

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 528**

Introduced by Harr, 8.

Read first time January 18, 2017

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, and sections  
3 77-1108, 77-1109, and 77-1116, Revised Statutes Cumulative  
4 Supplement, 2016; to change provisions relating to the New Markets  
5 Job Growth Investment Act; to repeal the original sections; and to  
6 declare an emergency.

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 2016, 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 2016, 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 77-1116, Revised Statutes Cumulative Supplement,  
16 2016, is amended to read:

17 77-1116 (1) A qualified community development entity that seeks to  
18 have an equity investment or long-term debt security designated as a  
19 qualified equity investment and eligible for tax credits under the New  
20 Markets Job Growth Investment Act shall apply to the Tax Commissioner.  
21 There shall be no new applications for such designation filed under this  
22 section after December 31, 2022.

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

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

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

31 ~~(c) A certificate executed by an executive officer of the entity~~

1 ~~attesting that the allocation agreement remains in effect and has not~~  
2 ~~been revoked or canceled by the Community Development Financial~~  
3 ~~Institutions Fund referred to in section 77-1109;~~

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

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

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

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

12 (3) Within thirty days after receipt of a completed application  
13 containing the information necessary for the Tax Commissioner to certify  
14 a potential qualified equity investment, including the payment of the  
15 application fee, the Tax Commissioner shall grant or deny the application  
16 in full or in part. If the Tax Commissioner denies any part of the  
17 application, the Tax Commissioner shall inform the qualified community  
18 development entity of the grounds for the denial. If the qualified  
19 community development entity provides any additional information required  
20 by the Tax Commissioner or otherwise completes its application within  
21 fifteen days after the notice of denial, the application shall be  
22 considered completed as of the original date of submission. If the  
23 qualified community development entity fails to provide the information  
24 or complete its application within the fifteen-day period, the  
25 application remains denied and must be resubmitted in full with a new  
26 submission date.

27 (4) If the application is deemed complete, the Tax Commissioner  
28 shall certify the proposed equity investment or long-term debt security  
29 as a qualified equity investment that is eligible for tax credits,  
30 subject to the limitations contained in section 77-1115. The Tax  
31 Commissioner shall provide written notice of the certification to the

1 qualified community development entity. The notice shall include the  
2 names of those taxpayers who are eligible to utilize the credits and  
3 their respective credit amounts. If the names of the taxpayers who are  
4 eligible to utilize the credits change due to a transfer of a qualified  
5 equity investment or a change in an allocation pursuant to section  
6 77-1114, the qualified community development entity shall notify the Tax  
7 Commissioner of such change.

8 (5) The Tax Commissioner shall certify qualified equity investments  
9 in the order applications are received. Applications received on the same  
10 day shall be deemed to have been received simultaneously. For  
11 applications received on the same day and deemed complete, the Tax  
12 Commissioner shall certify, consistent with remaining tax credit  
13 capacity, qualified equity investments in proportionate percentages based  
14 upon the ratio of the amount of qualified equity investment requested in  
15 an application to the total amount of qualified equity investments  
16 requested in all applications received on the same day.

17 (6) Once the Tax Commissioner has certified qualified equity  
18 investments that, on a cumulative basis, are eligible for the maximum  
19 limitation contained in section 77-1115, the Tax Commissioner may not  
20 certify any more qualified equity investments for that fiscal year. If a  
21 pending request cannot be fully certified, the Tax Commissioner shall  
22 certify the portion that may be certified unless the qualified community  
23 development entity elects to withdraw its request rather than receive  
24 partial credit.

25 (7) Within thirty days after receiving notice of certification, the  
26 qualified community development entity shall issue the qualified equity  
27 investment and receive cash in the amount of the certified amount. The  
28 qualified community development entity shall provide the Tax Commissioner  
29 with evidence of the receipt of the cash investment within ten business  
30 days after receipt. If the qualified community development entity does  
31 not receive the cash investment and issue the qualified equity investment

1 within thirty days after receipt of the certification notice, the  
2 certification shall lapse and the entity may not issue the qualified  
3 equity investment without reapplying to the Tax Commissioner for  
4 certification. A certification that lapses reverts back to the Tax  
5 Commissioner and may be reissued only in accordance with the application  
6 process outlined in this section.

7       Sec. 5. Original section 58-210.02, Reissue Revised Statutes of  
8 Nebraska, and sections 77-1108, 77-1109, and 77-1116, Revised Statutes  
9 Cumulative Supplement, 2016, are repealed.

10       Sec. 6. Since an emergency exists, this act takes effect when  
11 passed and approved according to law.