
A BILL FOR AN ACT

RELATING TO NEW MARKETS TAX CREDITS.

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

1 PART I

2 SECTION 1. The legislature finds that the business
3 community, nonprofit organizations, and other entrepreneurs
4 require a functional, service-oriented agency that is readily
5 available to provide business counseling, financial backing, and
6 general support to foster real community-based economic
7 development for the various products and services demonstrating
8 and embracing Hawaii's diversified economy.

9 The Hawaii community-based economic development technical
10 and financial assistance program in the department of business,
11 economic development, and tourism, was established for this
12 purpose. The program was established by the legislature in Act
13 111, Session Laws of Hawaii 1990, and codified as chapter 210D,
14 Hawaii Revised Statutes, to provide financial assistance to
15 community-based businesses and enterprises through low-interest
16 loans and grants to qualifying applicants.

17 There are various programs provided by the federal
18 government, nonprofit organizations, and foundations, as well as



1 opportunities provided by public-private partnerships that
2 further these goals. These programs and partnerships can be
3 used to provide a portion of the funding needed by economic
4 development projects. The project funding provided by the State
5 would be more efficient and more effective if it were provided
6 in the form most compatible with these programs and in the
7 manner most suitable to optimize all sources of funding. To
8 achieve this, some modifications are necessary to the types of
9 financial products offered by the Hawaii community-based
10 economic development technical and financial assistance program
11 and the manner in which those products are provided, along with
12 an increase in the total amount that may be provided for an
13 individual project and borrower.

14 The purpose of this part is to:

- 15 (1) Define "qualified community development entity" to
16 allow financing to be provided by the State through a
17 structure that facilitates the use of federal new
18 markets tax credits;
- 19 (2) Expand the methods of delivering funding to a project
20 by providing loans to capitalize a qualified community
21 development entity and to provide guarantees or other
22 credit enhancements that will facilitate private



1 lenders' participation in new markets tax credit
2 financing; and
3 (3) Adjust loan maximums and establish guarantees or
4 credit enhancements to reflect current available
5 funding and facilitate monetization of existing
6 project assets for purposes of new markets tax credit
7 financing.

8 SECTION 2. Section 210D-2, Hawaii Revised Statutes, is
9 amended by adding a new definition to be appropriately inserted
10 and to read as follows:

11 "Qualified community development entity" has the same
12 meaning as in section 45D(c)(1) of the Internal Revenue Code."

13 SECTION 3. Section 210D-8, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§210D-8 Powers and duties.** The department shall have the
16 necessary powers to carry out the purposes of this chapter,
17 including the following:

18 (1) With advice from the council, prescribe the
19 qualifications for eligibility of applicants for
20 loans, ~~and~~ grants, guarantees, and credit
21 enhancements;



- 1 (2) With advice from the council, establish preferences
2 and priorities in determining eligibility for
3 financial assistance;
- 4 (3) Establish the conditions, consistent with the purpose
5 of this chapter, for the awarding of financial
6 assistance;
- 7 (4) Provide for inspection at reasonable hours of
8 facilities, books, and records of a community-based
9 organization that has applied for or has been awarded
10 financial assistance and require the submission of
11 progress and final reports;
- 12 (5) Provide loans ~~[and]~~, grants, guarantees, and credit
13 enhancements for community-based economic development
14 activities and community-based enterprises for
15 purposes consistent with this chapter;
- 16 (6) Provide, participate in, and acquire loans used to
17 capitalize entities that make financing available for
18 activities and enterprises, including qualified
19 community development entities;
- 20 ~~[(6)]~~ (7) Determine the necessity for and the extent of
21 security required [in a loan;] for loans, guarantees,
22 and credit enhancements;



- 1 [~~(7)~~] (8) Prescribe and provide appropriate management
2 counseling and monitoring of business activities;
- 3 [~~(8)~~] (9) Administer the Hawaii community-based economic
4 development revolving fund;
- 5 [~~(9)~~] (10) Include in its budget for subsequent fiscal
6 periods amounts necessary to effectuate the purposes
7 of this chapter;
- 8 [~~(10)~~] (11) Participate in loans made to qualified persons
9 by private lenders;
- 10 [~~(11)~~] (12) Establish interest rates chargeable by the State
11 for [~~direct and participation~~] loans; [and]
- 12 (13) Establish interest rates, fees, and charges chargeable
13 by the State for guarantees and credit enhancements;
14 and
- 15 [~~(12)~~] (14) Adopt rules pursuant to chapter 91 to implement
16 this chapter."

17 SECTION 4. Section 210D-9, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§210D-9 Loans** [~~; limitation and terms~~]. Loans made under
20 this chapter shall be [~~for the purposes and in accordance with~~
21 ~~the terms specified in paragraphs (1) and (2) and shall be made~~



1 ~~only to applicants who meet the eligibility requirements~~
2 ~~specified therein.] limited to the following:~~

3 (1) Community-based enterprise establishment and
4 improvement loans may be made to provide for:

5 (A) The start-up costs, purchase or improvement of a
6 community-based enterprise or working capital;

7 and

8 (B) The purchase, construction, or improvement of
9 facilities; ~~[and]~~

10 (2) Operating loans may be made to carry on and improve an
11 existing enterprise, including:

12 (A) The purchase of equipment; and

13 (B) The payment of production and marketing expenses
14 including materials, labor, and services~~[-]~~; or

15 (3) Loans may be made to entities that capitalize
16 qualified community development entities that use the
17 proceeds to make loans to borrowers.

18 ~~[The loans shall be for an amount not to exceed \$250,000~~
19 ~~and for a term not to exceed ten years.]"~~

20 SECTION 5. Section 210D-10, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§210D-10 Terms and limitations of loans[-], guarantees,
2 and credit enhancements. [~~Loans shall be made to qualified~~
3 ~~applicants with the]~~ The following terms and conditions[+] shall
4 apply:

5 (1) The amount of the outstanding balance on all loans,
6 guarantees, and other credit enhancements issued under
7 this chapter to any one applicant at any one time
8 shall not exceed [~~\$250,000;~~] \$5,000,000;

9 (2) The maximum term of a loan, guarantee, or credit
10 enhancement shall not exceed ten years;

11 (3) Each loan shall bear simple interest at a rate of not
12 less than three and not more than six per cent a year,
13 depending on the nature of the loan; [~~and]~~

14 (4) Interest rates for guarantees and credit enhancements
15 shall not be more than the market rate for similar
16 instruments; and

17 [~~(4)~~] (5) The commencement date for the repayment of the
18 first installment on principal and interest of each
19 loan may be deferred by the director of business,
20 economic development, and tourism for a period not to
21 exceed two years."



1 PART II

2 SECTION 6. The purpose of this part is to establish a new
3 markets tax credit.

4 SECTION 7. Chapter 235, Hawaii Revised Statutes, is
5 amended by adding a new section to be appropriately designated
6 and to read as follows:

7 "§235- New markets tax credit. (a) Section 45D (with
8 respect to new markets tax credit) of the Internal Revenue Code
9 shall be operative for the purposes of this chapter, except as
10 otherwise provided in this section.

11 (b) Each taxpayer, subject to the tax imposed by this
12 chapter, who holds a qualified equity investment on a credit
13 allowance date of that investment that occurs during the taxable
14 year may claim a credit under this section. The amount of the
15 credit shall be deductible from the taxpayer's net income tax
16 liability, if any, imposed by this chapter for the taxable year
17 in which the credit is properly claimed.

18 (c) The amount of the credit shall be equal to the
19 applicable percentage of the amount paid to the qualified
20 community development entity for the investment at its original
21 issue. The applicable percentage shall be calculated as the

1 amount provided in section 45D(a)(2) of the Internal Revenue
2 Code.

3 (d) For the purpose of this section, the determination of
4 the following shall be made under the designated provisions of
5 the Internal Revenue Code, as follows:

6 (1) Credit allowance date shall be made under section
7 45D(a)(3);

8 (2) Qualified equity investment shall be made under
9 section 45D(b); provided that reference to "the
10 Secretary" under section 45D(b)(1), shall be to the
11 director of taxation;

12 (3) Qualified community development entity shall be made
13 under section 45D(c)(1);

14 (4) Qualified low-income community investment shall be
15 made under section 45D(d);

16 (5) Low-income community shall be made under section
17 45D(e); provided that the population census tract
18 referenced shall refer to tracts in the State;
19 provided further that "low-income community" has the
20 same meaning as in section 45D(e)(1)(B), except that
21 the percentage of median family income used for this



1 determination shall be half that provided in that
2 section;

3 (6) Recapture of credit shall be made under section
4 45D(g); provided that the tax for the taxable year,
5 and five previous taxable years, if applicable, shall
6 be increased under section 45D(g)(1) only with respect
7 to credits that were used to reduce state income tax;
8 and

9 (7) Basis reduction shall be made under section 45D(h).

10 (e) The credit allowed under this section shall be
11 deducted from the taxpayer's net income tax liability for the
12 taxable year. For the purpose of deducting this tax credit, net
13 income tax liability means net income tax liability reduced by
14 all other credits allowed to the taxpayer under this chapter.

15 A tax credit under this section that exceeds the taxpayer's
16 net income tax liability may be used as a credit against the
17 taxpayer's income tax liability in subsequent years until
18 exhausted. All claims for a tax credit under this section shall
19 be filed on or before the end of the twelfth month following the
20 close of the taxable year for which the credit may be claimed.
21 Failure to properly and timely claim the credit shall constitute
22 a waiver of the right to claim the credit.



1 (f) Section 469 (with respect to passive activity losses
2 and credits limited) of the Internal Revenue Code shall be
3 applied in claiming the credit under this section.

4 (g) The director of taxation may adopt rules under chapter
5 91 and prepare any forms necessary to carry out the purposes of
6 this section."

7 SECTION 8. Chapter 241, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§241- **New markets tax credit.** The new markets tax
11 credit provided under section 235- shall be operative for
12 this chapter."

13 SECTION 9. Chapter 431, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§431- **New markets tax credit.** The new markets tax
17 credit provided under section 235- shall be operative for
18 this chapter."

19 SECTION 10. Section 235-2.3, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

21 "(b) The following Internal Revenue Code subchapters,
22 parts of subchapters, sections, subsections, and parts of



1 subsections shall not be operative for the purposes of this
2 chapter, unless otherwise provided:

3 (1) Subchapter A (sections 1 to 59A) (with respect to
4 determination of tax liability), except section
5 1(h)(2) (relating to net capital gain reduced by the
6 amount taken into account as investment income),
7 except sections 2(a), 2(b), and 2(c) (with respect to
8 the definition of "surviving spouse" and "head of
9 household"), except section 41 (with respect to the
10 credit for increasing research activities), except
11 section 42 (with respect to low-income housing
12 credit), except section 45D (with respect to new
13 markets tax credit), except sections 47 and 48, as
14 amended, as of December 31, 1984 (with respect to
15 certain depreciable tangible personal property), and
16 except section 48(d)(3), as amended, as of February
17 17, 2009 (with respect to the treatment of United
18 States Department of Treasury grants made under
19 section 1603 of the American Recovery and Reinvestment
20 Tax Act of 2009). For treatment, see sections 235-
21 110.91, 235-110.7, [~~and~~] 235-110.8[+], and 235- ;



- 1 (2) Section 78 (with respect to dividends received from
2 certain foreign corporations by domestic corporations
3 choosing foreign tax credit);
- 4 (3) Section 86 (with respect to social security and tier 1
5 railroad retirement benefits);
- 6 (4) Section 103 (with respect to interest on state and
7 local bonds). For treatment, see section 235-7(b);
- 8 (5) Section 114 (with respect to extraterritorial income).
9 For treatment, any transaction as specified in the
10 transitional rule for 2005 and 2006 as specified in
11 the American Jobs Creation Act of 2004 section 101(d)
12 and any transaction that has occurred pursuant to a
13 binding contract as specified in the American Jobs
14 Creation Act of 2004 section 101(f) are inoperative;
- 15 (6) Section 120 (with respect to amounts received under
16 qualified group legal services plans). For treatment,
17 see section 235-7(a)(9) to (11);
- 18 (7) Section 122 (with respect to certain reduced uniformed
19 services retirement pay). For treatment, see section
20 235-7(a)(3);



- 1 (8) Section 135 (with respect to income from United States
2 savings bonds used to pay higher education tuition and
3 fees). For treatment, see section 235-7(a)(1);
- 4 (9) Section 139C (with respect to COBRA premium
5 assistance);
- 6 (10) Subchapter B (sections 141 to 150) (with respect to
7 tax exemption requirements for state and local bonds);
- 8 (11) Section 151 (with respect to allowance of deductions
9 for personal exemptions). For treatment, see section
10 235-54;
- 11 (12) Section 179B (with respect to expensing of capital
12 costs incurred in complying with Environmental
13 Protection Agency sulphur regulations);
- 14 (13) Section 181 (with respect to special rules for certain
15 film and television productions);
- 16 (14) Section 196 (with respect to deduction for certain
17 unused investment credits);
- 18 (15) Section 199 (with respect to the U.S. production
19 activities deduction);
- 20 (16) Section 222 (with respect to qualified tuition and
21 related expenses);



- 1 (17) Sections 241 to 247 (with respect to special
2 deductions for corporations). For treatment, see
3 section 235-7(c);
- 4 (18) Section 280C (with respect to certain expenses for
5 which credits are allowable). For treatment, see
6 section 235-110.91;
- 7 (19) Section 291 (with respect to special rules relating to
8 corporate preference items);
- 9 (20) Section 367 (with respect to foreign corporations);
- 10 (21) Section 501(c)(12), (15), (16) (with respect to exempt
11 organizations);
- 12 (22) Section 515 (with respect to taxes of foreign
13 countries and possessions of the United States);
- 14 (23) Subchapter G (sections 531 to 565) (with respect to
15 corporations used to avoid income tax on
16 shareholders);
- 17 (24) Subchapter H (sections 581 to 597) (with respect to
18 banking institutions), except section 584 (with
19 respect to common trust funds). For treatment, see
20 chapter 241;



- 1 (25) Section 642(a) and (b) (with respect to special rules
2 for credits and deductions applicable to trusts). For
3 treatment, see sections 235-54(b) and 235-55;
- 4 (26) Section 646 (with respect to tax treatment of electing
5 Alaska Native settlement trusts);
- 6 (27) Section 668 (with respect to interest charge on
7 accumulation distributions from foreign trusts);
- 8 (28) Subchapter L (sections 801 to 848) (with respect to
9 insurance companies). For treatment, see sections
10 431:7-202 and 431:7-204;
- 11 (29) Section 853 (with respect to foreign tax credit
12 allowed to shareholders). For treatment, see section
13 235-55;
- 14 (30) Section 853A (with respect to credits from tax credit
15 bonds allowed to shareholders);
- 16 (31) Subchapter N (sections 861 to 999) (with respect to
17 tax based on income from sources within or without the
18 United States), except sections 985 to 989 (with
19 respect to foreign currency transactions). For
20 treatment, see sections 235-4, 235-5, and 235-7(b),
21 and 235-55;



- 1 (32) Section 1042(g) (with respect to sales of stock in
2 agricultural refiners and processors to eligible farm
3 cooperatives);
- 4 (33) Section 1055 (with respect to redeemable ground
5 rents);
- 6 (34) Section 1057 (with respect to election to treat
7 transfer to foreign trust, etc., as taxable exchange);
- 8 (35) Sections 1291 to 1298 (with respect to treatment of
9 passive foreign investment companies);
- 10 (36) Subchapter Q (sections 1311 to 1351) (with respect to
11 readjustment of tax between years and special
12 limitations);
- 13 (37) Subchapter R (sections 1352 to 1359) (with respect to
14 election to determine corporate tax on certain
15 international shipping activities using per ton rate);
- 16 (38) Subchapter U (sections 1391 to 1397F) (with respect to
17 designation and treatment of empowerment zones,
18 enterprise communities, and rural development
19 investment areas). For treatment, see chapter 209E;
- 20 (39) Subchapter W (sections 1400 to 1400C) (with respect to
21 District of Columbia enterprise zone);



- 1 (40) Section 1400O (with respect to education tax
2 benefits);
- 3 (41) Section 1400P (with respect to housing tax benefits);
- 4 (42) Section 1400R (with respect to employment relief);
- 5 (43) Section 1400T (with respect to special rules for
6 mortgage revenue bonds);
- 7 (44) Section 1400U-1 (with respect to allocation of
8 recovery zone bonds);
- 9 (45) Section 1400U-2 (with respect to recovery zone
10 economic development bonds); and
- 11 (46) Section 1400U-3 (with respect to recovery zone
12 facility bonds)."

13 SECTION 11. Section 235-2.45, Hawaii Revised Statutes, is
14 amended by amending subsection (d) to read as follows:

15 "(d) Section 704 of the Internal Revenue Code (with
16 respect to a partner's distributive share) shall be operative
17 for purposes of this chapter; except that section 704(b)(2)
18 shall not apply to:

- 19 (1) Allocations of the high technology business investment
20 tax credit allowed by section 235-110.9 for
21 investments made before May 1, 2009;



- 1 (2) Allocations of net operating loss pursuant to section
- 2 235-111.5;
- 3 (3) Allocations of the attractions and educational
- 4 facilities tax credit allowed by section 235-110.46;
- 5 [~~or~~]
- 6 (4) Allocations of low-income housing tax credits among
- 7 partners under section 235-110.8~~[or]~~; or
- 8 (5) Allocations of the new markets tax credit allowed by
- 9 section 235- ."

10 PART III

11 SECTION 12. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 13. This Act shall take effect on July 1, 2050;
14 provided that part II shall apply to taxable years beginning
15 after December 31, 2011.



Report Title:

Economic Development; New Markets Tax Credits; Loans; Qualified Community Development Entity

Description:

Expands methods for delivering funding to a qualified community development entity by allowing guarantees and credit enhancements. Increases total maximum funding amounts from \$250,000 to \$5,000,000. Establishes new markets tax credits. Makes conforming amendments. Effective 7/1/2050. (SD2)

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