagraph (i)  
61 of this paragraph.

62 (d) "Qualified community development entity" shall have  
63 the meaning ascribed to such term in Section 45D of the Internal  
64 Revenue Code of 1986, as amended, if the entity has entered into  
65 an Allocation Agreement with the Community Development Financial  
66 Institutions Fund of the United States Department of the Treasury  
67 with respect to credits authorized by Section 45D of the Internal  
68 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.

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



119       (\$15,000,000.00), exclusive of credits that might be carried  
120       forward from previous taxable years; however, a maximum of  
121       one-third (1/3) of this amount may be allocated as credits for  
122       taxes imposed by Sections 27-15-103, 27-15-109 and 27-15-123. Any  
123       taxpayer claiming a credit under this section against the taxes  
124       imposed by Sections 27-7-5, 27-15-103, 27-15-109 and 27-15-123  
125       shall not be required to pay any additional tax under Section  
126       27-15-123 as a result of claiming such credit. The Mississippi  
127       Development Authority shall allocate credits within this limit as  
128       provided for in subsection (4) of this section.

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

138               (4) The qualified community development entity shall apply  
139       for credits with the Mississippi Development Authority on forms  
140       prescribed by the Mississippi Development Authority. The  
141       qualified community development entity must pay an application fee  
142       of One Thousand Dollars (\$1,000.00) to the Mississippi Development  
143       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

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

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

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

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

183 The Mississippi Development Authority shall not allocate any  
184 credits under this section after July 1, \* \* \* 2028.

185 (5) Each qualified community development entity that  
186 receives qualified equity investments to make qualified low-income  
187 community investments in Mississippi must annually report to the  
188 Mississippi Development Authority the North American Industry  
189 Classification System Code, the county, the dollars invested, the  
190 number of jobs assisted and the number of jobs assisted with wages  
191 over one hundred percent (100%) of the federal poverty level for a  
192 family of four (4) of each qualified low-income community  
193 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.

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



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

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

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

292 (8) The Mississippi Development Authority shall promulgate  
293 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.

