

House Bill 395

By: Representatives Shaw of the 176<sup>th</sup>, Stephens of the 164<sup>th</sup>, England of the 116<sup>th</sup>, Knight of the 130<sup>th</sup>, Williamson of the 115<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to  
2 establish qualified low-income community investment; to provide a short title; to provide  
3 definitions; to provide that certain entities may earn credit against state premium tax liability;  
4 to provide for certification of qualified equity investments; to provide for recapture of credit  
5 claimed under certain circumstances; to provide for certain refundable fees; to provide for  
6 a retaliatory tax; to provide for decertification; to provide for an effective date and  
7 applicability; to provide for related matters; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
12 adding a new Code section to read as follows:

13 "33-1-23.

14 (a) This Code section shall be known and may be cited as the 'Georgia New Markets Jobs  
15 Act.'

16 (b) As used in this Code section, the term:

17 (1) 'Applicable percentage' means 0 percent for the first two credit allowance dates, 12  
18 percent for the next three credit allowance dates, and 11 percent for the next two credit  
19 allowance dates.

20 (2) 'Credit allowance date' means with respect to any qualified equity investment:

21 (A) The date on which such investment is initially made; and

22 (B) Each of the six anniversary dates of such date thereafter.

23 (3) 'Department' means the Department of Economic Development.

24 (4) 'Letter ruling' means a written interpretation of law to a specific set of facts provided  
25 by the applicant requesting a letter ruling.

26 (5) 'Long-term debt security' means any debt instrument issued by a qualified community  
27 development entity, at par value or a premium, with an original maturity date of at least  
28 seven years from the date of its issuance, with no acceleration of repayment,  
29 amortization, or prepayment features prior to its original maturity date. The qualified  
30 community development entity that issues the debt instrument may not make cash interest  
31 payments on the debt instrument during the period beginning on the date of issuance and  
32 ending on the final credit allowance date in an amount that exceeds the cumulative  
33 operating income, as defined by regulations adopted under Section 45D of the Internal  
34 Revenue Code of 1986, as amended, of the qualified community development entity for  
35 that period prior to giving effect to the expense of such cash interest payments. The  
36 foregoing shall in no way limit the holder's ability to accelerate payments on the debt  
37 instrument in situations where the issuer has defaulted on covenants designed to ensure  
38 compliance with this Code section or Section 45D of the Internal Revenue Code of 1986,  
39 as amended.

40 (6) 'Purchase price' means the amount paid to the issuer of a qualified equity investment  
41 for such qualified equity investment.

42 (7) 'Qualified active low-income community business' has the same meaning given such  
43 term in Section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R.  
44 Section 1.45D-1, but limited to those businesses meeting the Small Business  
45 Administration size eligibility standards established in 13 C.F.R. Part 121 Sections  
46 121.101, et seq. at the time the qualified low-income community investment is made. A  
47 business shall be considered a qualified active low-income community business for the  
48 duration of the qualified community development entity's investment in, or loan to, the  
49 business if the entity reasonably expects, at the time it makes the investment or loan, that  
50 the business will continue to satisfy the requirements for being a qualified active  
51 low-income community business, other than the Small Business Administration size  
52 standards, throughout the entire period of the investment or loan. The term excludes any  
53 business that derives or projects to derive 15 percent or more of its annual revenue from  
54 the rental or sale of real estate. This exclusion does not apply to a business that is  
55 controlled by, or under common control with, another business if the second business: (a)  
56 does not derive or project to derive 15 percent or more of its annual revenue from the  
57 rental or sale of real estate and (b) is the primary tenant of the real estate leased from the  
58 first business.

59 (8) 'Qualified community development entity' has the same meaning given such term in  
60 Section 45D of the Internal Revenue Code of 1986, as amended, provided that such entity  
61 has entered into, for the current year or any prior year, an allocation agreement with the  
62 Community Development Financial Institutions Fund of the United States Treasury

63 Department with respect to credits authorized by Section 45D of the Internal Revenue  
 64 Code of 1986, as amended, which includes the State of Georgia within the service area  
 65 set forth in such allocation agreement. The term shall include subsidiary community  
 66 development entities of any such qualified community development entity.

67 (9) 'Qualified equity investment' means any equity investment in, or long-term debt  
 68 security issued by, a qualified community development entity that:

69 (A) Is acquired after the effective date of this Code section at its original issuance  
 70 solely in exchange for cash;

71 (B) Has at least 85 percent of its cash purchase price used by the issuer to make  
 72 qualified low-income community investments in qualified active low-income  
 73 community businesses located in this state by the first anniversary of the initial credit  
 74 allowance date; and

75 (C) Is designated by the issuer as a qualified equity investment under this paragraph  
 76 and is certified by the department as not exceeding the limitation contained in  
 77 paragraph (6) of subsection (e) of this Code section.

78 This term shall include any qualified equity investment that does not meet the provisions  
 79 of subparagraph (A) of this paragraph if such investment was a qualified equity  
 80 investment in the hands of a prior holder.

81 (10) 'Qualified low-income community investment' means any capital or equity  
 82 investment in, or loan to, any qualified active low-income community business.

83 (11) 'State premium tax liability' means any liability incurred by any entity under Code  
 84 Sections 33-3-26 and 33-8-4, or, if the tax liability under Code Sections 33-3-26 and  
 85 33-8-4 is eliminated or reduced, the term shall also mean any tax liability imposed on an  
 86 insurance company or other person that had premium tax liability under the laws of this  
 87 state.

88 (c) Any entity that makes a qualified equity investment earns a vested right to credit  
 89 against the entity's state premium tax liability on a premium tax report filed under this Code  
 90 section that may be utilized as follows:

91 (1) On each credit allowance date of such qualified equity investment the entity, or  
 92 subsequent holder of the qualified equity investment, shall be entitled to utilize a portion  
 93 of such credit during the taxable year including such credit allowance date;

94 (2) The credit amount shall be equal to the applicable percentage for such credit  
 95 allowance date multiplied by the purchase price paid to the issuer of such qualified equity  
 96 investment; and

97 (3) The amount of the credit claimed by an entity shall not exceed the amount of such  
 98 entity's state premium tax liability for the tax year for which the credit is claimed. Any

99 amount of tax credit that the entity is prohibited from claiming in a taxable year as a  
100 result of this Code section may be carried forward for use in any subsequent taxable year.  
101 (d) No tax credit claimed under this Code section shall be refundable or saleable on the  
102 open market. Tax credits earned by a partnership, limited liability company, S-corporation,  
103 or other 'pass-through' entity may be allocated to the partners, members, or shareholders  
104 of such entity for their direct use in accordance with the provisions of any agreement  
105 among such partners, members, or shareholders. Such allocation shall be not considered  
106 a sale for purposes of this Code section.

107 (e)(1) A qualified community development entity that seeks to have an equity investment  
108 or long-term debt security designated as a qualified equity investment and eligible for tax  
109 credits under this Code section shall apply to the department. The department shall begin  
110 accepting applications on August 1, 2013. The qualified community development entity  
111 shall include the following:

112 (A) Evidence of the applicant's certification as a qualified community development  
113 entity, including evidence of the service area of the entity that includes this state;  
114 (B) A copy of an allocation agreement executed by the applicant, or its controlling  
115 entity, and the Community Development Financial Institutions Fund;  
116 (C) A certificate executed by an executive officer of the applicant (i) attesting that the  
117 allocation agreement remains in effect and has not been revoked or cancelled by the  
118 Community Development Financial Institutions Fund and (ii) stating the cumulative  
119 amount of allocations awarded to the applicant by the Community Development  
120 Financial Institutions Fund;  
121 (D) A description of the proposed amount, structure, and purchaser of the qualified  
122 equity investment;  
123 (E) If known at the time of application, identifying information for any entity that will  
124 utilize the tax credits earned as a result of the issuance of the qualified equity  
125 investment;  
126 (F) Examples of the types of qualified active low-income businesses in which the  
127 applicant, its controlling entity, or affiliates of its controlling entity have invested under  
128 the federal New Markets Tax Credit Program. Applicants are not required to identify  
129 qualified active low-income community businesses in which they will invest when  
130 submitting an application;  
131 (G) A nonrefundable application fee of \$5,000.00. This fee shall be paid to the  
132 department and shall be required of each application submitted; and  
133 (H) The refundable performance fee required by paragraph (1) of subsection (h) of this  
134 Code section.

135 (2) A qualified community development entity, on an aggregate basis with all of its  
136 subsidiary qualified community development entities, may not apply to have equity  
137 investments or long-term debt instruments designated as qualified equity investments  
138 under this subsection in excess of the total amount of allocations awarded to such  
139 applicant and its subsidiary qualified community development entities by the Community  
140 Development Financial Institutions Fund under Section 45D of the Internal Revenue  
141 Code.

142 (3) Within 30 days after receipt of a completed application containing the information  
143 set forth in paragraph (1) of this subsection, including the payment of the application fee  
144 and the refundable performance fee, the department shall grant or deny the application  
145 in full or in part. If the department denies any part of the application, it shall inform the  
146 qualified community development entity of the grounds for the denial. If the qualified  
147 community development entity provides any additional information required by the  
148 department or otherwise completes its application within 15 days of the notice of denial,  
149 the application shall be considered completed as of the original date of submission. If the  
150 qualified community development entity fails to provide the information or complete its  
151 application within the 15 day period, the application remains denied and must be  
152 resubmitted in full with a new submission date.

153 (4) If the application is complete, the department shall certify the proposed equity  
154 investment or long-term debt security as a qualified equity investment that is eligible for  
155 tax credits under this Code section, subject to the limitations contained in paragraph (5)  
156 of this subsection. The department shall provide written notice of the certification to the  
157 qualified community development entity. The notice shall include the names of those  
158 entities who earned the credits and their respective credit amounts. If the names of the  
159 entities that are eligible to utilize the credits change due to a transfer of a qualified equity  
160 investment or an allocation pursuant to subsection (d) of this Code section, the qualified  
161 community development entity shall notify the department of such change.

162 (5) The department shall certify qualified equity investments in the order applications  
163 are received by the department. Applications received on the same day shall be deemed  
164 to have been received simultaneously. For applications that are complete and received  
165 on the same day, the department shall certify, consistent with remaining qualified equity  
166 investment capacity, the qualified equity investments in proportionate percentages based  
167 upon the ratio of the amount of qualified equity investment requested in an application  
168 to the total amount of qualified equity investments requested in all applications received  
169 on the same day.

170 (6) The department shall certify \$125 million in qualified equity investments. If a  
171 pending request cannot be fully certified due to this limit, the department shall certify the

172 portion that may be certified unless the qualified community development entity elects  
 173 to withdraw its request rather than receive partial certification.

174 (7) An approved applicant may transfer all or a portion of its certified qualified equity  
 175 investment authority to its controlling entity or any subsidiary qualified community  
 176 development entity of the controlling entity, provided that the applicant provides the  
 177 information required in the application with respect to such transferee and the applicant  
 178 notifies the department of such transfer within 30 days of the transfer.

179 (8) Within 30 days of the applicant receiving notice of certification, the qualified  
 180 community development entity or any transferee under paragraph (7) of this subsection  
 181 shall issue the qualified equity investment and receive cash in the amount of the certified  
 182 amount. The qualified community development entity or transferee under paragraph (7)  
 183 of this subsection must provide the department with evidence of the receipt of the cash  
 184 investment within ten business days after receipt. If the qualified community  
 185 development entity or any transferee under paragraph (7) of this subsection does not  
 186 receive the cash investment and issue the qualified equity investment within 30 days  
 187 following receipt of the certification notice, the certification shall lapse and the entity  
 188 may not issue the qualified equity investment without reapplying to the department for  
 189 certification. Lapsed certifications revert back to the department and shall be reissued,  
 190 first, pro rata to other applicants whose qualified equity investment allocations were  
 191 reduced under paragraph (5) of this subsection and, thereafter, in accordance with  
 192 application process.

193 (f) The department shall recapture, from the entity that claimed the credit on a return, the  
 194 tax credit allowed under this Code section if:

195 (1) Any amount of a federal tax credit available with respect to a qualified equity  
 196 investment that is eligible for a credit under this Code section is recaptured under Section  
 197 45D of the Internal Revenue Code of 1986, as amended. In such case the department's  
 198 recapture shall be proportionate to the federal recapture with respect to such qualified  
 199 equity investment;

200 (2) The issuer redeems or makes principal repayment with respect to a qualified equity  
 201 investment prior to the seventh anniversary of the issuance of such qualified equity  
 202 investment. In such case the department's recapture shall be proportionate to the amount  
 203 of the redemption or repayment with respect to such qualified equity investment;

204 (3) The issuer fails to invest an amount equal to 85 percent of the purchase price of the  
 205 qualified equity investment in qualified low-income community investments in Georgia  
 206 within 12 months of the issuance of the qualified equity investment and maintain at least  
 207 85 percent of such level of investment in qualified low-income community investments  
 208 in Georgia until the last credit allowance date for the qualified equity investment. For

209 purposes of this Code section, an investment shall be considered held by an issuer even  
 210 if the investment has been sold or repaid if the issuer reinvests an amount equal to the  
 211 capital returned to or recovered by the issuer from the original investment, exclusive of  
 212 any profits realized, in another qualified low-income community investment within 12  
 213 months of the receipt of such capital. An issuer shall not be required to reinvest capital  
 214 returned from qualified low-income community investments after the earlier of (i) the  
 215 sixth anniversary of the issuance of the qualified equity investment, the proceeds of  
 216 which were used to make the qualified low-income community investment, and (ii) the  
 217 date by which a qualified community development entity has made qualified low-income  
 218 community investments with the proceeds of such qualified equity investment on a  
 219 cumulative basis equal to at least 150 percent of such proceeds, and the qualified  
 220 low-income community investment shall be considered held by the issuer through the  
 221 seventh anniversary of the qualified equity investment's issuance; or

222 (4) At any time prior to the final credit allowance date of a qualified equity investment  
 223 the issuer uses the cash proceeds of such qualified equity investment to make qualified  
 224 low-income community investments in any one qualified active low-income community  
 225 businesses, including affiliated qualified active low-income community businesses,  
 226 exclusive of reinvestments of capital returned or repaid with respect to earlier investments  
 227 in such qualified active low-income community business and its affiliates, in excess of  
 228 25 percent of such cash proceeds.

229 (g) Enforcement of each of the recapture provisions in subsection (f) of this Code section  
 230 shall be subject to a six-month cure period. No recapture shall occur until the qualified  
 231 community development entity shall have been given notice of noncompliance and  
 232 afforded six months from the date of such notice to cure the noncompliance.

233 (h)(1) A qualified community development entity that seeks to have an equity investment  
 234 or long-term debt security designated as a qualified equity investment and eligible for tax  
 235 credits under this subsection shall pay a fee in the amount one-half of 1 percent of the  
 236 amount of the equity investment or long-term debt security requested to be designated as  
 237 a qualified equity investment to the department for deposit in the New Markets  
 238 Performance Guarantee Account, which is hereby established. The entity shall forfeit the  
 239 fee in its entirety if:

240 (A) The qualified community development entity and its subsidiary qualified  
 241 community development entities fail to issue the total amount of qualified equity  
 242 investments certified by the administrator and receive cash in the total amount certified  
 243 under paragraph (5) of subsection (e) of this Code section; or

244 (B) The qualified community development entity or any subsidiary qualified  
 245 community development entity that issues a qualified equity investment certified under

246 this subsection fails to meet the investment requirement under paragraph (3) of  
247 subsection (f) of this Code section by the second credit allowance date of such qualified  
248 equity investment. Forfeiture of the fee under this subparagraph shall be subject to the  
249 six-month cure period established under subsection (g) of this Code section.

250 (2) The fee required under paragraph (1) of this subsection shall be paid to the  
251 department and held in the New Markets Performance Guarantee Account until such time  
252 as compliance with the provisions of this subsection shall have been established. The  
253 qualified community development entity may request a refund of the fee from the  
254 department no sooner than 30 days after having met all the requirements of paragraph (1)  
255 of this subsection. The state treasurer shall have 30 days to comply with such request or  
256 give notice of noncompliance.

257 (i)(1) The department shall issue letter rulings regarding the tax credit program  
258 authorized under this Code section, subject to the terms and conditions set forth in this  
259 Code section.

260 (2) The department shall respond to a request for a letter ruling within 60 days of receipt  
261 of such request. The applicant may provide a draft letter ruling for the department's  
262 consideration. The applicant may withdraw the request for a letter ruling, in writing,  
263 prior to the issuance of the letter ruling. The department may refuse to issue a letter  
264 ruling for good cause, but must list the specific reasons for refusing to issue the letter  
265 ruling. Good cause includes, but is not limited to:

266 (A) The applicant requests the department to determine whether a statute is  
267 constitutional or a regulation is lawful;

268 (B) The request involves a hypothetical situation or alternative plans;

269 (C) The facts or issues presented in the request are unclear, overbroad, insufficient, or  
270 otherwise inappropriate as a basis upon which to issue a letter ruling; and

271 (D) The issue is currently being considered in a rulemaking procedure, contested case,  
272 or other agency or judicial proceeding that may resolve the issue.

273 (3) Letter rulings shall bind the department and the department's agents and their  
274 successors until such time as the entity or its shareholders, members, or partners, as  
275 applicable, claim all of such credits on a Georgia tax return or report, subject to the terms  
276 and conditions set forth in properly published regulations. The letter ruling shall apply  
277 only to the applicant.

278 (4) In rendering letter rulings and making other determinations under this Code section,  
279 to the extent applicable, the department and the Department of Revenue shall look for  
280 guidance to Section 45D of the Internal Revenue Code of 1986, as amended, and the rules  
281 and regulations issued thereunder.



282 (j)(1) An entity claiming a credit under this Code section is not required to pay any  
283 additional retaliatory tax levied under Code Section 33-3-26 as a result of claiming that  
284 credit.

285 (2) In addition to the exclusion in paragraph (1) of this subsection, an entity claiming a  
286 credit under this Code section shall not be required to pay any additional tax that may  
287 arise as a result of claiming that credit.

288 (k)(1) Once certified under paragraph (4) of subsection (e) of this Code section, a  
289 qualified equity investment may not be decertified unless all of the requirements of  
290 paragraph (2) of this subsection have been met. Until all qualified equity investments  
291 issued by a qualified community development entity are decertified under this subsection,  
292 the qualified community development entity shall not be entitled to distribute to its equity  
293 holders or make cash payments on long-term debt securities that have been designated  
294 as qualified equity investments in an amount that exceeds the sum of (i) the cumulative  
295 operating income, as defined by regulations adopted under Section 45D of the Internal  
296 Revenue Code of 1986, as amended, earned by the qualified community development  
297 entity since issuance of the qualified equity investment, prior to giving effect to any  
298 expense from the payment of interest on long-term debt securities designated as qualified  
299 equity investments and (ii) 50 percent of the purchase price of the qualified equity  
300 investments issued by the qualified community development entity.

301 (2) To be decertified, a qualified equity investment shall:

302 (A) Be beyond its seventh credit allowance date;

303 (B) Have been in compliance with subsection (f) of this Code section up through its  
304 seventh credit allowance date, including any cures under subsection (g) of this Code  
305 section; and

306 (C) Have had its proceeds invested in qualified low-income community investments  
307 such that the total qualified low-income community investments made, cumulatively  
308 including reinvestments, exceeds 150 percent of its qualified equity investment.

309 (3) A community development entity that seeks to have a qualified equity investment  
310 decertified under this subsection shall send notice to the department of its request for  
311 decertification along with evidence supporting the request. The provisions of  
312 subparagraph (B) of paragraph (2) of this subsection shall be deemed to be met if no  
313 recapture action has been commenced by the department as of the seventh credit  
314 allowance date. Such request shall not be unreasonably denied and shall be responded  
315 to within 30 days of receiving the request. If the request is denied for any reason, the  
316 burden of proof shall be on the department in any administrative or legal proceeding that  
317 follows.

318 (l) No qualified community development entity shall be entitled to pay to any affiliate of  
319 such qualified community development entity any fees in connection with any activity  
320 under this subsection prior to the decertification under subsection (k) of this Code section  
321 of all qualified equity investments issued by such qualified community development entity.  
322 The foregoing shall not prohibit a qualified community development entity from allocating  
323 or distributing income earned by it to such affiliates or paying reasonable interest on  
324 amounts loaned to the qualified community development entity by such affiliates."

325 **SECTION 2.**

326 This Act shall become effective on July 1, 2013, and shall be applicable to all taxable years  
327 beginning on or after January 1, 2014.

328 **SECTION 3.**

329 All laws and parts of laws in conflict with this Act are repealed.