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Chapter No. 351
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SENATE BILL NO. 2598

Originated in Senate Lizwelch Secretary

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AN ACT TO AMEND SECTION 57-105-1, MISSISSIPPI CODE OF 1972, TO EXTEND UNTIL JULY 1, 2021, THE DATE AFTER WHICH THE MISSISSIPPI DEVELOPMENT AUTHORITY SHALL NOT ALLOCATE INCOME TAX AND INSURANCE PREMIUM TAX CREDIT FOR TAXPAYERS HOLDING CERTAIN QUALIFIED EQUITY INVESTMENTS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(b) "Applicable percentage" means:

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

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

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

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

(i) The later of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Mississippi Development Authority shall not allocate any credits under this section after * * * July 1, * * * 2021.

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

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

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

(b) As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. This act shall take effect and be in force from and after July 1, 2019.

PASSED BY THE SENATE
February 7, 2019

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 7, 2019

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

March 21, 2019
1:50pm