



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 642**

February 9, 2010 – Offered by Representative BARCA.

1 **AN ACT to amend** 71.08 (1) (intro.); and **to create** 71.07 (5n), 71.10 (4) (fm), 71.28
2 (5n), 71.30 (3) (dn), 71.47 (5n), 71.49 (1) (dn), 76.639 and 560.2065 of the
3 statutes; **relating to:** an income and franchise tax credit for a qualified equity
4 investment in a qualified community development entity, providing an
5 exemption from emergency rule procedures, and requiring the exercise of
6 rule-making authority.

Analysis by the Legislative Reference Bureau

Under federal law, the New Markets Tax Credit Program permits federal taxpayers to receive a credit against federal income taxes for making qualified equity investments in qualified community development entities (QCDE). Federal law defines a QCDE as an entity with the primary mission of serving or providing investment capital for low-income communities or low-income persons that has been certified by the secretary of the Internal Revenue Service. Federal law defines a qualified equity investment as an investment funded by the QCDE for the purpose of making loans to or investments in certain businesses located in low-income communities identified under the federal law.

This bill authorizes the Department of Commerce (Commerce) to certify a qualified equity investment in a QCDE. The bill also authorizes Commerce to

certify a person who has invested in a certified qualified equity investment to receive a credit against state income and franchise taxes and against license fees paid by insurers. Commerce may certify up to \$10,000,000 in tax credits in any fiscal year. The credit may be claimed for seven consecutive taxable years beginning with the taxable year in which the taxpayer makes a qualified equity investment. The amount of the credit that a taxpayer may claim is equal to the amount of the taxpayer's investment multiplied by the following percentages:

1. For the first taxable year, zero percent.
2. For the next six taxable years, 3 percent.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.07 (5n) of the statutes is created to read:

2 71.07 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, “claimant”
3 means a person who files a claim under this subsection.

4 (b) *Filing claims.* Subject to the limitations provided under this subsection and
5 s. 560.2065, for investments made after December 31, 2010, a claimant may claim
6 as a credit against the taxes imposed under ss. 71.02 and 71.08, up to the amount of
7 the taxes, the amount of the claimant's qualified equity investment, as certified
8 under s. 560.2065 (2), multiplied by the following percentage:

9 1. For the taxable year that corresponds to the first credit allowance date, as
10 defined under 26 USC 45D (a) (3), zero percent.

11 2. For the taxable years that correspond to the 6 credit allowance dates, as
12 defined under 26 USC 45D (a) (3), following the credit allowance date described in
13 subd. 1., 3 percent.

14 (c) *Limitations.* 1. A partnership, limited liability company, or tax-option
15 corporation may not claim the credit under this subsection. The partners of a
16 partnership, members of a limited liability company, or shareholders in a tax-option

1 corporation may claim the credit under this subsection based on eligible costs
2 incurred by the partnership, company, or tax-option corporation. The partnership,
3 limited liability company, or tax-option corporation shall calculate the amount of the
4 credit which may be claimed by each partner, member, or shareholder and shall
5 provide that information to the partner, member, or shareholder. For shareholders
6 of a tax-option corporation, the credit may be allocated in proportion to the
7 ownership interest of each shareholder. Credits computed by a partnership or
8 limited liability company may be claimed in proportion to the ownership interests
9 of the partners or members or allocated to partners or members as provided in a
10 written agreement among the partners or members that is entered into no later than
11 the last day of the taxable year of the partnership or limited liability company, for
12 which the credit is claimed. Any partner or member who claims the credit as
13 provided under this paragraph shall attach a copy of the agreement, if applicable, to
14 the tax return on which the credit is claimed. A person claiming the credit as
15 provided under this paragraph is solely responsible for any tax liability arising from
16 a dispute with the department of revenue related to claiming the credit.

17 2. Any claimant who transfers an interest in a partnership, limited liability
18 company, or tax-option corporation after the first credit allowance date, as defined
19 under 26 USC 45D (b), but before the final credit allowance date for the credit
20 allowed under this subsection shall be entitled to claim the credit for the remaining
21 credit allowance dates by filing with the claimant's return a written agreement
22 between the claimant and the transferee of the interest that specifies that the
23 claimant, not the transferee, is the person entitled to claim the credit.

1 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
2 under par. (b) shall be reduced by the amount of the credit that is offset against
3 Wisconsin income taxes.

4 4. The limitation under section 469 (a) (1) (B) of the Internal Revenue Code does
5 not apply to the credit under this subsection.

6 5. A claimant may claim the credit under this subsection regardless of whether
7 the claimant claims a credit under 26 USC 45D.

8 (d) *Administration.* 1. Section 71.28 (4) (e) to (h), as it applies to the credit
9 under s. 71.28 (4), applies to the credit under this subsection.

10 2. The department of revenue may promulgate rules regarding the recapture
11 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
12 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
13 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
14 same time and in the same manner as the claimant's federal tax credit.

15 3. No credit may be allowed under this subsection unless the claimant includes
16 with the claimant's return a copy of the claimant's certification for tax benefits under
17 s. 560.2065 (2) (b).

18 **SECTION 2.** 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act
19 28, is amended to read:

20 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
21 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
22 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),
23 (3q), (3r), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8r), and (9e),
24 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),
25 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),

1 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s.
2 71.07 (7), is less than the tax under this section, there is imposed on that natural
3 person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02,
4 an alternative minimum tax computed as follows:

5 **SECTION 3.** 71.10 (4) (fm) of the statutes is created to read:

6 71.10 (4) (fm) New markets credit under s. 71.07 (5n).

7 **SECTION 4.** 71.28 (5n) of the statutes is created to read:

8 71.28 (5n) NEW MARKETS CREDIT. (a) *Definition.* In this subsection, “claimant”
9 means a person who files a claim under this subsection.

10 (b) *Filing claims.* Subject to the limitations provided under this subsection and
11 s. 560.2065, for investments made after December 31, 2010, a claimant may claim
12 as a credit against the taxes imposed under s. 71.23, up to the amount of the taxes,
13 the amount of the claimant’s qualified equity investment, as certified under s.
14 560.2065 (2), multiplied by the following percentage:

15 1. For the taxable year that corresponds to the first credit allowance date, as
16 defined under 26 USC 45D (a) (3), zero percent.

17 2. For the taxable years that correspond to the 6 credit allowance dates, as
18 defined under 26 USC 45D (a) (3), following the credit allowance date described in
19 subd. 1., 3 percent.

20 (c) *Limitations.* 1. A partnership, limited liability company, or tax-option
21 corporation may not claim the credit under this subsection. The partners of a
22 partnership, members of a limited liability company, or shareholders in a tax-option
23 corporation may claim the credit under this subsection based on eligible costs
24 incurred by the partnership, company, or tax-option corporation. The partnership,
25 limited liability company, or tax-option corporation shall calculate the amount of the

1 credit which may be claimed by each partner, member, or shareholder and shall
2 provide that information to the partner, member, or shareholder. For shareholders
3 of a tax-option corporation, the credit may be allocated in proportion to the
4 ownership interest of each shareholder. Credits computed by a partnership or
5 limited liability company may be claimed in proportion to the ownership interests
6 of the partners or members or allocated to partners or members as provided in a
7 written agreement among the partners or members that is entered into no later than
8 the last day of the taxable year of the partnership or limited liability company, for
9 which the credit is claimed. Any partner or member who claims the credit as
10 provided under this paragraph shall attach a copy of the agreement, if applicable, to
11 the tax return on which the credit is claimed. A person claiming the credit as
12 provided under this paragraph is solely responsible for any tax liability arising from
13 a dispute with the department of revenue related to claiming the credit.

14 2. Any claimant who transfers an interest in a partnership, limited liability
15 company, or tax-option corporation after the first credit allowance date, as defined
16 under 26 USC 45D (b), but before the final credit allowance date for the credit
17 allowed under this subsection shall be entitled to claim the credit for the remaining
18 credit allowance dates by filing with the claimant's return a written agreement
19 between the claimant and the transferee of the interest that specifies that the
20 claimant, not the transferee, is the person entitled to claim the credit.

21 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
22 under par. (b) shall be reduced by the amount of the credit that is offset against
23 Wisconsin income taxes.

24 4. The limitation under section 469 (a) (1) (B) of the Internal Revenue Code does
25 not apply to the credit under this subsection.

1 5. A claimant may claim the credit under this subsection regardless of whether
2 the claimant claims a credit under 26 USC 45D.

3 (d) *Administration*. 1. Subsection (4) (e) to (h), as it applies to the credit under
4 sub. (4), applies to the credit under this subsection.

5 2. The department of revenue may promulgate rules regarding the recapture
6 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
7 claimant’s federal tax credit under 26 USC 45D is subject to recapture under 26 USC
8 45D (g), the claimant’s tax credit under this subsection is subject to recapture at the
9 same time and in the same manner as the claimant’s federal tax credit.

10 3. No credit may be allowed under this subsection unless the claimant includes
11 with the claimant’s return a copy of the claimant’s certification for tax benefits under
12 s. 560.2065 (2) (b).

13 **SECTION 5.** 71.30 (3) (dn) of the statutes is created to read:

14 71.30 (3) (dn) New markets credit under s. 71.28 (5n).

15 **SECTION 6.** 71.47 (5n) of the statutes is created to read:

16 71.47 (5n) NEW MARKETS CREDIT. (a) *Definition*. In this subsection, “claimant”
17 means a person who files a claim under this subsection.

18 (b) *Filing claims*. Subject to the limitations provided under this subsection and
19 s. 560.2065, for investments made after December 31, 2010, a claimant may claim
20 as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes,
21 the amount of the claimant’s qualified equity investment, as certified under s.
22 560.2065 (2), multiplied by the following percentage:

23 1. For the taxable year that corresponds to the first credit allowance date, as
24 defined under 26 USC 45D (a) (3), zero percent.

1 2. For the taxable years that correspond to the 6 credit allowance dates, as
2 defined under 26 USC 45D (a) (3), following the credit allowance date described in
3 subd. 1., 3 percent.

4 (c) *Limitations.* 1. A partnership, limited liability company, or tax-option
5 corporation may not claim the credit under this subsection. The partners of a
6 partnership, members of a limited liability company, or shareholders in a tax-option
7 corporation may claim the credit under this subsection based on eligible costs
8 incurred by the partnership, company, or tax-option corporation. The partnership,
9 limited liability company, or tax-option corporation shall calculate the amount of the
10 credit which may be claimed by each partner, member, or shareholder and shall
11 provide that information to the partner, member, or shareholder. For shareholders
12 of a tax-option corporation, the credit may be allocated in proportion to the
13 ownership interest of each shareholder. Credits computed by a partnership or
14 limited liability company may be claimed in proportion to the ownership interests
15 of the partners or members or allocated to partners or members as provided in a
16 written agreement among the partners or members that is entered into no later than
17 the last day of the taxable year of the partnership or limited liability company, for
18 which the credit is claimed. Any partner or member who claims the credit as
19 provided under this paragraph shall attach a copy of the agreement, if applicable, to
20 the tax return on which the credit is claimed. A person claiming the credit as
21 provided under this paragraph is solely responsible for any tax liability arising from
22 a dispute with the department of revenue related to claiming the credit.

23 2. Any claimant who transfers an interest in a partnership, limited liability
24 company, or tax-option corporation after the first credit allowance date, as defined
25 under 26 USC 45D (b), but before the final credit allowance date for the credit

1 allowed under this subsection shall be entitled to claim the credit for the remaining
2 credit allowance dates by filing with the claimant's return a written agreement
3 between the claimant and the transferee of the interest that specifies that the
4 claimant, not the transferee, is the person entitled to claim the credit.

5 3. The Wisconsin adjusted basis of any investment for which a credit is claimed
6 under par. (b) shall be reduced by the amount of the credit that is offset against
7 Wisconsin income taxes.

8 4. A claimant may claim the credit under this subsection regardless of whether
9 the claimant claims a credit under 26 USC 45D.

10 (d) *Administration.* 1. Section 71.28 (4) (e) to (h), as it applies to the credit
11 under s. 71.28 (4), applies to the credit under this subsection.

12 2. The department of revenue may promulgate rules regarding the recapture
13 of tax credits claimed under this subsection, consistent with 26 USC 45D (g). If a
14 claimant's federal tax credit under 26 USC 45D is subject to recapture under 26 USC
15 45D (g), the claimant's tax credit under this subsection is subject to recapture at the
16 same time and in the same manner as the claimant's federal tax credit.

17 3. No credit may be allowed under this subsection unless the claimant includes
18 with the claimant's return a copy of the claimant's certification for tax benefits under
19 s. 560.2065 (2) (b).

20 **SECTION 7.** 71.49 (1) (dn) of the statutes is created to read:

21 71.49 (1) (dn) New markets credit under s. 71.47 (5n).

22 **SECTION 8.** 76.639 of the statutes is created to read:

23 **76.639 New markets credit. (1) FILING CLAIMS.** Subject to the limitations
24 provided under this section and s. 560.2065, for investments made after December
25 31, 2010, an insurer may claim as a credit against the fees imposed under s. 76.60,

1 76.63, 76.65, 76.66, or 76.67 the amount of the insurer’s qualified equity investment,
2 as certified under s. 560.2065 (2), multiplied by the following percentage:

3 (a) For the taxable year that corresponds to the first credit allowance date, as
4 defined under 26 USC 45D (a) (3), zero percent.

5 (b) For the taxable years that correspond to the 6 credit allowance dates, as
6 defined under 26 USC 45D (a) (3), following the credit allowance date described in
7 subd. 1., 3 percent.

8 **(2) LIMITATIONS.** (a) An insurer may claim the credit under this section
9 regardless of whether the insurer claims a credit under 26 USC 45D.

10 (b) The department of revenue may promulgate rules regarding the recapture
11 of credits claimed under this section, consistent with 26 USC 45D (g). If a claimant’s
12 federal tax credit under 26 USC 45D is subject to recapture under 26 USC 45D (g),
13 the claimant’s tax credit under this section is subject to recapture at the same time
14 and in the same manner as the claimant’s federal tax credit.

15 (c) No credit may be allowed under this section unless the claimant includes
16 with the claimant’s return a copy of the claimant’s certification for tax benefits under
17 s. 560.2065 (2) (b).

18 **(3) CARRY-FORWARD.** If the credit under sub. (2) is not entirely offset against the
19 fees under s. 76.60, 76.63, 76.65, 76.66, or 76.67 otherwise due, the unused balance
20 may be carried forward and credited against those fees for the following 15 years to
21 the extent that it is not offset by those fees otherwise due in all the years between
22 the year in which the expense was made and the year in which the carry-forward
23 credit is claimed.

24 **SECTION 9.** 560.2065 of the statutes is created to read:

1 **560.2065 Certification of qualified equity investments. (1) DEFINITIONS.**

2 In this section:

3 (a) “Credit allowance date” means a credit allowance date as defined under 26
4 USC 45D (a) (3).

5 (b) “Qualified active low-income community business” means a qualified active
6 low-income community business as defined in 26 USC 45D (d) 2.

7 (c) “Qualified community development entity” means a qualified community
8 development entity as defined under 26 USC 45D (c).

9 (d) “Qualified equity investment” means a qualified equity investment as
10 defined under 26 USC 45D (b).

11 **(2) CERTIFICATION.** The department may do all of the following:

12 (a) Certify a qualified equity investment under this paragraph if all of the
13 following apply:

14 1. The proposed qualified equity investment will be funded by a qualified
15 community development entity whose service area includes the state.

16 2. The qualified community development entity identified in subd. 1. applies
17 to the department on a form provided by the department and includes with the
18 application evidence satisfactory to the department that all of the following apply:

19 a. Subject to the limit under sub. (4) (a), proceeds from the proposed qualified
20 equity investment will be invested in or loaned to a qualified active low-income
21 community business located in this state.

22 b. The proposed qualified equity investment will promote the creation or
23 retention of jobs in this state or will promote other economic development goals
24 established by the department by rule.

1 (b) Subject to the limit under sub. (4) (b), certify a person under this paragraph
2 to claim tax credits under ss. 71.07 (5n), 71.28 (5n), 71.47 (5n), and 76.639 if the
3 person applies to the department on a form provided by the department and submits
4 evidence satisfactory to the department that the person made an investment in a
5 qualified equity investment certified under par. (a).

6 **(3) ELIGIBILITY.** (a) A qualified equity investment certified under sub. (2) (a)
7 shall be funded by the qualified community development entity that submitted the
8 application under sub. (2) (a) 2. by the last day of the 13th month beginning after the
9 date of certification under sub. (2) (a). The certification of a qualified equity
10 investment that is not funded by the last day of the 13th month beginning after the
11 date of certification under sub. (2) (a) shall expire on the first day of the 14th month
12 beginning after the date of certification.

13 (b) A person certified under sub. (2) (b) is eligible to claim tax credits under ss.
14 71.07 (5n), 71.28 (5n), 71.47 (5n), and 76.639 in each taxable year in which a credit
15 allowance date falls.

16 **(4) LIMITS.** (a) A qualified active low-income community business receiving
17 investments, loans, or proceeds from qualified community development entities
18 certified under sub. (2) (a) may receive no more than \$5,000,000 in investments,
19 loans, or proceeds from such qualified community development entities.

20 (b) The maximum amount of tax credits under ss. 71.07 (5n), 71.28 (5n), 71.47
21 (5n), and 76.639 that may be certified under sub. (2) (b), for making investments in
22 qualified equity investments certified under sub. (2) (a), is \$10,000,000 in each fiscal
23 year, including the amount for all credit allowance dates.

1 **(5) DUTIES OF THE DEPARTMENT.** (a) The department of commerce shall notify
2 the department of revenue of every certification issued under sub. (2) and shall
3 include the date on which any such certification is granted.

4 (b) The department shall provide to each applicant under sub. (2) a dated
5 written notice indicating the department's decision to grant or deny certification.

6 (c) The department shall promulgate rules to administer this program,
7 including all of the following:

8 1. Deadlines for the submission of an application for certification under this
9 section.

10 2. The period for review of applications submitted under this section, which
11 period may not exceed 45 days.

12 3. Criteria for reviewing applications under this section and for prioritizing
13 applications for certification received under sub. (2) (a). The criteria under this
14 subdivision shall do all of the following:

15 a. Include economic development goals that are consistent with the provisions
16 of 26 USC 45D.

17 b. Prioritize applications received under sub. (2) (a) from qualified community
18 development entities proposing qualified equity investments in qualified active
19 low-income community businesses that are owner-occupied businesses not
20 primarily engaged in any of the activities identified under s. 560.205 (1) (g).

21 **SECTION 10. Nonstatutory provisions.**

22 (1) (a) The department of commerce shall submit in proposed form the rules
23 required under section 560.2065 (5) (c) of the statutes, as created by this act, to the
24 legislative council staff under section 227.15 (1) of the statutes no later than the first
25 day of the 4th month beginning after the effective date of this paragraph.

1 (b) Using the procedure under section 227.24 of the statutes, the department
2 of commerce may promulgate rules required under section 560.2065 (5) (c) of the
3 statutes, as created by this act, for the period before the effective date of the rules
4 submitted under paragraph (a), but not to exceed the period authorized under section
5 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),
6 and (3) of the statutes, the department is not required to provide evidence that
7 promulgating a rule under this paragraph as an emergency rule is necessary for the
8 preservation of the public peace, health, safety, or welfare and is not required to
9 provide a finding of emergency for a rule promulgated under this paragraph.

10 **SECTION 11. Initial applicability.**

11 (1) This act first applies to taxable years beginning on January 1, 2011.

12 (END)