

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 907

Introduced by Harr, 8.

Read first time January 12, 2016

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 58-210.02, Reissue Revised Statutes of Nebraska, sections 77-1108,
3 77-1109, and 77-1115, Revised Statutes Cumulative Supplement, 2014,
4 and section 77-1116, Revised Statutes Supplement, 2015; to change
5 provisions relating to the New Markets Job Growth Investment Act;
6 and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 58-210.02, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 58-210.02 (1) Economic-impact project means any of the following,
4 whether or not in existence, financed in whole or in part through the use
5 of the state tax credit authorized in the New Markets Job Growth
6 Investment Act or the federal new markets tax credit described in section
7 45D of the Internal Revenue Code, and located in a low-income community
8 designated pursuant to section 45D of the Internal Revenue Code or
9 designated by the Department of Economic Development:

10 (a) Any land, building, or other improvement, including, but not
11 limited to, infrastructure;

12 (b) Any real or personal property;

13 (c) Any equipment; and

14 (d) Any undivided or other interest in any property described in
15 subdivision (a), (b), or (c) of this subsection.

16 (2) Economic-impact project does not include any operating capital.

17 Sec. 2. Section 77-1108, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 77-1108 Qualified active low-income community business has the
20 meaning given such term in section 45D of the Internal Revenue Code of
21 1986, as amended, and 26 C.F.R. 1.45D-1. A business shall be considered a
22 qualified active low-income community business for the duration of the
23 qualified community development entity's investment in, or loan to, the
24 business if the entity reasonably expects, at the time it makes the
25 investment or loan, that the business will continue to satisfy the
26 requirements for being a qualified active low-income community business
27 throughout the entire period of the investment or loan. The term excludes
28 any business that derives or projects to derive fifteen percent or more
29 of its annual revenue from the rental or sale of real estate. This
30 exclusion does not apply to a business that is controlled by, or under
31 common control with, another business if the second business ~~(1)~~ does not

1 derive or project to derive fifteen percent or more of its annual revenue
2 from the rental or sale of real estate ~~and (2) is the primary tenant of~~
3 ~~the real estate leased from the first business.~~

4 Sec. 3. Section 77-1109, Revised Statutes Cumulative Supplement,
5 2014, is amended to read:

6 77-1109 Qualified community development entity has the meaning given
7 such term in section 45D of the Internal Revenue Code of 1986, as
8 amended, if such entity ~~has entered into an allocation agreement with the~~
9 ~~Community Development Financial Institutions Fund of the United States~~
10 ~~Department of the Treasury with respect to credits authorized by section~~
11 ~~45D of the code which~~ includes the State of Nebraska within the entity's
12 ~~service area set forth in such allocation agreement.~~ The term includes
13 affiliated entities and subordinate community development entities of any
14 such qualified community development entity.

15 Sec. 4. Section 77-1115, Revised Statutes Cumulative Supplement,
16 2014, is amended to read:

17 77-1115 (1) The Tax Commissioner shall limit the monetary amount of
18 qualified equity investments permitted under the New Markets Job Growth
19 Investment Act to a level necessary to limit tax credit utilization (a)
20 in any fiscal year ending on or before June 30, 2016, at no more than
21 fifteen million dollars of new tax credits or (b) in any fiscal year
22 thereafter at no more than twenty-five million dollars of new tax
23 credits.

24 (2) Such limitation on qualified equity investments shall be based
25 on the anticipated utilization of credits without regard to the potential
26 for taxpayers to carry forward tax credits to later tax years.

27 Sec. 5. Section 77-1116, Revised Statutes Supplement, 2015, is
28 amended to read:

29 77-1116 (1) A qualified community development entity that seeks to
30 have an equity investment or long-term debt security designated as a
31 qualified equity investment and eligible for tax credits under the New

1 Markets Job Growth Investment Act shall apply to the Tax Commissioner.
2 There shall be no new applications for such designation filed under this
3 section after December 31, 2019.

4 (2) The qualified community development entity shall submit an
5 application on a form that the Tax Commissioner provides that includes:

6 (a) Evidence of the entity's certification as a qualified community
7 development entity, including evidence of the service area of the entity
8 that includes this state;

9 ~~(b) A copy of the allocation agreement executed by the entity, or~~
10 ~~its controlling entity, and the Community Development Financial~~
11 ~~Institutions Fund referred to in section 77-1109;~~

12 ~~(c) A certificate executed by an executive officer of the entity~~
13 ~~attesting that the allocation agreement remains in effect and has not~~
14 ~~been revoked or canceled by the Community Development Financial~~
15 ~~Institutions Fund referred to in section 77-1109;~~

16 ~~(b d)~~ A description of the proposed amount, structure, and purchaser
17 of the equity investment or long-term debt security;

18 ~~(c e)~~ Identifying information for any taxpayer eligible to utilize
19 tax credits earned as a result of the issuance of the qualified equity
20 investment;

21 ~~(d f)~~ Information regarding the proposed use of proceeds from the
22 issuance of the qualified equity investment; and

23 ~~(e g)~~ A nonrefundable application fee of five thousand dollars.

24 (3) Within thirty days after receipt of a completed application
25 containing the information necessary for the Tax Commissioner to certify
26 a potential qualified equity investment, including the payment of the
27 application fee, the Tax Commissioner shall grant or deny the application
28 in full or in part. If the Tax Commissioner denies any part of the
29 application, the Tax Commissioner shall inform the qualified community
30 development entity of the grounds for the denial. If the qualified
31 community development entity provides any additional information required

1 by the Tax Commissioner or otherwise completes its application within
2 fifteen days after the notice of denial, the application shall be
3 considered completed as of the original date of submission. If the
4 qualified community development entity fails to provide the information
5 or complete its application within the fifteen-day period, the
6 application remains denied and must be resubmitted in full with a new
7 submission date.

8 (4) If the application is deemed complete, the Tax Commissioner
9 shall certify the proposed equity investment or long-term debt security
10 as a qualified equity investment that is eligible for tax credits,
11 subject to the limitations contained in section 77-1115. The Tax
12 Commissioner shall provide written notice of the certification to the
13 qualified community development entity. The notice shall include the
14 names of those taxpayers who are eligible to utilize the credits and
15 their respective credit amounts. If the names of the taxpayers who are
16 eligible to utilize the credits change due to a transfer of a qualified
17 equity investment or a change in an allocation pursuant to section
18 77-1114, the qualified community development entity shall notify the Tax
19 Commissioner of such change.

20 (5) The Tax Commissioner shall certify qualified equity investments
21 in the order applications are received. Applications received on the same
22 day shall be deemed to have been received simultaneously. For
23 applications received on the same day and deemed complete, the Tax
24 Commissioner shall certify, consistent with remaining tax credit
25 capacity, qualified equity investments in proportionate percentages based
26 upon the ratio of the amount of qualified equity investment requested in
27 an application to the total amount of qualified equity investments
28 requested in all applications received on the same day.

29 (6) Once the Tax Commissioner has certified qualified equity
30 investments that, on a cumulative basis, are eligible for the maximum
31 limitation contained in section 77-1115, the Tax Commissioner may not

1 certify any more qualified equity investments for that fiscal year. If a
2 pending request cannot be fully certified, the Tax Commissioner shall
3 certify the portion that may be certified unless the qualified community
4 development entity elects to withdraw its request rather than receive
5 partial credit.

6 (7) Within thirty days after receiving notice of certification, the
7 qualified community development entity shall issue the qualified equity
8 investment and receive cash in the amount of the certified amount. The
9 qualified community development entity shall provide the Tax Commissioner
10 with evidence of the receipt of the cash investment within ten business
11 days after receipt. If the qualified community development entity does
12 not receive the cash investment and issue the qualified equity investment
13 within thirty days after receipt of the certification notice, the
14 certification shall lapse and the entity may not issue the qualified
15 equity investment without reapplying to the Tax Commissioner for
16 certification. A certification that lapses reverts back to the Tax
17 Commissioner and may be reissued only in accordance with the application
18 process outlined in this section.

19 Sec. 6. Original section 58-210.02, Reissue Revised Statutes of
20 Nebraska, sections 77-1108, 77-1109, and 77-1115, Revised Statutes
21 Cumulative Supplement, 2014, and section 77-1116, Revised Statutes
22 Supplement, 2015, are repealed.