

ASSEMBLY BILL

No. 2647

**Introduced by Assembly Members Eduardo Garcia and Medina
(Principal coauthors: Assembly Members Brown and Chu)**

February 19, 2016

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 2647, as introduced, Eduardo Garcia. Income taxation: insurance taxation: credits: California New Markets Tax Credit.

Existing federal law allows a New Markets Tax Credit to a taxpayer holding a qualified equity investment in an amount equal to the applicable percentage of the amount paid to the qualified community development entity for investment in low-income communities.

The state Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws. Existing state constitutional law governing insurance taxation imposes an annual tax on the gross premiums of an insurer, as defined, doing business in this state at specified rates.

Existing law establishes the Governor's Office of Business and Economic Development, also known as "GO-Biz," to, among other things, 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.

This bill would allow a California New Markets Tax Credit under the Personal Income Tax Law and the Corporation Tax Law, and the law governing insurance taxation, in modified conformity with a federal New Markets Tax Credit, for taxable years beginning on or after January 1, 2017, and before January 1, 2029, 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 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 annual appropriation by the Legislature, to defray the cost of applying to, and administering the credits, as specified. The bill would only authorize the allocation for these credits for those taxable years for which moneys are appropriated to GO-Biz to administer these credits for those taxable years.

Existing law requires any bill authorizing a new personal or corporation income tax credit to contain, among other things, specific goals, purposes, and objectives that the tax credit will achieve, detailed performance indicators, and data collection requirements, as provided.

This bill would also include that additional information required for any bill authorizing a new personal or corporation income tax credit.

The bill would provide that its provisions are severable.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) While many areas of California have recovered from the
- 3 economic and community development impacts of the 2006
- 4 Financial Crisis and the 2010 global recession, Californians in a
- 5 number of communities and neighborhoods are still experiencing
- 6 their lingering effects. In some cases this has resulted in small and
- 7 medium businesses in low-income areas lacking sufficient access

1 to capital and technical assistance. Given that the state has many
2 needs and limited resources, moneys from the private sector are
3 necessary to fill this capital and investment gap.

4 (b) Initially enacted in 2000, the federal government established
5 the New Markets Tax Credit (NMTC) Program, which uses a
6 market-based approach for expanding capital and technical
7 assistance to businesses in lower income communities. The federal
8 program is jointly administered by the Community Development
9 Financial Institutions Fund (CDFI Fund) and the Internal Revenue
10 Service. The NMTC Program allocates federal tax incentives to
11 community development entities (CDE), which they then use to
12 attract private investors who contribute funds that can be used to
13 finance and invest in businesses and develop real estate in
14 low-income communities. Through the 2013–14 funding round,
15 the CDFI Fund had awarded approximately forty billion dollars
16 (\$40,000,000,000) in NMTC in 836 awards, including three billion
17 dollars (\$3,000,000,000) in American Recovery and Investment
18 Act of 2009 awards and one billion dollars (\$1,000,000,000) of
19 special allocation authority to be used for the recovery and
20 redevelopment of the Gulf Opportunity Zone.

21 (c) The federal NMTC totals 39 percent of the original
22 investment amount in the CDE and is claimed over a period of
23 seven years (5 percent for each of the first three years, and 6
24 percent for each of the remaining four years). Any investment by
25 any taxpayer in the CDE redeemed before the end of the seven-year
26 period will be recaptured.

27 (d) Fourteen states in the United States have adopted state
28 programs using the NMTC model including Alabama, Florida,
29 Illinois, Nevada, and Oregon. While some of the programs
30 substantially mirror the federal program, others vary in both the
31 percentage of the credit and some of the policies that form the
32 foundation of the credit. One of the reasons cited for establishing
33 state-level programs is to make a state more attractive to CDEs,
34 which results in increasing the amount of federal NMTCs being
35 utilized in a state. Further, several studies, including a January 1,
36 2011, case study by Pacific Community Ventures, showed that for
37 every dollar of forgone tax revenue, the federal NMTC leverages
38 \$12 to \$14 of private investment.

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

1 26011.9. The authority shall make a determination of the
 2 amount of the one hundred million dollars (\$100,000,000) in
 3 exclusions not granted in the assigned calendar year pursuant to
 4 Section 26011.8. An amount equal to that amount but not to exceed
 5 forty million dollars (\$40,000,000) shall be granted in the
 6 subsequent calendar year through the California New Markets Tax
 7 Credit Program pursuant to Sections 12283, 17053.9, and 23622.9
 8 of the Revenue and Taxation Code. This section shall not prevent
 9 a taxpayer granted an exclusion pursuant to Section 6010.8 of the
 10 Revenue and Taxation Code from applying for, and receiving a
 11 refund for, taxes paid under Part 1 (commencing with Section
 12 6001) of Division 2 of the Revenue and Taxation Code.

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

15 12283. (a) There is hereby created the California New Markets
 16 Tax Credit Program as provided in this section, Section 17053.9,
 17 and Section 23622.9. The purpose of this program is to stimulate
 18 private sector investment in lower income communities by
 19 providing a tax incentive to community and economic development
 20 entities that can be leveraged by the entity to attract private sector
 21 investment that in turn will be deployed by providing financing
 22 and technical assistance to small- and medium-size businesses and
 23 the development of commercial, industrial, and community
 24 development projects, including, but not limited to, facilities for
 25 nonprofit service organizations, light manufacturing, and mixed-use
 26 and transit-oriented development. GO-Biz shall administer this
 27 program as provided in this section, Section 17053.9, and Section
 28 23622.9. The Director of GO-Biz may delegate the administration
 29 of all or portions of the program within GO-Biz.

30 (b) (1) For taxable years beginning on or after January 1, 2017,
 31 and before January 1, 2029, and subject to subdivision (h), there
 32 shall be allowed as a credit against the tax described in Section
 33 12201, in an amount determined in accordance with Section 45D
 34 of the Internal Revenue Code, relating to the new markets tax
 35 credit, as modified in this section.

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

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

1 (1) Section 45D(a)(2) of the Internal Revenue Code, relating to
2 applicable percentage, is modified by substituting for “(A) 5
3 percent with respect to the first 3 credit allowance dates, and (B)
4 6 percent with respect to the remainder of the credit allowance
5 dates” with the following:

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

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

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

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

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

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

34 (A) By substituting “any low-income community in California”
35 for “any low-income community” every place it appears in Section
36 45D of the Internal Revenue Code.

37 (B) A qualified active low-income community business shall
38 not include any business that derives, or projects to derive, 15
39 percent or more of its annual revenue from the rental or sale of
40 real estate. This exclusion does not apply to a business that is

1 controlled by, or under common control with, another business if
2 the second business: (i) does not derive or project to derive 15
3 percent or more of its annual revenue from the rental or sale of
4 real estate; and (ii) is the primary tenant of the real estate leased
5 from the first business.

6 (C) A qualified active low-income community business shall
7 only include a business that, at the time the initial investment is
8 made, has 250 or fewer employees and is located in one or more
9 California low-income communities. The operating business shall
10 meet all other conditions of a qualified active low-income
11 community business, except as modified by this paragraph. This
12 requirement does not apply to a business that is located on land
13 and is controlled by, or under common control with, a federally
14 recognized tribe.

15 (D) A qualified active low-income community business shall
16 only include a business located in census tracts with a poverty rate
17 greater than 30 percent, or census tracts, if located within a
18 nonmetropolitan area, with a median family income that does not
19 exceed 60 percent of median family income for this state, or census
20 tracts, if located within a metropolitan area, with a median family
21 income that does not exceed 60 percent of the greater of the
22 California median family income or the metropolitan area median
23 family income, or census tracts with unemployment rates at least
24 1.5 times the national average.

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

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

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

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

6 (A) The following shall apply in lieu of the provisions of Section
7 45D(f)(1) of the Internal Revenue Code: The aggregate amount
8 of qualified equity investments that may be allocated in any
9 calendar year for purposes of this section, Section 17053.9, and
10 Section 23622.9 shall be an amount as determined by GO-Biz in
11 consultation with the Department of Finance based upon any
12 unused portion of the one hundred million dollars (\$100,000,000)
13 in exclusions, authorized pursuant to Section 6010.8, as determined
14 by the California Alternative Energy and Advanced Transportation
15 Financing Authority pursuant to Section 26011.9 of the Public
16 Resources Code and reported to GO-Biz, not to exceed an amount
17 based upon a credit of forty million dollars (\$40,000,000). GO-Biz
18 shall limit the allocation of investments that may be designated
19 under this section, Section 17053.9, and Section 23622.9 to a
20 cumulative total amount based on credits of no more than two
21 hundred million dollars (\$200,000,000). The allocation of any
22 undesignated qualified equity investments shall be returned to
23 GO-Biz by March 1 of the year following allocation and the value
24 of the undesignated qualified equity investment shall be available
25 for allocation in the following calendar years in accordance with
26 the application process. Any qualified equity investment
27 attributable to recaptured credits shall be available to GO-Biz on
28 March 1 of the year following recapture and shall be available for
29 allocation in the following calendar years in accordance with
30 subparagraph (B) of paragraph (5). Reallocated qualified equity
31 investments attributable to recapture credits shall not count against
32 the annual or the cumulative limit.

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

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

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

1 (A) The qualified community development entity fails to comply
2 with subparagraph (D) of paragraph (5) of subdivision (d). In this
3 case, recapture shall be 100 percent of the credit.
4 (B) GO-Biz shall establish a process, in consultation with the
5 Department of Insurance, for the recapture of credits allowed under
6 this section from the entity that claimed the credit on a return.
7 (C) Recaptured qualified equity investments revert back to
8 GO-Biz and shall be reissued. The reissue shall not count toward
9 the annual or cumulative allocation limitation. The reissue shall
10 be done in the following order:
11 (i) First, pro rata to applicants whose qualified equity investment
12 allocations were reduced pursuant to subparagraph (F) of paragraph
13 (5) of subdivision (d) by the annual allocation limitation.
14 (ii) Thereafter, in accordance with the application process.
15 (D) Enforcement of each of the recapture provisions shall be
16 subject to a six-month cure period.
17 (d) (1) GO-Biz shall adopt guidelines necessary or appropriate
18 to carry out its responsibilities with respect to the allocation,
19 monitoring, and management of the tax credit program authorized
20 by this section.
21 (2) (A) GO-Biz shall establish and impose reasonable fees upon
22 entities that apply for the allocation pursuant to this subdivision
23 that in the aggregate defray the cost of reviewing applications for
24 the program. GO-Biz may impose other reasonable fees upon
25 entities that receive the allocation pursuant to this subdivision that
26 in the aggregate defray the cost of administering the program.
27 (B) The fees collected shall be deposited in the California New
28 Markets Tax Credit Fund established in Section 18410.3.
29 (3) In developing guidelines, GO-Biz shall adopt an allocation
30 process that does all of the following:
31 (A) Creates an equitable distribution process that ensures that
32 low-income community populations across the state have an
33 opportunity to benefit from the program.
34 (B) Sets minimum organizational capacity standards that
35 applicants must meet in order to receive an allocation of authority
36 to designate qualified equity investments including, but not limited
37 to, its business strategy, targeted community outcomes,
38 capitalization strategy, and management capacity.

1 (C) Considers the qualified community development entity's
2 prior qualified low-income community investments under Section
3 45D of the Internal Revenue Code.

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

7 (4) (A) Subject to subdivision (h), GO-Biz shall begin accepting
8 applications on or before May 15, 2017, and shall award authority
9 to designate qualified equity investments annually through 2029.

10 (B) In the instance where GO-Biz determines that an application
11 is incomplete, the qualified community development entity shall
12 be given five business days to provide the omitted information.

13 (5) (A) In the 2017 awards cycle, GO-Biz shall award authority
14 to designate qualified equity investments to qualified community
15 development entities described in paragraph (2) of subdivision (c)
16 in the order applications are received by GO-Biz. Applications
17 received on the same day shall be deemed to have been received
18 simultaneously.

19 (B) In the 2018 to 2029 award cycles, inclusive, at least 60
20 percent of the authority to designate qualified equity investments
21 shall be awarded pursuant to subparagraph (A). At the discretion
22 of GO-Biz, a higher percentage of authority to designate qualified
23 equity investments may be awarded pursuant to subparagraph (A).

24 (C) GO-Biz shall award up to 40 percent of the authority to
25 designate qualified equity investments in the 2018 to 2029,
26 inclusive, award cycles, to qualified community development
27 entities on a competitive basis using blind scoring and a review
28 committee that is composed of community development finance
29 practitioners and members having demonstrated experience in
30 assessing organizational business strategy, community outcomes,
31 capitalization strategy, and management capacity. A member of
32 the review committee shall not have a financial interest, which
33 includes, but is not limited to, asking, consenting, or agreeing to
34 receive any commission, emolument, gratuity, money, property,
35 or thing of value for his or her own use, benefit, or personal
36 advantage for procuring or endeavoring to procure for any person,
37 partnership, joint venture, association, or corporation any qualified
38 equity investment or other assistance from any applicant.

39 (D) (i) For qualified equity investments derived from the 2017
40 to 2029, inclusive, awards cycles, pursuant to subparagraphs (A),

1 (B), and (C), a qualified community development entity shall invest
2 at least 15 percent of the qualified equity investment in a qualified
3 low-income community business in consultation or in partnership
4 with either of the following:

5 (I) A qualified community development entity certified under
6 Section 45D of the Internal Revenue Code that has not received a
7 federal New Markets Tax Credit allocation on or after January 1,
8 2012, and has either a local service area that includes one or more
9 California communities or a California statewide service area, but
10 excluding qualified community development entities with a
11 national service area.

12 (II) A nonprofit organization that does the following:

13 (ia) Is tax exempt under Section 23701.

14 (ib) Is registered with the Registry of Charitable Trusts, which
15 is administered by the Attorney General.

16 (ic) Has articles of incorporation or articles of organization that
17 state the primary mission of the organization is focused on
18 improving the economic well-being of low-income communities
19 or individuals.

20 (id) Has bylaws that provide that the organization maintains
21 accountability to residents of low-income communities through
22 their representation on any governing board or on an advisory
23 board of the nonprofit organization.

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

30 (E) In making competitive awards of authority to designate
31 qualified equity investments, priority shall be given to applications
32 that can demonstrate that the qualified equity investment authority
33 will allow the qualified community development entity to undertake
34 qualified low-income community investments in rural, suburban,
35 or urban areas that have been historically underserved and result
36 in the primary benefit to the hardest to serve and undercapitalized
37 lower income populations, or in activities that support
38 neighborhood revitalization strategies driven by local grassroots
39 stakeholders in multiple low-income communities across one or
40 more regions or the state for the purpose of scaling economic

1 development activities that compliment regional industry clusters
2 that result in the greatest benefit to the largest number of lower
3 income individuals.

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

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

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

26 (H) Within 200 calendar days of GO-Biz sending notice of
27 certification, the qualified community development entity or any
28 transferee, under subparagraph (G), shall issue the qualified equity
29 investment and receive cash in the amount of the certified amount.
30 The qualified community development entity or transferee, under
31 subparagraph (G), shall provide GO-Biz with evidence of the
32 receipt of the cash investment within 205 calendar days of the
33 applicant receiving notice of certification. If the qualified
34 community development entity or any transferee, under
35 subparagraph (G), does not receive the cash investment and issue
36 the qualified equity investment within 200 calendar days of GO-Biz
37 sending the certification notice, the certification shall lapse and
38 the entity may not issue the qualified equity investment without
39 reapplying to GO-Biz for certification. Lapsed certifications revert
40 back to GO-Biz and shall be reissued in the following order:

- 1 (i) First, pro rata to applicants whose qualified equity investment
2 allocations were reduced pursuant to subparagraph (F) under the
3 annual allocation limitation of forty million dollars (\$40,000,000)
4 in paragraph (4) of subdivision (c).
- 5 (ii) Thereafter, in accordance with the application process.
- 6 (I) A qualified community development entity that issues
7 qualified equity investments shall notify GO-Biz of the names of
8 taxpayers that are eligible to utilize tax credits pursuant to this
9 section and any transfer of a qualified equity investment.
- 10 (6) (A) A qualified community development entity that issues
11 qualified equity investments shall submit a report to GO-Biz that
12 provides documentation as to the investment of at least 85 percent
13 of the funds being deployed within one year in qualified
14 low-income community investments in qualified active low-income
15 community businesses located in California. Such report shall
16 include all of the following:
- 17 (i) A bank statement of such qualified community development
18 entity evidencing each qualified low-income community
19 investment.
- 20 (ii) Evidence that such business was a qualified active
21 low-income community business at the time of such qualified
22 low-income community investment.
- 23 (iii) Evidence that the community development entity complied
24 with subparagraph (D) of paragraph (5).
- 25 (iv) Evidence that each qualified low-income community
26 investment was determined to have a positive revenue impact on
27 the state. This requirement does not apply to reinvestments of
28 redeemed qualified low-income investments.
- 29 (v) Any other information required by GO-Biz as being
30 necessary to meet the requirements of this section.
- 31 (B) Thereafter, the qualified community development entity
32 shall submit an annual report to GO-Biz during the seven years
33 following submittal of the report, pursuant to subparagraph (A).
34 No annual report shall be due prior to the first anniversary of the
35 initial credit allowance date. The report shall include, but is not
36 limited to, the following:
- 37 (i) The social, environmental, and economic impact the credit
38 had on the low-income community during the report period and
39 cumulatively.

- 1 (ii) The amount of moneys used for qualified low-income
2 investments in qualified low-income community businesses.
- 3 (iii) The number of employment positions created and retained
4 as a result of qualified low-income community investments and
5 the average annual salary of such positions.
- 6 (iv) The number of operating businesses assisted as a result of
7 qualified low-income community investments, by industry and
8 number of employees.
- 9 (v) Number of owner-occupied real estate projects.
- 10 (vi) Location of each qualified low-income community business
11 assisted by a qualified low-income community investment.
- 12 (vii) Summary of the outcomes of each of the revenue impact
13 assessments undertaken by the qualified community development
14 entity during the year.
- 15 (viii) Any other information requested by GO-Biz.
- 16 (e) (1) In the case where the credit allowed by this section
17 exceeds the tax described in Section 12201, the excess may be
18 carried over to reduce that tax in the following year, and the six
19 succeeding years if necessary, until the credit is exhausted.
- 20 (2) A taxpayer allowed a credit under this section for a qualified
21 equity investment shall not be eligible for any other credit under
22 this part with respect to that investment.
- 23 (3) The credit allowed under this section may be in addition to
24 any credit allowed under Section 45D of the Internal Revenue
25 Code.
- 26 (f) GO-Biz shall annually report on its Internet Web site the
27 information provided by low-income community development
28 entities and on the geographic distribution of the qualified active
29 low-income community businesses assisted.
- 30 (g) (1) The Insurance Commissioner may prescribe any rules
31 or regulations that may be necessary or appropriate to implement
32 this section. The Insurance Commissioner shall have access to any
33 documentation held by GO-Biz relative to the application and
34 reporting of a qualified community development entity.
- 35 (2) A qualifying community development entity shall provide
36 GO-Biz with the name, address, and tax identification number of
37 each investor and entity for which a qualified equity investment
38 was designated by the qualifying community development entity,
39 pursuant to this section. GO-Biz shall provide this information to

1 the Insurance Commissioner in a manner determined by the
2 Insurance Commissioner.

3 (h) (1) The credit authorized by this section shall only be
4 allowed for those taxable years for which moneys are appropriated
5 to GO-Biz to administer the California New Markets Tax Credit
6 pursuant to 18410.3 for that taxable year. The appropriation shall
7 specifically identify the California New Markets Tax Credit.

8 (2) For those taxable years for which those moneys are
9 appropriated pursuant to subdivision (1), GO-Biz shall post notice
10 of the appropriation on the homepage of its Internet Web site and
11 send notice of such appropriation to the Secretary of State and the
12 Legislative Counsel.

13 (i) This section shall be repealed on December 1, 2029.

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

16 17053.9. (a) There is hereby created the California New
17 Markets Tax Credit Program as provided in this section, Section
18 12283, and Section 23622.9. The purpose of this program is to
19 stimulate private sector investment in lower income communities
20 by providing a tax incentive to community and economic
21 development entities that can be leveraged by the entity to attract
22 private sector investment that in turn will be deployed by providing
23 financing and technical assistance to small- and medium-size
24 businesses and the development of commercial, industrial, and
25 community development projects, including, but not limited to,
26 facilities for nonprofit service organizations, light manufacturing,
27 and mixed-use and transit-oriented development. GO-Biz shall
28 administer this program as provided in this section, Section 12283,
29 and Section 23622.9. The Director of GO-Biz may delegate the
30 administration of all or portions of the program within GO-Biz.

31 (b) (1) For taxable years beginning on or after January 1, 2017,
32 and before January 1, 2029, and subject to subdivision (h), there
33 shall be allowed as a credit against the “net tax,” as defined in
34 Section 17039, in an amount determined in accordance with Section
35 45D of the Internal Revenue Code, relating to the new markets tax
36 credit, as modified in this section.

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

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

1 (1) Section 45D(a)(2) of the Internal Revenue Code, relating to
2 applicable percentage, is modified by substituting for “(A) 5
3 percent with respect to the first 3 credit allowance dates, and (B)
4 6 percent with respect to the remainder of the credit allowance
5 dates” with the following:

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

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

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

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

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

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

34 (A) By substituting “any low-income community in California”
35 for “any low-income community” every place it appears in Section
36 45D of the Internal Revenue Code.

37 (B) A qualified active low-income community business shall
38 not include any business that derives, or projects to derive, 15
39 percent or more of its annual revenue from the rental or sale of
40 real estate. This exclusion does not apply to a business that is

1 controlled by, or under common control with, another business if
2 the second business: (i) does not derive or project to derive 15
3 percent or more of its annual revenue from the rental or sale of
4 real estate; and (ii) is the primary tenant of the real estate leased
5 from the first business.

6 (C) A qualified active low-income community business shall
7 only include a business that, at the time the initial investment is
8 made, has 250 or fewer employees and is located in one or more
9 California low-income communities. The operating business shall
10 meet all other conditions of a qualified active low-income
11 community business, except as modified by this paragraph. This
12 requirement does not apply to a business that is located on land
13 and is controlled by, or under common control with, a federally
14 recognized tribe.

15 (D) A qualified active low-income community business shall
16 only include a business located in census tracts with a poverty rate
17 greater than 30 percent, or census tracts, if located within a
18 nonmetropolitan area, with a median family income that does not
19 exceed 60 percent of median family income for this state, or census
20 tracts, if located within a metropolitan area, with a median family
21 income that does not exceed 60 percent of the greater of the
22 California median family income or the metropolitan area median
23 family income, or census tracts with unemployment rates at least
24 1.5 times the national average.

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

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

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

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

6 (A) The following shall apply in lieu of the provisions of Section
7 45D(f)(1) of the Internal Revenue Code: The aggregate amount
8 of qualified equity investments that may be allocated in any
9 calendar year for purposes of this section, Section 12283, and
10 Section 23622.9 shall be an amount as determined by GO-Biz in
11 consultation with the Department of Finance based upon any
12 unused portion of the one hundred million dollars (\$100,000,000)
13 in exclusions, authorized pursuant to Section 6010.8, as determined
14 by the California Alternative Energy and Advanced Transportation
15 Financing Authority pursuant to Section 26011.9 of the Public
16 Resources Code and reported to GO-Biz, not to exceed an amount
17 based upon a credit of forty million dollars (\$40,000,000). GO-Biz
18 shall limit the allocation of investments that may be designated
19 under this section, Section 12283, and Section 23622.9 to a
20 cumulative total amount based on credits of no more than two
21 hundred million dollars (\$200,000,000). The allocation of any
22 undesignated qualified equity investments shall be returned to
23 GO-Biz by March 1 of the year following allocation and the value
24 of the undesignated qualified equity investment shall be available
25 for allocation in the following calendar years in accordance with
26 the application process. Any qualified equity investment
27 attributable to recaptured credits shall be available to GO-Biz on
28 March 1 of the year following recapture and shall be available for
29 allocation in the following calendar years in accordance with clause
30 (ii) of subparagraph (B) of paragraph (5). Reallocated qualified
31 equity investments attributable to recapture credits shall not count
32 against the annual or the cumulative limit.

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

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

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

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

6 (i) The qualified community development entity fails to comply
7 with subparagraph (D) of paragraph (5) of subdivision (d). In this
8 case, recapture shall be 100 percent of the credit.

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

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

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

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

21 (iv) Enforcement of each of the recapture provisions shall be
22 subject to a six-month cure period.

23 (d) (1) GO-Biz shall adopt guidelines necessary or appropriate
24 to carry out its responsibilities with respect to the allocation,
25 monitoring, and management of the tax credit program authorized
26 by this section.

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

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

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

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

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

6 (C) Considers the qualified community development entity's
7 prior qualified low-income community investments under Section
8 45D of the Internal Revenue Code.

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

12 (4) (A) Subject to subdivision (h), GO-Biz shall begin accepting
13 applications on or before May 15, 2017, and shall award authority
14 to designate qualified equity investments annually through 2029.

15 (B) In the instance where GO-Biz determines that an application
16 is incomplete, the qualified community development entity shall
17 be given five business days to provide the omitted information.

18 (5) (A) In the 2017 awards cycle, GO-Biz shall award authority
19 to designate qualified equity investments to qualified community
20 development entities described in paragraph (2) of subdivision (c)
21 in the order applications are received by GO-Biz. Applications
22 received on the same day shall be deemed to have been received
23 simultaneously.

24 (B) In the 2018 to 2029 award cycles, inclusive, at least 60
25 percent of the authority to designate qualified equity investments
26 shall be awarded pursuant to subparagraph (A). At the discretion
27 of GO-Biz, a higher percentage of authority to designate qualified
28 equity investments may be awarded pursuant to subparagraph (A).

29 (C) GO-Biz shall award up to 40 percent of the authority to
30 designate qualified equity investments in the 2018 to 2029,
31 inclusive, award cycles, to qualified community development
32 entities on a competitive basis using blind scoring and a review
33 committee that is composed of community development finance
34 practitioners and members having demonstrated experience in
35 assessing organizational business strategy, community outcomes,
36 capitalization strategy, and management capacity. A member of
37 the review committee shall not have a financial interest, which
38 includes, but is not limited to, asking, consenting, or agreeing to
39 receive any commission, emolument, gratuity, money, property,
40 or thing of value for his or her own use, benefit, or personal

1 advantage for procuring or endeavoring to procure for any person,
2 partnership, joint venture, association, or corporation any qualified
3 equity investment or other assistance from any applicant.

4 (D) (i) For qualified equity investments derived from the 2017
5 to 2029, inclusive, awards cycles, pursuant to subparagraphs (A),
6 (B), and (C), a qualified community development entity shall invest
7 at least 15 percent of the qualified equity investment in a qualified
8 low-income community business in consultation or in partnership
9 with either of the following:

10 (I) A qualified community development entity certified under
11 Section 45D of the Internal Revenue Code that has not received a
12 federal New Markets Tax Credit allocation on or after January 1,
13 2012, and has either a local service area that includes one or more
14 California communities or a California statewide service area, but
15 excluding qualified community development entities with a
16 national service area.

17 (II) A nonprofit organization that does the following:

18 (ia) Is tax exempt under Section 23701.

19 (ib) Is registered with the Registry of Charitable Trusts, which
20 is administered by the Attorney General.

21 (ic) Has articles of incorporation or articles of organization that
22 state the primary mission of the organization is focused on
23 improving the economic well-being of low-income communities
24 or individuals.

25 (id) Has bylaws that provide that the organization maintains
26 accountability to residents of low-income communities through
27 their representation on any governing board or on an advisory
28 board of the nonprofit organization.

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

35 (E) In making competitive awards of authority to designate
36 qualified equity investments, priority shall be given to applications
37 that can demonstrate that the qualified equity investment authority
38 will allow the qualified community development entity to undertake
39 qualified low-income community investments in rural, suburban,
40 or urban areas that have been historically underserved and result

1 in the primary benefit to the hardest to serve and undercapitalized
2 lower income populations, or in activities that support
3 neighborhood revitalization strategies driven by local grassroots
4 stakeholders in multiple low-income communities across one or
5 more regions or the state for the purpose of scaling economic
6 development activities that compliment regional industry clusters
7 that result in the greatest benefit to the largest number of lower
8 income individuals.

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

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

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

31 (H) Within 200 calendar days of GO-Biz sending notice of
32 certification, the qualified community development entity or any
33 transferee, under subparagraph (G), shall issue the qualified equity
34 investment and receive cash in the amount of the certified amount.
35 The qualified community development entity or transferee, under
36 subparagraph (G), shall provide GO-Biz with evidence of the
37 receipt of the cash investment within 205 calendar days of the
38 applicant receiving notice of certification. If the qualified
39 community development entity or any transferee, under
40 subparagraph (G), does not receive the cash investment and issue

1 the qualified equity investment within 200 calendar days of GO-Biz
 2 sending the certification notice, the certification shall lapse and
 3 the entity may not issue the qualified equity investment without
 4 reapplying to GO-Biz for certification. Lapsed certifications revert
 5 back to GO-Biz and shall be reissued in the following order:

6 (i) First, pro rata to applicants whose qualified equity investment
 7 allocations were reduced pursuant to subparagraph (F) under the
 8 annual allocation limitation of forty million dollars (\$40,000,000)
 9 in paragraph (4) of subdivision (c).

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

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

15 (6) (A) A qualified community development entity that issues
 16 qualified equity investments shall submit a report to GO-Biz that
 17 provides documentation as to the investment of at least 85 percent
 18 of the funds being deployed within one year in qualified
 19 low-income community investments in qualified active low-income
 20 community businesses located in California. Such report shall
 21 include all of the following:

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

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

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

30 (iv) Evidence that each qualified low-income community
 31 investment was determined to have a positive revenue impact on
 32 the state. This requirement does not apply to reinvestments of
 33 redeemed qualified low-income investments.

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

36 (B) Thereafter, the qualified community development entity
 37 shall submit an annual report to GO-Biz during the seven years
 38 following submittal of the report, pursuant to subparagraph (A).
 39 No annual report shall be due prior to the first anniversary of the

1 initial credit allowance date. The report shall include, but is not
2 limited to, the following:

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

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

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

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

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

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

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

20 (viii) Any other information requested by GO-Biz.

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

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

28 (3) The credit allowed under this section may be in addition to
29 any credit allowed under Section 45D of the Internal Revenue
30 Code.

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

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

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

8 (h) (1) The credit authorized by this section shall only be
 9 allowed for those taxable years for which moneys are appropriated
 10 to GO-Biz to administer the California New Markets Tax Credit
 11 pursuant to 18410.3 for that taxable year. The appropriation shall
 12 specifically identify the California New Markets Tax Credit.

13 (2) For those taxable years for which those moneys are
 14 appropriated pursuant to subdivision (1), GO-Biz shall post notice
 15 of the appropriation on the homepage of its Internet Web site and
 16 send notice of such appropriation to the Secretary of State and the
 17 Legislative Counsel.

18 (i) This section shall be repealed on December 1, 2029.

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

21 18410.3. (a) The California New Markets Tax Credit Fund is
 22 hereby established in the State Treasury.

23 (b) Upon annual appropriation, moneys in the fund shall be used
 24 for the purposes described in subdivision (d) of Section 12283,
 25 subdivision (d) of Section 17053.9, and subdivision (d) of Section
 26 23622.9.

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

29 23622.9. (a) There is hereby created the California New
 30 Markets Tax Credit Program as provided in this section, Section
 31 12283, and Section 17053.9. The purpose of this program is to
 32 stimulate private sector investment in lower income communities
 33 by providing a tax incentive to community and economic
 34 development entities that can be leveraged by the entity to attract
 35 private sector investment that in turn will be deployed by providing
 36 financing and technical assistance to small- and medium-size
 37 businesses and the development of commercial, industrial, and
 38 community development projects, including, but not limited to,
 39 facilities for nonprofit service organizations, light manufacturing,
 40 and mixed-use and transit-oriented development. GO-Biz shall

1 administer this program as provided in this section, Section 12283,
2 and Section 17053.9. The Director of GO-Biz may delegate the
3 administration of all or portions of the program within GO-Biz.

4 (b) (1) For taxable years beginning on or after January 1, 2017,
5 and before January 1, 2029, and subject to subdivision (h), there
6 shall be allowed as a credit against the “tax,” as defined in Section
7 23036, in an amount determined in accordance with Section 45D
8 of the Internal Revenue Code, relating to the new markets tax
9 credit, as modified in this section.

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

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

14 (1) Section 45D(a)(2) of the Internal Revenue Code, relating to
15 applicable percentage, is modified by substituting for “(A) 5
16 percent with respect to the first 3 credit allowance dates, and (B)
17 6 percent with respect to the remainder of the credit allowance
18 dates” with the following:

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

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

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

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

35 (B) Section 45D(c)(2) of the Internal Revenue Code, relating
36 to special rules for certain organizations, is modified to only
37 include a specialized small business investment company or
38 community development financial institution that entered into an
39 allocation agreement with the Community Development Financial
40 Institutions Fund of the United States Treasury Department, with

1 respect to credits authorized by Section 45D of the Internal
2 Revenue Code, that includes California within the service area and
3 is dated on or after January 1, 2012.

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

7 (A) By substituting “any low-income community in California”
8 for “any low-income community” every place it appears in Section
9 45D of the Internal Revenue Code.

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

19 (C) A qualified active low-income community business shall
20 only include a business that, at the time the initial investment is
21 made, has 250 or fewer employees and is located in one or more
22 California low-income communities. The operating business shall
23 meet all other conditions of a qualified active low-income
24 community business, except as modified by this paragraph. This
25 requirement does not apply to a business that is located on land
26 and is controlled by, or under common control with, a federally
27 recognized tribe.

28 (D) A qualified active low-income community business shall
29 only include a business located in census tracts with a poverty rate
30 greater than 30 percent, or census tracts, if located within a
31 nonmetropolitan area, with a median family income that does not
32 exceed 60 percent of median family income for this state, or census
33 tracts, if located within a metropolitan area, with a median family
34 income that does not exceed 60 percent of the greater of the
35 California median family income or the metropolitan area median
36 family income, or census tracts with unemployment rates at least
37 1.5 times the national average.

38 (E) A qualified active low-income community business shall
39 not include any business that operates or derives revenues from

1 the operation of a country club, gaming establishment, massage
2 parlor, liquor store, or golf course.

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

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

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

19 (A) The following shall apply in lieu of the provisions of Section
20 45D(f)(1) of the Internal Revenue Code: The aggregate amount
21 of qualified equity investments that may be allocated in any
22 calendar year for purposes of this section, Section 12283, and
23 Section 17053.9 shall be an amount as determined by GO-Biz in
24 consultation with the Department of Finance based upon any
25 unused portion of the one hundred million dollars (\$100,000,000)
26 in exclusions, authorized pursuant to Section 6010.8, as determined
27 by the California Alternative Energy and Advanced Transportation
28 Financing Authority pursuant to Section 26011.9 of the Public
29 Resources Code and reported to GO-Biz, not to exceed an amount
30 based upon a credit of forty million dollars (\$40,000,000). GO-Biz
31 shall limit the allocation of investments that may be designated
32 under this section, Section 12283, and Section 17053.9 to a
33 cumulative total amount based on credits of no more than two
34 hundred million dollars (\$200,000,000). The allocation of any
35 undesignated qualified equity investments shall be returned to
36 GO-Biz by March 1 of the year following allocation and the value
37 of the undesignated qualified equity investment shall be available
38 for allocation in the following calendar years in accordance with
39 the application process. Any qualified equity investment
40 attributable to recaptured credits shall be available to GO-Biz on

1 March 1 of the year following recapture and shall be available for
2 allocation in the following calendar years in accordance with clause
3 (ii) of subparagraph (B) of paragraph (5). Reallocated qualified
4 equity investments attributable to recapture credits shall not count
5 against the annual or the cumulative limit.

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

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

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

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

17 (i) The qualified community development entity fails to comply
18 with subparagraph (D) of paragraph (5) of subdivision (d). In this
19 case, recapture shall be 100 percent of the credit.

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

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

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

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

31 (iv) Enforcement of each of the recapture provisions shall be
32 subject to a six-month cure period.

33 (d) (1) GO-Biz shall adopt guidelines necessary or appropriate
34 to carry out its responsibilities with respect to the allocation,
35 monitoring, and management of the tax credit program authorized
36 by this section.

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

1 entities that receive the allocation pursuant to this subdivision that
2 in the aggregate defray the cost of administering the program.

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

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

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

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

15 (C) Considers the qualified community development entity's
16 prior qualified low-income community investments under Section
17 45D of the Internal Revenue Code.

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

21 (4) (A) Subject to subdivision (h), GO-Biz shall begin accepting
22 applications on or before May 15, 2017, and shall award authority
23 to designate qualified equity investments annually through 2029.

24 (B) In the instance where GO-Biz determines that an application
25 is incomplete, the qualified community development entity shall
26 be given five business days to provide the omitted information.

27 (5) (A) In the 2017 awards cycle, GO-Biz shall award authority
28 to designate qualified equity investments to qualified community
29 development entities described in paragraph (2) of subdivision (c)
30 in the order applications are received by GO-Biz. Applications
31 received on the same day shall be deemed to have been received
32 simultaneously.

33 (B) In the 2018 to 2029 award cycles, inclusive, at least 60
34 percent of the authority to designate qualified equity investments
35 shall be awarded pursuant to subparagraph (A). At the discretion
36 of GO-Biz, a higher percentage of authority to designate qualified
37 equity investments may be awarded pursuant to subparagraph (A).

38 (C) GO-Biz shall award up to 40 percent of the authority to
39 designate qualified equity investments in the 2018 to 2029,
40 inclusive, award cycles, to qualified community development

1 entities on a competitive basis using blind scoring and a review
2 committee that is composed of community development finance
3 practitioners and members having demonstrated experience in
4 assessing organizational business strategy, community outcomes,
5 capitalization strategy, and management capacity. A member of
6 the review committee shall not have a financial interest, which
7 includes, but is not limited to, asking, consenting, or agreeing to
8 receive any commission, emolument, gratuity, money, property,
9 or thing of value for his or her own use, benefit, or personal
10 advantage for procuring or endeavoring to procure for any person,
11 partnership, joint venture, association, or corporation any qualified
12 equity investment or other assistance from any applicant.

13 (D) (i) For qualified equity investments derived from the 2017
14 to 2029, inclusive, awards cycles, pursuant to subparagraphs (A),
15 (B), and (C), a qualified community development entity shall invest
16 at least 15 percent of the qualified equity investment in a qualified
17 low-income community business in consultation or in partnership
18 with either of the following:

19 (I) A qualified community development entity certified under
20 Section 45D of the Internal Revenue Code that has not received a
21 federal New Markets Tax Credit allocation on or after January 1,
22 2012, and has either a local service area that includes one or more
23 California communities or a California statewide service area, but
24 excluding qualified community development entities with a
25 national service area.

26 (II) A nonprofit organization that does the following:

27 (ia) Is tax exempt under Section 23701.

28 (ib) Is registered with the Registry of Charitable Trusts, which
29 is administered by the Attorney General.

30 (ic) Has articles of incorporation or articles of organization that
31 state the primary mission of the organization is focused on
32 improving the economic well-being of low-income communities
33 or individuals.

34 (id) Has bylaws that provide that the organization maintains
35 accountability to residents of low-income communities through
36 their representation on any governing board or on an advisory
37 board of the nonprofit organization.

38 (ii) The 15-percent investment shall be calculated by multiplying
39 the total purchase price of the qualified equity investments issued
40 by the qualified community development entity by 15 percent.

1 Each community development entity application shall indicate
2 how the qualified community development entity will meet this
3 requirement.

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

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

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

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

1 (H) Within 200 calendar days of GO-Biz sending notice of
2 certification, the qualified community development entity or any
3 transferee, under subparagraph (G), shall issue the qualified equity
4 investment and receive cash in the amount of the certified amount.
5 The qualified community development entity or transferee, under
6 subparagraph (G), shall provide GO-Biz with evidence of the
7 receipt of the cash investment within 205 calendar days of the
8 applicant receiving notice of certification. If the qualified
9 community development entity or any transferee, under
10 subparagraph (G), does not receive the cash investment and issue
11 the qualified equity investment within 200 calendar days of GO-Biz
12 sending the certification notice, the certification shall lapse and
13 the entity may not issue the qualified equity investment without
14 reapplying to GO-Biz for certification. Lapsed certifications revert
15 back to GO-Biz and shall be reissued in the following order:

16 (i) First, pro rata to applicants whose qualified equity investment
17 allocations were reduced pursuant to subparagraph (F) under the
18 annual allocation limitation of forty million dollars (\$40,000,000)
19 in paragraph (4) of subdivision (c).

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

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

25 (6) (A) A qualified community development entity that issues
26 qualified equity investments shall submit a report to GO-Biz that
27 provides documentation as to the investment of at least 85 percent
28 of the funds being deployed within one year in qualified
29 low-income community investments in qualified active low-income
30 community businesses located in California. Such report shall
31 include all of the following:

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

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

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

1 (iv) Evidence that each qualified low-income community
2 investment was determined to have a positive revenue impact on
3 the state. This requirement does not apply to reinvestments of
4 redeemed qualified low-income investments.

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

7 (B) Thereafter, the qualified community development entity
8 shall submit an annual report to GO-Biz during the seven years
9 following submittal of the report, pursuant to subparagraph (A).
10 No annual report shall be due prior to the first anniversary of the
11 initial credit allowance date. The report shall include, but is not
12 limited to, the following:

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

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

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

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

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

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

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

30 (viii) Any other information requested by GO-Biz.

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

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

38 (3) The credit allowed under this section may be in addition to
39 any credit allowed under Section 45D of the Internal Revenue
40 Code.

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

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

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

17 (h) (1) The credit authorized by this section shall only be
18 allowed for those taxable years for which moneys are appropriated
19 to GO-Biz to administer the California New Markets Tax Credit
20 pursuant to 18410.3 for that taxable year. The appropriation shall
21 specifically identify the California New Markets Tax Credit.

22 (2) For those taxable years for which those moneys are
23 appropriated pursuant to subdivision (1), GO-Biz shall post notice
24 of the appropriation on the homepage of its Internet Web site and
25 send notice of such appropriation to the Secretary of State and the
26 Legislative Counsel.

27 (i) This section shall be repealed on December 1, 2029.

28 SEC. 7. For the purposes of complying with Section 41 of the
29 Revenue and Taxation Code, the Legislature finds and declares as
30 follows:

31 (a) Specific goals, purposes, and objectives: attract private sector
32 investment in lower income communities in California.

33 (b) Performance indicators:

34 (1) Amount of qualified low-income community investments
35 issued.

36 (2) Amount of dollars deployed in qualified low-income
37 community investments.

38 (3) Number of operating businesses assisted as a result of
39 qualified low-income community investments.

- 1 (4) Number of employment positions created and retained as a
2 result of qualified low-income community investments and the
3 average annual salary of those positions.
- 4 (c) Data collection requirements and baseline measurements:
- 5 (1) The baseline measurements include:
- 6 (A) The amount of tax credits issued in the year.
- 7 (B) The unemployment rate of the area.
- 8 (C) The poverty rate of the area.
- 9 (2) Data to collect includes:
- 10 (A) The amount tax credits issued in the year.
- 11 (B) The number of operating businesses in a low-income
12 community assisted.
- 13 (C) The number of jobs created and retained as a result of
14 qualified low-income community investments.
- 15 SEC. 8. The provisions of this act are severable. If any
16 provision of this act or its application is held invalid, that invalidity
17 shall not affect other provisions or applications that can be given
18 effect without the invalid provision or application.
- 19 SEC. 9. This act provides for a tax levy within the meaning of
20 Article IV of the Constitution and shall go into immediate effect.