ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012
COMMITTEE STATEMENT
LB1128

Hearing Date: Monday February 13, 2012
Committee On: Revenue
Introducer: Schumacher
One Liner: Adopt the New Markets Job Growth Investment Act and provide tax credits

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye:	5	Senators Brasch, Cornett, Hadley, Pirsch, Schumacher
Nay:	1	Senator Adams
Absent:		
Present Not Voting:	2	Senators Fischer, Louden

Proponents:	**Representing:**
Sen. Paul Schumacher	Introducer
Ryan Brennen	Advantage Capital Partners
Ricky Cunningham	City of Omaha
Mark Koller	NE New Markets Resources

Opponents: **Representing:**

Neutral: **Representing:**

Summary of purpose and/or changes:
Legislative Bill 1128 would adopt the "New Markets Job Growth Investment Act" and provide related income tax credits for corporations, individuals, and estates and trusts, as well as a related insurance premium tax credit and a related bank franchise tax credit.

Section 1: Sections 1 to 22 of LB 1128 constitute the New Markets Job Growth Investment Act (NMJGIA).

Section 2: The definitions set forth in sections 3 to 13 of LB 1128 apply for purposes of the NMJGIA.

Sections 3 to 13: Define key terms and phrases for purposes of the NMJGIA, including credit allowance date; letter ruling; long-term debt security; purchase price; qualified active low-income community business; qualified community development entity; qualified equity investment; qualified low-income community investment; tax credit; and taxpayer.

Section 14: Would provide income tax credits for corporations, individuals, and estates and trusts, as well as an insurance premium tax credit and a bank franchise tax credit under the NMJGIA.

A taxpayer that "acquires" a qualified equity investment will earn tax credits under the NMJGIA as follows:

(1) On each "credit allowance date" of such qualified equity investment by the taxpayer (or subsequent holder of it) is entitled to a portion of the tax credit during the tax year that includes the credit allowance date;
(2) The amount of the tax credit is equal to the product of (a) the applicable percentage for such credit allowance date

multiplied by the purchase price paid to the issuer; and
(3) The tax credit claimed cannot exceed the amount of the taxpayer's tax liability for the year for which the credit is claimed.

Section 15: NMJGIA tax credits are not refundable tax or transferable, except that a partnership, limited liability company, S corporation, or other pass-through entity can allocate to its shareholders, partners, or members its NMJGIA tax credits "for their direct use in accordance with any agreement among such partners, members, or shareholders." Any amount of NMJGIA tax credit that the taxpayer cannot claim in a tax year can be carried over to any of the taxpayer's five subsequent tax years.

Section 16: The NMJGIA tax credit program limitation is $15 million per fiscal year (i.e., July 1 through June 30).

Section 17: Sets forth the application process and procedures which a qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified entity investment eligible for tax credits under the NMJGIA must follow. Section 17 also requires the Tax Commissioner to design an application form, which must solicit certain information from the applicant. The application fee would be $5,000. Section 17 also sets forth certain requirements that the Tax Commissioner must follow when determining whether to approve or disapprove an application for NMJGIA tax credits.

Section 18: Requires the issuer of the qualified equity investment to certify to the Tax Commissioner the anticipated dollar amount of those investments to be made in Nebraska during the first 12-month period after the initial credit allowance date. If the actual dollar amount of those investments on the second credit allowance date is different than the anticipated amount, the Tax Commissioner must adjust the credits arising on the second credit allowance date to account for that difference.

Section 19: For the purpose of calculating the amount of the credit allowed under the NMJGIA (when the proceeds of the qualified equity investment have been invested completely in qualified low-income community investments in Nebraska), the "purchase price" must equal 100 percent of the qualified equity investment, regardless of the location of the investments made with the proceeds of other qualified equity investments issued by the same qualified community development entity. If a portion of a qualified equity investment is not invested in Nebraska, then the "purchase price" must be reduced by the same ratio and the burden is on the qualified community development entity to show the extent to which the qualified equity investments are fully invested in Nebraska, either by showing that the qualified community development entity itself invests exclusively in Nebraska or otherwise showing-through direct tracing-the portion of a qualified equity investment that is invested solely in Nebraska.

Section 20: Sets forth rules governing the recapture of tax credits under the NMJGIA if either of two conditions are met-namely, (a) if any amount of the Internal Revenue Code section 45D "New Markets Tax Credit" is recaptured (in which case the recapture of the NMJGIA tax credit must be "proportionate to the federal recapture with respect to such qualified equity investment") and (b) if the issuer redeems or makes repayment with respect to a qualified equity investment before the 7th credit allowance date (in which case recapture of the NMJGIA tax credit must be "proportionate to the amount of the redemption or repayment with respect to such qualified equity investment").

Section 20 also includes an exception from recapture for "to an investment that has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment" within 12 months "of the receipt of such capital." However, an issuer will not be required to reinvest capital returned from qualified low-income community investments after the 6th credit allowance date, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment must be considered held by the issuer through the 7th credit allowance date.

Section 21: Sections 18 and 20 of LB 1128 would be subject to "a six-month cure period." Also, section 21 prohibits any adjustment under section 18 of LB 1128 or recapture under section 20 of LB 1128 until the qualified community development entity has been given notice of non compliance and afforded six months from the date of such notice to cure the noncompliance.

Section 22: Would require the Tax Commissioner to issue letter rulings regarding the NMJGIA tax credit program and provides guidelines for doing that.

Section 23: Would amend the Internal Revenue Code (IRC) "update" statute to list sections 6, 8, 9, 20, and 22 of LB 1128 along with the other business tax incentive statutes that are excluded from the annual IRC update bill (e.g., Laws 2011, LB 134), that updates references to the IRC in Nebraska statutes to mean the IRC as it exists on a particular date (e.g., February 23, 2011). The business tax incentive statutes are excluded from the annual IRC update legislation because when a business tax incentive agreement is entered into between a taxpayer and the Tax Commissioner the parties to the agreement place their reliance on the provisions of the IRC that are in force for purposes of Nebraska tax law when the parties enter into the tax incentive agreement. [LB 1128, sec. 23, amending Neb. Rev. Stat. 49-801.01.]

Section 24: Coordinating change allowing insurance companies an insurance premium tax credit under the NMJGIA. [LB 1128, sec. 24, amending Neb. Rev. Stat. 77-908.]

Section 25: Coordinating change allowing a nonrefundable individual income tax credit as provided in the NMJGIA. [LB 1128, sec. 25, amending Neb. Rev. Stat. 77-2715.07 by adding new paragraph (d) to subsection (3).]

Section 26: Coordinating change allowing a nonrefundable income tax credit for all resident and nonresident estates as provided in the NMJGIA, including changes allowing the credit to be passed through to beneficiaries of such estates and trusts. [LB 1128, sec. 26, amending Neb. Rev. Stat. 77-2717(1)(a), (1)(b), (3), and (4).]

Section 27: Coordinating change allowing a nonrefundable corporate income tax credit as provided in the NMJGIA. [LB 1128, sec. 27, amending Neb. Rev. Stat. 77-2734.03 by adding new paragraph (7).]

Section 28: Coordinating change allowing a financial institution franchise tax credit under the NMJGIA. [LB 1128, sec. 28, amending Neb. Rev. Stat. 77-3806(4).]

Section 29: LB 1128 would be operative for all taxable years beginning or deemed to begin on or after January 1, 2012. [LB 1128, sec. 29.]

Section 30: Repeals the current version of the existing statute sections that LB 1128 seeks to amend. [LB 1128, sec. 30.]

Abbie Cornett, Chairperson