

Assembly Bill No. 1399

Passed the Assembly August 29, 2014

Chief Clerk of the Assembly

Passed the Senate August 27, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 26011.9 to the Public Resources Code, and to add Section 18410.3 to, and to add and repeal Sections 12283, 17053.9, and 23622.9 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST

AB 1399, Medina. Income taxation: insurance taxation: credits: California New Markets Tax Credit.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. Existing law creates the California Competes Tax Credit Committee, which has specified duties in regard to tax credits for economic development. Existing law establishes the Governor’s Office of Business and Economic Development, also known as “GO-Biz,” to, among other duties, serve the Governor as the lead entity for economic strategy and the marketing of California on issues relating to business development, private sector investment, and economic growth.

Existing law imposes an annual tax on the gross premiums of an insurer, as defined, doing business in this state at specified rates.

This bill would allow a credit under the Personal Income Tax Law and the Corporation Tax Law, and a credit against the tax imposed on an insurer, in modified conformity with a federal New Markets Tax Credit, for taxable years beginning on or after January 1, 2015, and before January 1, 2027, in a specified amount for investments in low-income communities. The bill would limit the total annual amount of credit allowed pursuant to these provisions to an amount equal to any portion not granted under a specified sales and use tax exclusion, not to exceed \$40,000,000 per calendar year, and would limit the allocation of the credit to a cumulative total of no more than \$200,000,000, as provided. The bill would impose specified duties on the California Competes Tax Credit Committee and GO-Biz with regard to the application for, and allocation of, the credit. The bill would require GO-Biz to establish and impose reasonable fees upon entities that apply for the allocation of the credit, to be deposited in the California New

Markets Tax Credit Fund established by the bill, and use the revenue, upon appropriation by the Legislature, to defray the cost of applying to, and administering the program, as specified. The bill would specify that the credit would not be allowed unless the Legislature makes an appropriation from the fund.

The bill would provide that its provisions are severable.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) While many areas of California have recovered from the economic and community development impacts of the 2006 Financial Crisis and the 2010 global recession, Californians in a number of communities and neighborhoods are still experiencing their lingering effects. In some cases this has resulted in small and medium businesses in low-income areas lacking sufficient access to capital and technical assistance. Given that the state has many needs and limited resources, moneys from the private sector are necessary to fill this capital and investment gap.

(b) Initially enacted in 2000, the federal government established the New Markets Tax Credit (NMTC) Program, which uses a market-based approach for expanding capital and technical assistance to businesses in lower income communities. The federal program is jointly administered by the Community Development Financial Institutions Fund (CDFI Fund) and the Internal Revenue Service. The NMTC Program allocates federal tax incentives to community development entities (CDE), which they then use to attract private investors who contribute funds that can be used to finance and invest in businesses and develop real estate in low-income communities. Through the 2013–14 funding round, the CDFI Fund had awarded approximately \$40,000,000,000 in NMTC in 836 awards including \$3,000,000,000 in American Recovery and Investment Act of 2009 awards and \$1,000,000,000 of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone.

(c) The federal NMTC totals 39 percent of the original investment amount in the CDE and is claimed over a period of seven years (5 percent for each of the first three years, and 6 percent for each of the remaining four years). Any investment by

any taxpayer in the CDE redeemed before the end of the seven-year period will be recaptured.

(d) Fourteen states in the United States have adopted state programs using the NMTC model including Alabama, Florida, Illinois, Nevada, and Oregon. While some of the programs substantially mirror the federal program, others vary in both the percentage of the credit and some of the policies that form the foundation of the credit. One of the reasons cited for establishing state-level programs is to make a state more attractive to CDEs, which results in increasing the amount of federal NMTCs being utilized in a state. Further, several studies, including a January 1, 2011, case study by Pacific Community Ventures, showed that for every dollar of forgone tax revenue, the federal NMTC leverages \$12 to \$14 of private investment.

SEC. 2. Section 26011.9 is added to the Public Resources Code, to read:

26011.9. The authority shall make a determination of the amount of the one hundred million dollars (\$100,000,000) in exclusions not granted in the assigned calendar year pursuant to Section 26011.8. An amount equal to that amount shall be granted in the subsequent calendar year through the California New Markets Tax Credit Program pursuant to Sections 12283, 17053.9, and 23622.9 of the Revenue and Taxation Code. This section shall not prevent a taxpayer granted an exclusion pursuant to Section 6010.8 of the Revenue and Taxation Code from applying for, and receiving a refund for, taxes paid under Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 3. Section 12283 is added to the Revenue and Taxation Code, to read:

12283. (a) There is hereby created the California New Markets Tax Credit Program as provided in this section, Section 17053.9, and Section 23622.9. The purpose of this program is to stimulate private sector investment in lower income communities by providing a tax incentive to community and economic development entities that can be leveraged by the entity to attract private sector investment that in turn will be deployed by providing financing and technical assistance to small- and medium-size businesses and the development of commercial, industrial, and community development projects, including, but not limited to, facilities for nonprofit service organizations, light manufacturing, and mixed-use

and transit-oriented development. The committee and GO-Biz shall administer this program as provided in this section, Section 17053.9, and Section 23622.9. The Director of GO-Biz may delegate the administration of all or portions of the program within GO-Biz.

(b) (1) For taxable years beginning on or after January 1, 2015, and before January 1, 2027, and subject to subdivision (h), there shall be allowed as a credit against the tax described in Sections 12201, 12204, 12206, and 12209, an amount determined in accordance with Section 45D of the Internal Revenue Code, as modified as set forth in this section.

(2) (A) For purposes of this section, “committee” means the California Competes Tax Credit Committee established under Section 18410.2.

(B) For purposes of this section, “GO-Biz” means the Governor’s Office of Business and Economic Development.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) Section 45D(a)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting for “(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates” with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(2) (A) Section 45D(c)(1) of the Internal Revenue Code is modified to only include a qualified community development entity, that is certified by the Secretary of the Treasury, and its subsidiary qualified community development entities that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(B) Section 45D(c)(2) of the Internal Revenue Code is modified to only include a specialized small business investment company

or community development financial institution that entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(3) The term “qualified active low-income community business,” as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) By substituting “any low-income community in California” for “any low-income community” every place it appears in Section 45D of the Internal Revenue Code.

(B) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code is modified to allow the services of employees of a service-based qualified active low-income community business to be performed outside the low-income community. A service-based qualified active low-income community business is a business that primarily earns revenue through providing intangible products and services and leases or owns real property in the low-income community that is used for the operation of the business.

(C) A qualified active low-income community business shall not include any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (I) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (II) is the primary tenant of the real estate leased from the first business.

(D) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in one or more California low-income communities. The operating business shall meet all other conditions of a qualified active low-income community business, except as modified by this paragraph.

(E) A qualified active low-income community business shall only include a business located in census tracts with a poverty rate greater than 30 percent, or census tracts, if located within a non-metropolitan area, with a median family income that does not exceed 60 percent of median family income for the State of

California, or census tracts, if located within a metropolitan area, with a median family income that does not exceed 60 percent of the greater of the California median family income or the metropolitan area median family income, or census tracts with unemployment rates at least 1.5 times the national average.

(F) A qualified active low-income community business shall not include any business that operates or derives revenues from the operation of a country club, gaming establishment, massage parlor, liquor store, or golf course.

(G) A qualified active low-income community business shall not include a sexually oriented business. A “sexually oriented business” means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance. “Nude” means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of the genitals or, in the case of a female, any portion of the breasts below the top of the areola of the breasts.

(H) A qualified active low-income community business shall not include a charter school.

(4) Section 45D(f) of the Internal Revenue Code, relating to national limitation on amount of investments designated, is modified as follows:

(A) The following shall apply in lieu of the provisions of Section 45D(f)(1) of the Internal Revenue Code: “The aggregate amount of qualified equity investments that may be allocated in any calendar year for purposes of this section, Section 17053.9, and Section 23622.9 shall be an amount as determined by GO-Biz in consultation with the Department of Finance based upon any unused portion of the one hundred million dollars (\$100,000,000) in exclusions, authorized pursuant to Section 6010.8, as determined by the California Alternative Energy and Advanced Transportation Financing Authority and reported to the committee, not to exceed an amount based upon a credit of forty million dollars (\$40,000,000). The committee shall limit the allocation of investments that may be designated under this section, Section 17053.9, and Section 23622.9 to a cumulative total amount based on credits of no more than two hundred million dollars

(\$200,000,000). The allocation of any undesignated qualified equity investments shall be returned to the committee by March 1 of the year following allocation and the value of the undesignated qualified equity investment shall be available for allocation in the following calendar years in accordance with the application process. Any qualified equity investment attributable to recaptured credits shall be available to the committee on March 1 of the year following recapture and shall be available for allocation in the following calendar years in accordance with subparagraph (B) of paragraph (5). Reallocated qualified equity investments attributable to recapture credits shall not count against the annual or the cumulative limit.”

(B) The references to “the Secretary” in Section 45D(f)(2) of the Internal Revenue Code, relating to allocation of limitation, is modified to read “GO-Biz.”

(C) The last sentence of Section 45D(f)(3) of the Internal Revenue Code, relating to carryover of unused limitation, shall not apply.

(5) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified to add the following:

(A) (i) The qualified community development entity fails to comply with subparagraph (D) of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit. The qualified community development entity shall send notice to GO-Biz within 30 calendar days of the close of any calendar year in which the qualified community development entity has failed to invest at least 15 percent of the purchase price of the qualified equity investment in satisfaction of the requirements of subparagraph (D) of paragraph (5) of subdivision (d).

(ii) The qualified community development entity made an investment without performing a revenue impact assessment that satisfies subparagraph (J) of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit, unless GO-Biz has approved a waiver pursuant to clause (ii) of subparagraph (J) of paragraph (5) of subdivision (d). The qualified community development entity shall send notice to GO-Biz within 30 calendar days of the close of any calendar year in which the qualified community development entity has made an investment that fails to meet the requirements set forth in subparagraph (J) of paragraph (5) of subdivision (d).

(B) GO-Biz shall establish a process, in consultation with the Department of Insurance, for the recapture of credits allowed under this section from the entity that claimed the credit on a return.

(C) Recaptured qualified equity investments revert back to GO-Biz and shall be reissued. The reissue shall not count toward the annual or cumulative allocation limitation. The reissue shall be done in the following order:

(i) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph (F) of paragraph (5) of subdivision (d) by the annual allocation limitation.

(ii) Thereafter, in accordance with the application process.

(D) (i) Enforcement of each of the recapture provisions shall be subject to a six-month cure period. Recapture shall not occur until the qualified community development entity gives notice of potential noncompliance to GO-Biz and is afforded six months from the date of such notice to cure the noncompliance. The six-month cure period shall begin on the day GO-Biz sends written acknowledgment of the qualified community development entity's notice of the potential noncompliance. The qualified community development entity is responsible for addressing the circumstances of the potential noncompliance and providing all documentation to GO-Biz necessary to demonstrate, to GO-Biz's satisfaction, that those conditions no longer exist.

(ii) In an instance where a qualified community development entity fails to send the required notice of potential noncompliance or GO-Biz has information from the annual report or other sources that indicates that the entity is in potential noncompliance, GO-Biz shall send the notice. The date GO-Biz sends the notice of potential noncompliance shall begin the six-month cure period.

(iii) Not more than 45 calendar days following the close of the cure period, GO-Biz shall make a final determination as to whether the noncompliance has been cured. This determination shall be based on the review of the notice, information submitted by the qualified community development entity, and any other information GO-Biz deems relevant to this determination. Within 30 calendar days of making the final determination, GO-Biz shall notify the Department of Insurance and the Franchise Tax Board of the determination and other related information including, but not limited to, the tax identification number of the qualified community development entity.

(iv) GO-Biz shall post, and update monthly, a tally of undesignated qualified equity investments, pursuant to paragraph (4), and recaptured credits pursuant to this paragraph.

(6) Section 45D(h) of the Internal Revenue Code, relating to basis reduction, shall not apply.

(7) If a qualified community development entity makes a capital or equity investment or a loan with respect to a qualified low-income building under the state Low-Income Housing Tax Credit Program, the investment or loan is not a qualified low-income community investment under this section.

(d) (1) GO-Biz shall adopt guidelines necessary or appropriate to carry out its responsibilities with respect to the allocation of the qualified equity investments and recapture of credit allowed by this section. The adoption of the guidelines shall not be subject to the rulemaking provisions of the Administrative Procedure Act of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) (A) GO-Biz shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to this subdivision that in the aggregate defray the cost of reviewing applications for the program. GO-Biz may impose other reasonable fees upon entities that receive the allocation pursuant to this subdivision that in the aggregate defray the cost of administering the program.

(B) The fees collected shall be deposited in the California New Markets Tax Credit Fund established in Section 18410.3.

(3) In developing guidelines GO-Biz shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income community populations across the state are engaged and have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of authority to designate qualified equity investments including, but not limited to, its business strategy, targeted community outcomes, capitalization strategy, and management capacity.

(C) Considers the qualified community development entity's prior qualified low-income community investments under Section 45D of the Internal Revenue Code.

(D) Considers the qualified community development entity's prior qualified low-income community investments under this section, including subparagraph (D) of paragraph (5).

(E) Does not require the qualified community development entity to identify the qualified active low-income community businesses in which the qualified community development entity will invest in an application for qualified equity investment allocation.

(F) Does not disqualify a low-income community investment for the single reason that public or private incentives, loans, equity investments, technical assistance, or other forms of support have been or continue to be provided.

(4) (A) GO-Biz shall begin accepting applications on or before May 15, 2015, and shall award authority to designate qualified equity investments annually through 2019, to the extent that allocations are available pursuant to Section 26011.9 of the Public Resources Code. To the extent reasonable and consistent in carrying out the purposes of this section, GO-Biz shall consider how the timing of the state allocation rounds correspond with the allocation schedule of the federal New Markets Tax Credit Program.

(B) Within 20 calendar days after receipt of an application GO-Biz shall determine whether the application is complete or whether additional information is necessary in order to fully evaluate the application. If additional information is requested and the qualified community development entity provides that information within five business days, the application shall be considered completed as of the original date of receipt. If the qualified community development entity fails to provide the information within the five-business-day period, the application shall be denied and must be resubmitted in full with a new receipt date.

(C) Within 20 calendar days after receipt of an application determined to be complete by GO-Biz, the committee shall grant or deny the application in full or in part. If the committee denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial.

(5) (A) In the 2015 awards cycle, the committee shall award authority to designate qualified equity investments to qualified community development entities described in paragraph (3) of

subdivision (c) in the order applications are received by the committee. Applications received on the same day shall be deemed to have been received simultaneously.

(B) In the 2016 to 2019 award cycles, inclusive, at least 60 percent of the authority to designate qualified equity investments shall be awarded pursuant to subparagraph (A). At the committee's discretion, a higher percentage of authority to designate qualified equity investments may be awarded pursuant to subparagraph (A).

(C) The committee shall award up to 40 percent of the authority to designate qualified equity investments in the 2016 to 2019, inclusive, award cycles, to qualified community development entities on a competitive basis using blind scoring and a review committee that is comprised of community development finance practitioners and members having demonstrated experience in assessing organizational business strategy, community outcomes, capitalization strategy, and management capacity. A member of the review committee shall not have a financial interest, which includes, but is not limited to, asking, consenting, or agreeing to receive any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation any qualified equity investment or other assistance from any applicant.

(D) (i) For qualified equity investments derived from the 2015 to 2019, inclusive, awards cycles, pursuant to subparagraphs (A), (B) and (C), a qualified community development entity shall invest at least 15 percent of the qualified equity investment in a qualified low-income community business in consultation or in partnership with either of the following:

(I) A qualified community development entity certified under Section 45D of the Internal Revenue Code that has not received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.

(II) A nonprofit organization certified by GO-Biz, pursuant to clause (iii).

(ii) The 15-percent investment shall be calculated by multiplying the total purchase price of the qualified equity investments issued

by the qualified community development entity by 15 percent. Each community development entity application shall indicate how the qualified community development entity will meet this requirement.

(iii) GO-Biz shall establish guidelines for certifying a nonprofit organization pursuant to this subparagraph. A nonprofit organization shall meet the requirements of Section 23701 and be certified by GO-Biz as having a primary mission of serving or providing investment capital in low-income communities in California. The nonprofit organization shall maintain accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization. GO-Biz may include reasonable conditions on the certification to effectuate the intent of this section and may suspend or revoke a certification, after affording the nonprofit organization notice and the opportunity to appeal and be heard by the committee, if GO-Biz finds that the nonprofit organization no longer meets the requirements for certification.

(E) In making competitive awards of authority to designate qualified equity investments, priority shall be given to applications that can demonstrate that the qualified equity investment authority will allow the qualified community development entity to undertake qualified low-income community investments in rural, suburban, or urban areas that have been historically underserved and result in the greatest benefit to the hardest to serve and undercapitalized lower income populations, or in newly established businesses, or in activities that support neighborhood revitalization strategies driven by local grassroots stakeholders in multiple low-income communities across one or more regions or the state for the purpose of scaling economic development activities that compliment regional industry clusters that result in the greatest benefit to the largest number of lower income individuals.

(F) (i) For applications described in subparagraph (A), in the event requests for authority to designate qualified equity investments exceed the applicable annual allocation limitation, GO-Biz shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in such applications to the

total amount of qualified equity investments requested in all such applications received on the same day.

(ii) If a pending request cannot be fully certified due to this limit, GO-Biz shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

(G) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify the committee within 30 calendar days of such transfer and include the information required in the application with respect to such transferee with such notice. The transferee shall be subject to the same rules, requirements, and limitations applicable to the transferor.

(H) Within 60 calendar days of GO-Biz sending notice of certification, the qualified community development entity or any transferee, under subparagraph (G), shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee, under subparagraph (G), must provide GO-Biz with evidence of the receipt of the cash investment within 65 calendar days of the applicant receiving notice of certification. If the qualified community development entity or any transferee, under subparagraph (G), does not receive the cash investment and issue the qualified equity investment within 60 calendar days of GO-Biz sending the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to GO-Biz for certification. Lapsed certifications revert back to GO-Biz and shall be reissued in the following order:

(i) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph (F) under the annual allocation limitation of forty million dollars (\$40,000,000) in paragraph (5) of subdivision (c).

(ii) Thereafter, in accordance with the application process.

(I) A qualified community development entity that issues qualified equity investments must notify GO-Biz of the names of taxpayers that are eligible to utilize tax credits pursuant to this section and any transfer of a qualified equity investment.

(J) (i) A qualified community development entity shall only make a qualified low-income community investment that demonstrates a positive revenue impact on the state over a 10-year period against the aggregate tax credit utilization over the same 10-year period. GO-Biz shall approve one or more nationally recognized revenue impact assessment models that shall be used by the qualified community development entity to demonstrate positive revenue impact. If it is demonstrated that the qualified low-income community investment has a positive revenue impact on the state at the time the investment is made, it shall be treated as if the investment continues to meet the requirement of this subparagraph for the duration of the seven-year program period.

(ii) Upon application and approval by GO-Biz, the requirement of this subparagraph may be waived.

(6) (A) A qualified community development entity that issues qualified equity investments shall submit a report to GO-Biz within the first five business days after the first anniversary of the initial credit allowance date that provides documentation as to the investment of at least 85 percent of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in California. Such report shall include all of the following:

(i) A bank statement of such qualified community development entity evidencing each qualified low-income community investment.

(ii) Evidence that such business was a qualified active low-income community business at the time of such qualified low-income community investment.

(iii) Evidence that the community development entity complied with subparagraph (D) of paragraph (5).

(iv) Evidence that each qualified low-income community investment was determined to have a positive revenue impact on the state. This requirement does not apply for any qualified low-income community investment for which GO-Biz approved a waiver, pursuant to clause (ii) of subparagraph (J) of paragraph (5) or to reinvestments of redeemed qualified low-income investments.

(v) Any other information required by GO-Biz as being necessary to meet the requirements of this section.

(B) Thereafter, the qualified community development entity shall submit an annual report to GO-Biz within 60 calendar days of the beginning of the calendar year during the seven years following submittal of the report, pursuant to subparagraph (A). No annual report shall be due prior to the first anniversary of the initial credit allowance date. The report shall include, but is not limited to, the following:

(i) The social, environmental, and economic impact the credit had on the low-income community during the report period and cumulatively.

(ii) The amount of moneys used for qualified low-income investments in qualified low-income community businesses.

(iii) The number of employment positions created and retained as a result of qualified low-income community investments and the average annual salary of such positions.

(iv) The number of operating businesses assisted as a result of qualified low-income community investments, by industry and number of employees.

(v) Number of owner-occupied real estate projects.

(vi) Location of each qualified low-income community business assisted by a qualified low-income community investment.

(vii) Summary of the outcomes of each of the revenue impact assessments undertaken by the qualified community development entity during the year.

(e) (1) In the case where the credit allowed by this section exceeds the tax described in Sections 12201, 12204, 12206, and 12209, the excess may be carried over to reduce that tax in the following year, and the six succeeding years if necessary, until the credit is exhausted.

(2) A taxpayer allowed a credit under this section for a qualified equity investment shall not be eligible for any other credit under this part with respect to that investment.

(f) GO-Biz shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the qualified active low-income community businesses assisted.

(g) (1) The Insurance Commissioner and the Franchise Tax Board may prescribe any rules or regulations that may be necessary or appropriate to implement this section. The Insurance Commissioner and the Franchise Tax Board shall have access to

any documentation held by the committee relative to the application and reporting of a qualified community development entity.

(2) A qualifying community development entity shall provide GO-Biz with the name, address, and tax identification number of each investor and entity for which a qualified equity investment was designated by the qualifying community development entity, pursuant to this section. GO-Biz shall provide this information to the Insurance Commissioner and the Franchise Tax Board in a manner determined by the Insurance Commissioner and the Franchise Tax Board.

(h) GO-Biz and the committee shall only make awards pursuant to paragraph (4) of subdivision (d) in a calendar year in which the Legislature appropriates funds in the California New Markets Tax Credit Fund pursuant to subdivision (b) of Section 18410.3.

(i) This section shall remain in effect only until December 1, 2028, and as of that date is repealed.

SEC. 4. Section 17053.9 is added to the Revenue and Taxation Code, to read:

17053.9. (a) There is hereby created the California New Markets Tax Credit Program as provided in this section, Section 12283, and Section 23622.9. The purpose of this program is to stimulate private sector investment in lower income communities by providing a tax incentive to community and economic development entities that can be leveraged by the entity to attract private sector investment that in turn will be deployed by providing financing and technical assistance to small- and medium-size businesses and the development of commercial, industrial, and community development projects, including, but not limited to, facilities for nonprofit service organizations, light manufacturing, and mixed-use and transit-oriented development. The committee and GO-Biz shall administer this program as provided in this section, Section 12283, and Section 23622.9. The Director of GO-Biz may delegate the administration of all or portions of the program within GO-Biz.

(b) (1) For taxable years beginning on or after January 1, 2015, and before January 1, 2027, and subject to subdivision (h), there shall be allowed as a credit against the “net tax,” as defined in Section 17039, an amount determined in accordance with Section 45D of the Internal Revenue Code, as modified as set forth in this section.

(2) (A) For purposes of this section, “committee” means the California Competes Tax Credit Committee established under Section 18410.2.

(B) For purposes of this section, “GO-Biz” means the Governor’s Office of Business and Economic Development.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) Section 45D(a)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting for “(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates” with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(2) (A) Section 45D(c)(1) of the Internal Revenue Code is modified to only include a qualified community development entity, that is certified by the Secretary of the Treasury, and its subsidiary qualified community development entities that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(B) Section 45D(c)(2) of the Internal Revenue Code is modified to only include a specialized small business investment company or community development financial institution that entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(3) The term “qualified active low-income community business,” as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) By substituting “any low-income community in California” for “any low-income community” every place it appears in Section 45D of the Internal Revenue Code.

(B) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code is modified to allow the services of employees of a service-based qualified active low-income community business to be performed outside the low-income community. A service-based qualified active low-income community business is a business that primarily earns revenue through providing intangible products and services and leases or owns real property in the low-income community that is used for the operation of the business.

(C) A qualified active low-income community business shall not include any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (I) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (II) is the primary tenant of the real estate leased from the first business.

(D) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in one or more California low-income communities. The operating business shall meet all other conditions of a qualified active low-income community business, except as modified by this paragraph.

(E) A qualified active low-income community business shall only include a business located in census tracts with a poverty rate greater than 30 percent, or census tracts, if located within a non-metropolitan area, with a median family income that does not exceed 60 percent of median family income for the State of California, or census tracts, if located within a metropolitan area, with a median family income that does not exceed 60 percent of the greater of the California median family income or the metropolitan area median family income, or census tracts with unemployment rates at least 1.5 times the national average.

(F) A qualified active low-income community business shall not include any business that operates or derives revenues from the operation of a country club, gaming establishment, massage parlor, liquor store, or golf course.

(G) A qualified active low-income community business shall not include a sexually oriented business. A “sexually oriented business” means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance. “Nude” means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of the genitals or, in the case of a female, any portion of the breasts below the top of the areola of the breasts.

(H) A qualified active low-income community business shall not include a charter school.

(4) Section 45D(f) of the Internal Revenue Code, relating to national limitation on amount of investments designated, is modified as follows:

(A) The following shall apply in lieu of the provisions of Section 45D(f)(1) of the Internal Revenue Code: “The aggregate amount of qualified equity investments that may be allocated in any calendar year for purposes of this section, Section 12283, and Section 23622.9 shall be an amount as determined by GO-Biz in consultation with the Department of Finance based upon any unused portion of the one hundred million dollars (\$100,000,000) in exclusions, authorized pursuant to Section 6010.8, as determined by the California Alternative Energy and Advanced Transportation Financing Authority and reported to the committee, not to exceed an amount based upon a credit of forty million dollars (\$40,000,000). The committee shall limit the allocation of investments that may be designated under this section, Section 12283, and Section 23622.9 to a cumulative total amount based on credits of no more than two hundred million dollars (\$200,000,000). The allocation of any undesignated qualified equity investments shall be returned to the committee by March 1 of the year following allocation and the value of the undesignated qualified equity investment shall be available for allocation in the following calendar years in accordance with the application process. Any qualified equity investment attributable to recaptured credits shall be available to the committee on March 1 of the year following recapture and shall be available for allocation in the following calendar years in accordance with clause (ii) of

subparagraph (B) of paragraph (5). Reallocated qualified equity investments attributable to recapture credits shall not count against the annual or the cumulative limit.”

(B) The references to “the Secretary” in Section 45D(f)(2) of the Internal Revenue Code, relating to allocation of limitation, is modified to read “GO-Biz.”

(C) The last sentence of Section 45D(f)(3) of the Internal Revenue Code, relating to carryover of unused limitation, shall not apply.

(5) (A) Section 45D(g)(2)(B) of the Internal Revenue Code, relating to credit recapture amount, is modified to substitute “Section 19101 of this code” for “section 6621”.

(B) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified to add the following:

(i) (I) The qualified community development entity fails to comply with subparagraph (D) of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit. The qualified community development entity shall send notice to GO-Biz within 30 calendar days of the close of any calendar year in which the qualified community development entity has failed to invest at least 15 percent of the purchase price of the qualified equity investment in satisfaction of the requirements of subparagraph (D) of paragraph (5) of subdivision (d).

(II) The qualified community development entity made an investment without performing a revenue impact assessment that satisfies subparagraph (J) of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit, unless GO-Biz has approved a waiver pursuant to clause (ii) of subparagraph (J) of paragraph (5) of subdivision (d). The qualified community development entity shall send notice to GO-Biz within 30 calendar days of the close of any calendar year in which the qualified community development entity has made an investment that fails to meet the requirements set forth in subparagraph (J) of paragraph (5) of subdivision (d).

(ii) GO-Biz shall establish a process, in consultation with the Franchise Tax Board, for the recapture of credits allowed under this section from the entity that claimed the credit on a return.

(iii) Recaptured qualified equity investment investments revert back to GO-Biz and shall be reissued. The reissue shall not count

toward the annual or cumulative allocation limitation. The reissue shall be done in the following order:

(I) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph (F) of paragraph (5) of subdivision (d) by the annual allocation limitation.

(II) Thereafter, in accordance with the application process.

(iv) (I) Enforcement of each of the recapture provisions shall be subject to a six-month cure period. Recapture shall not occur until the qualified community development entity gives notice of potential noncompliance to GO-Biz and is afforded six months from the date of such notice to cure the noncompliance. The six-month cure period shall begin on the day GO-Biz sends written acknowledgment of the qualified community development entity's notice of the potential noncompliance. The qualified community development entity is responsible for addressing the circumstances of the potential noncompliance and providing all documentation to GO-Biz necessary to demonstrate, to GO-Biz's satisfaction, that those conditions no longer exist.

(II) In an instance where a qualified community development entity fails to send the required notice of potential noncompliance or GO-Biz has information from the annual report or other sources that indicates that the entity is in potential noncompliance, GO-Biz shall send the notice. The date GO-Biz sends the notice of potential noncompliance shall begin the six-month cure period.

(III) Not more than 45 calendar days following the close of the cure period, GO-Biz shall make a final determination as to whether the noncompliance has been cured. This determination shall be based on the review of the notice, information submitted by the qualified community development entity, and any other information GO-Biz deems relevant to this determination. Within 30 calendar days of making the final determination, GO-Biz shall notify the Franchise Tax Board of the determination and other related information including, but not limited to, the tax identification number of the qualified community development entity.

(IV) GO-Biz shall post, and update monthly, a tally of undesignated qualified equity investments, pursuant to paragraph (4), and recaptured credits pursuant to this paragraph.

(6) If a qualified community development entity makes a capital or equity investment or a loan with respect to a qualified

low-income building under the state Low-Income Housing Tax Credit Program, the investment or loan is not a qualified low-income community investment under this section.

(d) (1) GO-Biz shall adopt guidelines necessary or appropriate to carry out its responsibilities with respect to the allocation of the qualified equity investments and recapture of credit allowed by this section. The adoption of the guidelines shall not be subject to the rulemaking provisions of the Administrative Procedure Act of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) (A) GO-Biz shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to this subdivision that in the aggregate defray the cost of reviewing applications for the program. GO-Biz may impose other reasonable fees upon entities that receive the allocation pursuant to this subdivision that in the aggregate defray the cost of administering the program.

(B) The fees collected shall be deposited in the California New Markets Tax Credit Fund established in Section 18410.3.

(3) In developing guidelines GO-Biz shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income community populations across the state are engaged and have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of authority to designate qualified equity investments including, but not limited to, its business strategy, targeted community outcomes, capitalization strategy, and management capacity.

(C) Considers the qualified community development entity's prior qualified low-income community investments under Section 45D of the Internal Revenue Code.

(D) Considers the qualified community development entity's prior qualified low-income community investments under this section, including subparagraph (D) of paragraph (5).

(E) Does not require the qualified community development entity to identify the qualified active low-income community businesses in which the qualified community development entity will invest in an application for qualified equity investment allocation.

(F) Does not disqualify a low-income community investment for the single reason that public or private incentives, loans, equity investments, technical assistance, or other forms of support have been or continue to be provided.

(4) (A) GO-Biz shall begin accepting applications on or before May 15, 2015, and shall award authority to designate qualified equity investments annually through 2019, to the extent that allocations are available pursuant to Section 26011.9 of the Public Resources Code. To the extent reasonable and consistent in carrying out the purposes of this section, GO-Biz shall consider how the timing of the state allocation rounds correspond with the allocation schedule of the federal New Markets Tax Credit Program.

(B) Within 20 calendar days after receipt of an application GO-Biz shall determine whether the application is complete or whether additional information is necessary in order to fully evaluate the application. If additional information is requested and the qualified community development entity provides that information within five business days, the application shall be considered completed as of the original date of receipt. If the qualified community development entity fails to provide the information within the five-business-day period, the application shall be denied and must be resubmitted in full with a new receipt date.

(C) Within 20 calendar days after receipt of an application determined to be complete by GO-Biz, the committee shall grant or deny the application in full or in part. If the committee denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial.

(5) (A) In the 2015 awards cycle, the committee shall award authority to designate qualified equity investments to qualified community development entities described in paragraph (3) of subdivision (c) in the order applications are received by the committee. Applications received on the same day shall be deemed to have been received simultaneously.

(B) In the 2016 to 2019 award cycles, inclusive, at least 60 percent of the authority to designate qualified equity investments shall be awarded pursuant to subparagraph (A). At the committee's discretion, a higher percentage of authority to designate qualified equity investments may be awarded pursuant to subparagraph (A).

(C) The committee shall award up to 40 percent of the authority to designate qualified equity investments in the 2016 to 2019, inclusive, award cycles, to qualified community development entities on a competitive basis using blind scoring and a review committee that is comprised of community development finance practitioners and members having demonstrated experience in assessing organizational business strategy, community outcomes, capitalization strategy, and management capacity. A member of the review committee shall not have a financial interest, which includes, but is not limited to, asking, consenting, or agreeing to receive any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation any qualified equity investment or other assistance from any applicant.

(D) (i) For qualified equity investments derived from the 2015 to 2019, inclusive, awards cycles, pursuant to subparagraphs (A), (B) and (C), a qualified community development entity shall invest at least 15 percent of the qualified equity investment in a qualified low-income community business in consultation or in partnership with either of the following:

(I) A qualified community development entity certified under Section 45D of the Internal Revenue Code that has not received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.

(II) A nonprofit organization certified by GO-Biz, pursuant to clause (iii).

(ii) The 15-percent investment shall be calculated by multiplying the total purchase price of the qualified equity investments issued by the qualified community development entity by 15 percent. Each community development entity application shall indicate how the qualified community development entity will meet this requirement.

(iii) GO-Biz shall establish guidelines for certifying a nonprofit organization pursuant to this subparagraph. A nonprofit organization shall meet the requirements of Section 23701 and be certified by GO-Biz as having a primary mission of serving or

providing investment capital in low-income communities in California. The nonprofit organization shall maintain accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization. GO-Biz may include reasonable conditions on the certification to effectuate the intent of this section and may suspend or revoke a certification, after affording the nonprofit organization notice and the opportunity to appeal and be heard by the committee, if GO-Biz finds that the nonprofit organization no longer meets the requirements for certification.

(E) In making competitive awards of authority to designate qualified equity investments, priority shall be given to applications that can demonstrate that the qualified equity investment authority will allow the qualified community development entity to undertake qualified low-income community investments in rural, suburban, or urban areas that have been historically underserved and result in the greatest benefit to the hardest to serve and undercapitalized lower income populations, or in newly established businesses, or in activities that support neighborhood revitalization strategies driven by local grassroots stakeholders in multiple low-income communities across one or more regions or the state for the purpose of scaling economic development activities that compliment regional industry clusters that result in the greatest benefit to the largest number of lower income individuals.

(F) (i) For applications described in of subparagraph (A), in the event requests for authority to designate qualified equity investments exceed the applicable annual allocation limitation, GO-Biz shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in such applications to the total amount of qualified equity investments requested in all such applications received on the same day.

(ii) If a pending request cannot be fully certified due to this limit, GO-Biz shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

(G) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity

of the controlling entity, provided that the applicant and the transferee notify the committee within 30 calendar days of such transfer and include the information required in the application with respect to such transferee with such notice. The transferee shall be subject to the same rules, requirements, and limitations applicable to the transferor.

(H) Within 60 calendar days of GO-Biz sending notice of certification, the qualified community development entity or any transferee, under subparagraph (G), shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee, under subparagraph (G), must provide GO-Biz with evidence of the receipt of the cash investment within 65 calendar days of the applicant receiving notice of certification. If the qualified community development entity or any transferee, under subparagraph (G), does not receive the cash investment and issue the qualified equity investment within 60 calendar days of GO-Biz sending the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to GO-Biz for certification. Lapsed certifications revert back to GO-Biz and shall be reissued in the following order:

(i) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph (F) under the annual allocation limitation of forty million dollars (\$40,000,000) in paragraph (5) of subdivision (c).

(ii) Thereafter, in accordance with the application process.

(I) A qualified community development entity that issues qualified equity investments must notify GO-Biz of the names of taxpayers that are eligible to utilize tax credits pursuant to this section and any transfer of a qualified equity investment.

(J) (i) A qualified community development entity shall only make a qualified low-income community investment that demonstrates a positive revenue impact on the state over a 10-year period against the aggregate tax credit utilization over the same 10-year period. GO-Biz shall approve one or more nationally recognized revenue impact assessment models that shall be used by the qualified community development entity to demonstrate positive revenue impact. If it is demonstrated that the qualified low-income community investment has a positive revenue impact on the state at the time the investment is made, it shall be treated

as if the investment continues to meet the requirement of this subparagraph for the duration of the seven-year program period.

(ii) Upon application and approval by GO-Biz, the requirement of this subparagraph may be waived.

(6) (A) A qualified community development entity that issues qualified equity investments shall submit a report to GO-Biz within the first five business days after the first anniversary of the initial credit allowance date that provides documentation as to the investment of at least 85 percent of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in California. Such report shall include all of the following:

(i) A bank statement of such qualified community development entity evidencing each qualified low-income community investment.

(ii) Evidence that such business was a qualified active low-income community business at the time of such qualified low-income community investment.

(iii) Evidence that the community development entity complied with subparagraph (D) of paragraph (5).

(iv) Evidence that each qualified low-income community investment was determined to have a positive revenue impact on the state. This requirement does not apply for any qualified low-income community investment for which GO-Biz approved a waiver, pursuant to clause (ii) of subparagraph (J) of paragraph (5) or to reinvestments of redeemed qualified low-income investments.

(v) Any other information required by GO-Biz as being necessary to meet the requirements of this section.

(B) Thereafter, the qualified community development entity shall submit an annual report to GO-Biz within 60 calendar days of the beginning of the calendar year during the seven years following submittal of the report, pursuant to subparagraph (A). No annual report shall be due prior to the first anniversary of the initial credit allowance date. The report shall include, but is not limited to, the following:

(i) The social, environmental, and economic impact the credit had on the low-income community during the report period and cumulatively.

(ii) The amount of moneys used for qualified low-income investments in qualified low-income community businesses.

(iii) The number of employment positions created and retained as a result of qualified low-income community investments and the average annual salary of such positions.

(iv) The number of operating businesses assisted as a result of qualified low-income community investments, by industry and number of employees.

(v) Number of owner-occupied real estate projects.

(vi) Location of each qualified low-income community business assisted by a qualified low-income community investment.

(vii) Summary of the outcomes of each of the revenue impact assessments undertaken by the qualified community development entity during the year.

(e) (1) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and the six succeeding years if necessary, until the credit is exhausted.

(2) A taxpayer allowed a credit under this section for a qualified equity investment shall not be eligible for any other credit under this part with respect to that investment.

(f) GO-Biz shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the qualified active low-income community businesses assisted.

(g) (1) The Franchise Tax Board may prescribe any rules or regulations that may be necessary or appropriate to implement this section. The Franchise Tax Board shall have access to any documentation held by the committee relative to the application and reporting of a qualified community development entity.

(2) A qualifying community development entity shall provide GO-Biz with the name, address, and tax identification number of each investor and entity for which a qualified equity investment was designated by the qualifying community development entity, pursuant to this section. GO-Biz shall provide this information to the Franchise Tax Board in a manner determined by the Franchise Tax Board.

(h) GO-Biz and the committee shall only make awards pursuant to paragraph (4) of subdivision (d) in a calendar year in which the

Legislature appropriates funds in the California New Markets Tax Credit Fund pursuant to subdivision (b) of Section 18410.3.

(i) This section shall remain in effect only until December 1, 2028, and as of that date is repealed.

SEC. 5. Section 18410.3 is added to the Revenue and Taxation Code, to read:

18410.3. (a) The California New Markets Tax Credit Fund is hereby established in the State Treasury.

(b) Upon appropriation, moneys in the fund shall be used for the purposes described in subdivision (d) of Section 12283, subdivision (d) of Section 17053.9, and subdivision (d) of Section 23622.9.

SEC. 6. Section 23622.9 is added to the Revenue and Taxation Code, to read:

23622.9. (a) There is hereby created the California New Markets Tax Credit Program as provided in this section, Section 12283, and Section 17053.9. The purpose of this program is to stimulate private sector investment in lower income communities by providing a tax incentive to community and economic development entities that can be leveraged by the entity to attract private sector investment that in turn will be deployed by providing financing and technical assistance to small- and medium-size businesses and the development of commercial, industrial, and community development projects, including, but not limited to, facilities for nonprofit service organizations, light manufacturing, and mixed-use and transit-oriented development. The committee and GO-Biz shall administer this program as provided in this section, Section 12283, and Section 17053.9. The Director of GO-Biz may delegate the administration of all or portions of the program within GO-Biz.

(b) (1) For taxable years beginning on or after January 1, 2015, and before January 1, 2027, and subject to subdivision (h), there shall be allowed as a credit against the “tax,” as defined in Section 23036, an amount determined in accordance with Section 45D of the Internal Revenue Code, as modified as set forth in this section.

(2) (A) For purposes of this section, “committee” means the California Competes Tax Credit Committee established under Section 18410.2.

(B) For purposes of this section, “GO-Biz” means the Governor’s Office of Business and Economic Development.

(c) Section 45D of the Internal Revenue Code is modified as follows:

(1) Section 45D(a)(2) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting for “(A) 5 percent with respect to the first 3 credit allowance dates, and (B) 6 percent with respect to the remainder of the credit allowance dates” with the following:

(A) Zero percent with respect to the first two credit allowance dates.

(B) Seven percent with respect to the third credit allowance date.

(C) Eight percent with respect to the remainder of the credit allowance dates.

(2) (A) Section 45D(c)(1) of the Internal Revenue Code is modified to only include a qualified community development entity, that is certified by the Secretary of the Treasury, and its subsidiary qualified community development entities that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(B) Section 45D(c)(2) of the Internal Revenue Code is modified to only include a specialized small business investment company or a community development financial institution that have entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Treasury Department, with respect to credits authorized by Section 45D of the Internal Revenue Code, that includes California within the service area and is dated on or after January 1, 2012.

(3) The term “qualified active low-income community business,” as defined in Section 45D(d)(2) of the Internal Revenue Code, is modified as follows:

(A) By substituting “any low-income community in California” for “any low-income community” every place it appears in Section 45D of the Internal Revenue Code.

(B) Section 45D(d)(2)(A)(iii) of the Internal Revenue Code is modified to allow the services of employees of a service-based qualified active low-income community business to be performed outside the low-income community. A service-based qualified

active low-income community business is a business that primarily earns revenue through providing intangible products and services and leases or owns real property in the low-income community that is used for the operation of the business.

(C) A qualified active low-income community business shall not include any business that derives, or projects to derive, 15 percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business: (I) does not derive or project to derive 15 percent or more of its annual revenue from the rental or sale of real estate; and (II) is the primary tenant of the real estate leased from the first business.

(D) A qualified active low-income community business shall only include a business that, at the time the initial investment is made, has 250 or fewer employees and is located in one or more California low-income communities. The operating business shall meet all other conditions of a qualified active low-income community business, except as modified by this paragraph.

(E) A qualified active low-income community business shall only include a business located in census tracts with a poverty rate greater than 30 percent, or census tracts, if located within a non-metropolitan area, with a median family income that does not exceed 60 percent of median family income for the State of California, or census tracts, if located within a metropolitan area, with a median family income that does not exceed 60 percent of the greater of the California median family income or the metropolitan area median family income, or census tracts with unemployment rates at least 1.5 times the national average.

(F) A qualified active low-income community business shall not include any business that operates or derives revenues from the operation of a country club, gaming establishment, massage parlor, liquor store, or golf course.

(G) A qualified active low-income community business shall not include a sexually oriented business. A “sexually oriented business” means a nightclub, bar, restaurant, or similar commercial enterprise that provides for an audience of two or more individuals live nude entertainment or live nude performances where the nudity is a function of everyday business operations and where nudity is a planned and intentional part of the entertainment or performance.

“Nude” means clothed in a manner that leaves uncovered or visible, through less than fully opaque clothing, any portion of the genitals or, in the case of a female, any portion of the breasts below the top of the areola of the breasts.

(H) A qualified active low-income community business shall not include a charter school.

(4) Section 45D(f) of the Internal Revenue Code, relating to national limitation on amount of investments designated, is modified as follows:

(A) The following shall apply in lieu of the provisions of Section 45D(f)(1) of the Internal Revenue Code: “The aggregate amount of qualified equity investments that may be allocated in any calendar year for purposes of this section, Section 12283, and Section 17053.9 shall be an amount as determined by GO-Biz in consultation with the Department of Finance based upon any unused portion of the one hundred million dollars (\$100,000,000) in exclusions, authorized pursuant to Section 6010.8, as determined by the California Alternative Energy and Advanced Transportation Financing Authority and reported to the committee, not to exceed an amount based upon a credit of forty million dollars (\$40,000,000). The committee shall limit the allocation of investments that may be designated under this section, Section 12283, and Section 17053.9 to a cumulative total amount based on credits of no more than two hundred million dollars (\$200,000,000). The allocation of any undesignated qualified equity investments shall be returned to the committee by March 1 of the year following allocation and the value of the undesignated qualified equity investment shall be available for allocation in the following calendar years in accordance with the application process. Any qualified equity investment attributable to recaptured credits shall be available to the committee on March 1 of the year following recapture and shall be available for allocation in the following calendar years in accordance with clause (ii) of subparagraph (B) of paragraph (5). Reallocated qualified equity investments attributable to recapture credits shall not count against annual or the cumulative limit.”

(B) The references to “the Secretary” in Section 45D(f)(2) of the Internal Revenue Code, relating to allocation of limitation, is modified to read “GO-Biz.”

(C) The last sentence of Section 45D(f)(3) of the Internal Revenue Code, relating to carryover of unused limitation, shall not apply.

(5) (A) Section 45D(g)(2)(B) of the Internal Revenue Code, relating to credit recapture amount, is modified to substitute “Section 19101 of this code” for “section 6621”.

(B) Section 45D(g)(3) of the Internal Revenue Code, relating to recapture event, is modified to add the following:

(i) (I) The qualified community development entity fails to comply with subparagraph (D) of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit. The qualified community development entity shall send notice to GO-Biz within 30 calendar days of the close of any calendar year in which the qualified community development entity has failed to invest at least 15 percent of the purchase price of the qualified equity investment in satisfaction of the requirements of subparagraph (D) of paragraph (5) of subdivision (d).

(II) The qualified community development entity made an investment without performing a revenue impact assessment that satisfies subparagraph (J) of paragraph (5) of subdivision (d). In this case, recapture shall be 100 percent of the credit, unless GO-Biz has approved a waiver pursuant to clause (ii) of subparagraph (J) of paragraph (5) of subdivision (d). The qualified community development entity shall send notice to GO-Biz within 30 calendar days of the close of any calendar year in which the qualified community development entity has made an investment that fails to meet the requirements set forth in subparagraph (J) of paragraph (5) of subdivision (d).

(ii) GO-Biz shall establish a process, in consultation with the Franchise Tax Board, for the recapture of credits allowed under this section from the entity that claimed the credit on a return.

(iii) Recaptured investments revert back to GO-Biz and shall be reissued. The reissue shall not count toward the annual or cumulative allocation limitation. The reissue shall be done in the following order:

(I) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph (F) of paragraph (5) of subdivision (d) by the annual allocation limitation.

(II) Thereafter, in accordance with the application process.

(iv) (I) Enforcement of each of the recapture provisions shall be subject to a six month cure period. Recapture shall not occur until the qualified community development entity gives notice of potential noncompliance to GO-Biz and is afforded six months from the date of such notice to cure the noncompliance. The six-month cure period shall begin on the day GO-Biz sends written acknowledgment of the qualified community development entity's notice of the potential noncompliance. The qualified community development entity is responsible for addressing the circumstances of the potential noncompliance and providing all documentation to GO-Biz necessary to demonstrate, to GO-Biz's satisfaction, that those conditions no longer exist.

(II) In an instance where a qualified community development entity fails to send the required notice of potential noncompliance or GO-Biz has information from the annual report or other sources that indicates that the entity is in potential noncompliance, GO-Biz shall send the notice. The date GO-Biz sends the notice of potential noncompliance shall begin the six-month cure period.

(III) Not more than 45 calendar days following the close of the cure period, GO-Biz shall make a final determination as to whether the noncompliance has been cured. This determination shall be based on the review of the notice, information submitted by the qualified community development entity, and any other information GO-Biz deems relevant to this determination. Within 30 calendar days of making the final determination, GO-Biz shall notify the Franchise Tax Board of the determination and other related information including, but not limited to, the tax identification number of the taxpayer.

(IV) GO-Biz shall post, and update monthly, a tally of undesignated qualified equity investments, pursuant to paragraph (4), and recaptured credits pursuant to this paragraph.

(6) If a qualified community development entity makes a capital or equity investment or a loan with respect to a qualified low-income building under the state Low-Income Housing Tax Credit Program, the investment or loan is not a qualified low-income community investment under this section.

(d) (1) GO-Biz shall adopt guidelines necessary or appropriate to carry out its responsibilities with respect to the allocation of the qualified equity investments and recapture of credit allowed by this section. The adoption of the guidelines shall not be subject to

the rulemaking provisions of the Administrative Procedure Act of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) (A) GO-Biz shall establish and impose reasonable fees upon entities that apply for the allocation pursuant to this subdivision that in the aggregate defray the cost of reviewing applications for the program. GO-Biz may impose other reasonable fees upon entities that receive the allocation pursuant to this subdivision that in the aggregate defray the cost of administering the program.

(B) The fees collected shall be deposited in the California New Markets Tax Credit Fund established in Section 18410.3.

(3) In developing guidelines GO-Biz shall adopt an allocation process that does all of the following:

(A) Creates an equitable distribution process that ensures that low-income community populations across the state are engaged and have an opportunity to benefit from the program.

(B) Sets minimum organizational capacity standards that applicants must meet in order to receive an allocation of authority to designate qualified equity investments including, but not limited to, its business strategy, targeted community outcomes, capitalization strategy, and management capacity.

(C) Considers the qualified community development entity's prior qualified low-income community investments under Section 45D of the Internal Revenue Code.

(D) Considers the qualified community development entity's prior qualified low-income community investments under this section, including subparagraph (D) of paragraph (5).

(E) Does not require the qualified community development entity to identify the qualified active low-income community businesses in which the qualified community development entity will invest in an application for qualified equity investment allocation.

(F) Does not disqualify a low-income community investment for the single reason that public or private incentives, loans, equity investments, technical assistance, or other forms of support have been or continue to be provided.

(4) (A) GO-Biz shall begin accepting applications on or before May 15, 2015, and shall award authority to designate qualified equity investments annually through 2019, to the extent that allocations are available pursuant to Section 26011.9 of the Public

Resources Code. To the extent reasonable and consistent in carrying out the purposes of this section, GO-Biz shall consider how the timing of the state allocation rounds correspond with the allocation schedule of the federal New Markets Tax Credit Program.

(B) Within 20 calendar days after receipt of an application GO-Biz shall determine whether the application is complete or whether additional information is necessary in order to fully evaluate the application. If additional information is requested and the qualified community development entity provides that information within five business days, the application shall be considered completed as of the original date of receipt. If the qualified community development entity fails to provide the information within the five-business-day period, the application shall be denied and must be resubmitted in full with a new receipt date.

(C) Within 20 calendar days after receipt of an application determined to be complete by GO-Biz, the committee shall grant or deny the application in full or in part. If the committee denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial.

(5) (A) In the 2015 awards cycle, the committee shall award authority to designate qualified equity investments to qualified community development entities described in paragraph (3) of subdivision (c) in the order applications are received by the committee. Applications received on the same day shall be deemed to have been received simultaneously.

(B) In the 2016 to 2019 award cycles, inclusive, at least 60 percent of the authority to designate qualified equity investments shall be awarded pursuant to subparagraph (A). At the committee's discretion, a higher percentage of authority to designate qualified equity investments may be awarded pursuant to subparagraph (A).

(C) The committee shall award up to 40 percent of the authority to designate qualified equity investments in the 2016 to 2019, inclusive, award cycles, to qualified community development entities on a competitive basis using blind scoring and a review committee that is comprised of community development finance practitioners and members having demonstrated experience in assessing organizational business strategy, community outcomes, capitalization strategy, and management capacity. A member of

the review committee shall not have a financial interest, which includes, but is not limited to, asking, consenting, or agreeing to receive any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation any qualified equity investment or other assistance from any applicant.

(D) (i) For qualified equity investments derived from the 2015 to 2019, inclusive, awards cycles, pursuant to subparagraphs (A), (B) and (C), a qualified community development entity shall invest at least 15 percent of the qualified equity investment in a qualified low-income community business in consultation or in partnership with either of the following:

(I) A qualified community development entity certified under Section 45D of the Internal Revenue Code that has not received a federal New Markets Tax Credit allocation on or after January 1, 2012, and has either a local service area that includes one or more California communities or a California statewide service area, but excluding qualified community development entities with a national service area.

(II) A nonprofit organization certified by GO-Biz, pursuant to clause (iii).

(i) The 15-percent investment shall be calculated by multiplying the total purchase price of the qualified equity investments issued by the qualified community development entity by 15 percent. Each community development entity application shall indicate how the qualified community development entity will meet this requirement.

(iii) GO-Biz shall establish guidelines for certifying a nonprofit organization pursuant to this subparagraph. A nonprofit organization shall meet the requirements of Section 23701 and be certified by GO-Biz as having a primary mission of serving or providing investment capital in low-income communities in California. The nonprofit organization shall maintain accountability to residents of low-income communities through their representation on any governing board or on an advisory board of the nonprofit organization. GO-Biz may include reasonable conditions on the certification to effectuate the intent of this section and may suspend or revoke a certification, after affording the nonprofit organization notice and the opportunity to appeal and

be heard by the committee, if GO-Biz finds that the nonprofit organization no longer meets the requirements for certification.

(E) In making competitive awards of authority to designate qualified equity investments, priority shall be given to applications that can demonstrate that the qualified equity investment authority will allow the qualified community development entity to undertake qualified low-income community investments in rural, suburban, or urban areas that have been historically underserved and result in the greatest benefit to the hardest to serve and undercapitalized lower income populations, or in newly established businesses, or in activities that support neighborhood revitalization strategies driven by local grassroots stakeholders in multiple low-income communities across one or more regions or the state for the purpose of scaling economic development activities that compliment regional industry clusters that result in the greatest benefit to the largest number of lower income individuals.

(F) (i) For applications described in subparagraph (A), in the event requests for authority to designate qualified equity investments exceed the applicable annual allocation limitation, GO-Biz shall certify, consistent with remaining qualified equity investment capacity, qualified equity investments of applicants in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in such applications to the total amount of qualified equity investments requested in all such applications received on the same day.

(ii) If a pending request cannot be fully certified due to this limit, GO-Biz shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial certification.

(G) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity, provided that the applicant and the transferee notify the committee within 30 calendar days of such transfer and include the information required in the application with respect to such transferee with such notice. The transferee shall be subject to the same rules, requirements, and limitations applicable to the transferor.

(H) Within 60 calendar days of GO-Biz sending notice of certification, the qualified community development entity or any

transferee, under subparagraph (G), shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity or transferee, under subparagraph (G), must provide GO-Biz with evidence of the receipt of the cash investment within 65 calendar days of the applicant receiving notice of certification. If the qualified community development entity or any transferee, under subparagraph (G), does not receive the cash investment and issue the qualified equity investment within 60 calendar days of GO-Biz sending the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to GO-Biz for certification. Lapsed certifications revert back to GO-Biz and shall be reissued in the following order:

(i) First, pro rata to applicants whose qualified equity investment allocations were reduced pursuant to subparagraph (F) under the annual allocation limitation of forty million dollars (\$40,000,000) in paragraph (5) of subdivision (c).

(ii) Thereafter, in accordance with the application process.

(I) A qualified community development entity that issues qualified equity investments must notify GO-Biz of the names of the taxpayers that are eligible to utilize tax credits pursuant to this section and any transfer of a qualified equity investment.

(J) (i) A qualified community development entity shall only make a qualified low-income community investment that demonstrates a positive revenue impact on the state over a 10-year period against the aggregate tax credit utilization over the same 10-year period. GO-Biz shall approve one or more nationally recognized revenue impact assessment models that shall be used by the qualified community development entity to demonstrate positive revenue impact. If it is demonstrated that the qualified low-income community investment has a positive revenue impact on the state at the time the investment is made, it shall be treated as if the investment continues to meet the requirement of this subparagraph for the duration of the seven-year program period.

(ii) Upon application and approval by GO-Biz, the requirement of this subparagraph may be waived.

(6) (A) A qualified community development entity that issues qualified equity investments shall submit a report to GO-Biz within the first five business days after the first anniversary of the initial credit allowance date that provides documentation as to the

investment of at least 85 percent of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in California. Such report shall include all of the following:

(i) A bank statement of such qualified community development entity evidencing each qualified low-income community investment.

(ii) Evidence that such business was a qualified active low-income community business at the time of such qualified low-income community investment.

(iii) Evidence that the community development entity complied with subparagraph (D) of paragraph (5).

(iv) Evidence that each qualified low-income community investment was determined to have a positive revenue impact on the state. This requirement does not apply for any qualified low-income community investment for which GO-Biz approved a waiver, pursuant to clause (ii) of subparagraph (J) of paragraph (5) or to reinvestments of redeemed qualified low-income investments.

(v) Any other information required by GO-Biz as being necessary to meet the requirements of this section.

(B) Thereafter, the qualified community development entity shall submit an annual report to GO-Biz within 60 calendar days of the beginning of the calendar year during the seven years following submittal of the report, pursuant to subparagraph (A). No annual report shall be due prior to the first anniversary of the initial credit allowance date. The report shall include, but is not limited to, the following:

(i) The social, environmental, and economic impact the credit had on the low-income community during the report period and cumulatively.

(ii) The amount of moneys used for qualified low-income investments in qualified low-income community businesses.

(iii) The number of employment positions created and retained as a result of qualified low-income community investments and the average annual salary of such positions.

(iv) The number of operating businesses assisted as a result of qualified low-income community investments, by industry and number of employees.

(v) Number of owner-occupied real estate projects.

(vi) Location of each qualified low-income community business assisted by a qualified low-income community investment.

(vii) Summary of the outcomes of each of the revenue impact assessments undertaken by the qualified community development entity during the year.

(e) (1) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and the six succeeding years if necessary, until the credit is exhausted.

(2) A taxpayer allowed a credit under this section for a qualified equity investment shall not be eligible for any other credit under this part with respect to that investment.

(f) GO-Biz shall annually report on its Internet Web site the information provided by low-income community development entities and on the geographic distribution of the qualified active low-income community businesses assisted.

(g) (1) The Franchise Tax Board may prescribe any rules or regulations that may be necessary or appropriate to implement this section. The Franchise Tax Board shall have access to any documentation held by the committee relative to the application and reporting of a qualified community development entity.

(2) A qualifying community development entity shall provide GO-Biz with the name, address, and tax identification number of each investor and entity for which a qualified equity investment was designated by the qualifying community development entity, pursuant to this section. GO-Biz shall provide this information to the Franchise Tax Board in a manner determined by the Franchise Tax Board.

(h) GO-Biz and the committee shall only make awards pursuant to paragraph (4) of subdivision (d) in a calendar year in which the Legislature appropriates funds in the California New Markets Tax Credit Fund pursuant to subdivision (b) of Section 18410.3.

(i) This section shall remain in effect only until December 1, 2028, and as of that date is repealed.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 8. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

Approved _____, 2014

Governor