AN ACT concerning economic development.

**Be it enacted by the People of the State of Illinois, represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the New Markets Development Program Act.

Section 5. Definitions. As used in this Act:

"Applicable percentage" means 0% for each of the first 2 credit allowance dates, 7% for the third credit allowance date, and 8% for the next 4 credit allowance dates.

"Credit allowance date" means with respect to any qualified equity investment:

(1) the date on which the investment is initially made; and

(2) each of the 6 anniversary dates of that date thereafter.

"Department" means the Department of Commerce and Economic Opportunity.

"Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least 7 years from the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. Cumulative cash payments of interest on

the qualified debt instrument during the period commencing with the issuance of the qualified debt instrument and ending with the seventh anniversary of its issuance shall not exceed the sum of such cash interest payments and the cumulative net income of the issuing community development entity for the same period. This definition in no way limits the holder's ability to accelerate payments on the debt instrument in situations where the issuer has defaulted on covenants designed to ensure compliance with this Act or Section 45D of the Internal Revenue Code of 1986, as amended.

"Purchase price" means the amount paid to the issuer of a qualified equity investment for that qualified equity investment.

"Qualified active low-income community business" has the meaning given to that term in Section 45D of the Internal Revenue Code of 1986, as amended; except that any business that derives or projects to derive 15% or more of its annual revenue from the rental or sale of real estate is not considered to be a qualified active low-income community business. This exception does not apply to a business that is controlled by or under common control with another business if the second business (i) does not derive or project to derive 15% or more of its annual revenue from the rental or sale of real estate and (ii) is the primary tenant of the real estate leased from the initial business. A business shall be considered a qualified active low-income community business for the

duration of the qualified community development entity's investment in or loan to the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan.

"Qualified community development entity" has the meaning given to that term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Treasury Department with respect to credits authorized by Section 45D of the Internal Revenue Code of 1986, as amended, that includes the State of Illinois within the service area set forth in that allocation agreement.

"Qualified equity investment" means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(1) is acquired after the effective date of this Act at its original issuance solely in exchange for cash;

(2) has at least 85% of its cash purchase price used by the issuer to make qualified low-income community investments in the State of Illinois; and

(3) is designated by the issuer as a qualified equity investment under this Act and is certified by the Department as not exceeding the limitation contained in

Section 20.

This term includes any qualified equity investment that does not meet the provisions of item (1) of this definition if the investment was a qualified equity investment in the hands of a prior holder.

"Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in that business, on a collective basis with all of its affiliates that may be counted towards the satisfaction of paragraph (2) of the definition of qualified equity investment, shall be $10,000,000 whether issued to one or several qualified community development entities.

"Tax credit" means a credit against any income, franchise, or insurance premium taxes otherwise due under Illinois law.

"Taxpayer" means any individual or entity subject to any income, franchise, or insurance premium tax under Illinois law.

Section 10. Credit established. A person or entity that makes a qualified equity investment earns a vested right to tax credits as follows:

(1) on each credit allowance date of the qualified equity investment, the purchaser of the qualified equity investment, or subsequent holder of the qualified equity

investment, is entitled to a tax credit during the taxable year including that credit allowance date;

(2) the tax credit amount shall be equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the issuer of the qualified equity investment; and

(3) the amount of the tax credit claimed shall not exceed the amount of the State tax liability of the holder, or the person or entity to whom the credit is allocated for use pursuant to Section 15, for the tax year for which the tax credit is claimed.

A company doing insurance business in this State claiming a tax credit against insurance premium taxes payable pursuant to Section 409 of the Illinois Insurance Code is not required to pay any additional retaliatory tax imposed pursuant to Section 444 or 444.1 of the Illinois Insurance Code related to that claim for a tax credit.

Section 15. Transferability. No tax credit claimed under this Act shall be refundable or saleable on the open market. Tax credits earned by a partnership, limited liability company, S corporation, or other "pass-through" entity may be allocated to the partners, members, or shareholders of that entity for their direct use in accordance with the provisions of any agreement among the partners, members, or shareholders. Any amount of tax credit that the taxpayer, or partner, member, or

shareholder thereof, is prohibited from claiming in a taxable year may be carried forward to any of the taxpayer's 5 subsequent taxable years.

Section 20. Annual cap on credits. The Department shall limit the monetary amount of qualified equity investments permitted under this Act to a level necessary to limit tax credit use at no more than $10,000,000 of tax credits in any fiscal year. This limitation on qualified equity investments shall be based on the anticipated use of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

Section 25. Certification of qualified equity investments.

(a) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under this Section shall apply to the Department. The qualified community development entity must submit an application on a form that the Department provides that includes:

(1) The name, address, tax identification number of the entity, and evidence of the entity's certification as a qualified community development entity.

(2) A copy of the allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund.

(3) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund.

(4) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security.

(5) The name and tax identification number of any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment.

(6) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment.

(7) A nonrefundable application fee of $5,000. This fee shall be paid to the Department and shall be required of each application submitted.

(b) Within 30 days after receipt of a completed application containing the information necessary for the Department to certify a potential qualified equity investment, including the payment of the application fee, the Department shall grant or deny the application in full or in part. If the Department denies any part of the application, it shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Department or otherwise completes its application within 15 days of the notice of denial, the application shall be considered completed

as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the 15-day period, the application remains denied and must be resubmitted in full with a new submission date.

(c) If the application is deemed complete, the Department shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits under this Section, subject to the limitations contained in Section 20. The Department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to Section 15, the qualified community development entity shall notify the Department of such change.

(d) The Department shall certify qualified equity investments in the order applications are received by the Department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity

investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(e) Once the Department has certified qualified equity investments that, on a cumulative basis, are eligible for $10,000,000 in tax credits, the Department may not certify any more qualified equity investments. If a pending request cannot be fully certified, the Department shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(f) Within 30 days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity must provide the Department with evidence of the receipt of the cash investment within 10 business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within 30 days following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Department for certification. A certification that lapses reverts back to the Department and may be reissued only in accordance with the application process outline in this Section 25.

Section 40. Recapture. The Department of Revenue shall recapture, from the taxpayer that claimed the credit on a return, the tax credit allowed under this Act if:

(1) any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this Act is recaptured under Section 45D of the Internal Revenue Code of 1986, as amended. In that case, the Department of Revenue's recapture shall be proportionate to the federal recapture with respect to that qualified equity investment;

(2) the issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the 7th anniversary of the issuance of the qualified equity investment. In that case, the Department of Revenue's recapture shall be proportionate to the amount of the redemption or repayment with respect to the qualified equity investment; or

(3) the issuer fails to invest at least 85% of the cash purchase price of the qualified equity investment in qualified low-income community investments in the State of Illinois within 12 months of the issuance of the qualified equity investment and maintain such level of investment in qualified low-income community investments in Illinois until the last credit allowance date for such qualified equity investment.

For purposes of this Section, an investment shall be considered held by an issuer even if the investment has been sold or repaid; provided that 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 in this State within 12 months after the receipt of that capital. An issuer is not required to reinvest capital returned from qualified low-income community investments after the 6th anniversary of the issuance of the qualified equity investment, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the 7th anniversary of the qualified equity investment's issuance.

The Department of Revenue shall provide notice to the qualified community development entity of any proposed recapture of tax credits pursuant to this Section. The entity shall have 90 days to cure any deficiency indicated in the Department of Revenue's original recapture notice and avoid such recapture. If the entity fails or is unable to cure such deficiency with the 90-day period, the Department of Revenue shall provide the entity and the taxpayer from whom the credit is to be recaptured with a final order of recapture. Any tax credit for which a final recapture order has been issued shall be recaptured by the Department of Revenue from the taxpayer

who claimed the tax credit on a tax return.

Section 45. Examination and Rulemaking.

(a) The Department may conduct examinations to verify that the tax credits under this Act have been received and applied according to the requirements of this Act and to verify that no event has occurred that would result in a recapture of tax credits under Section 40.

(b) Neither the Department nor the Department of Revenue shall have the authority to promulgate rules under the Act, but the Department and the Department of Revenue shall have the authority to issue advisory letters to individual qualified community development entities and their investors that are limited to the specific facts outlined in an advisory letter request from a qualified community development entity. Such rulings cannot be relied upon by any person or entity other than the qualified community development entity that requested the letter and the taxpayers that are entitled to any tax credits generated from investments in such entity. For purposes of this subsection, "rules" is given the meaning contained in Section 1-70 of the Illinois Administrative Procedure Act.

(c) In rendering advisory letters and making other determinations under this Act, to the extent applicable, the Department and the Department of Revenue shall look for guidance to Section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder.

Section 50. Sunset. For fiscal years following fiscal year 2012, qualified equity investments shall not be made under this Act unless reauthorization is made pursuant to this Section. For all fiscal years following fiscal year 2012, unless the General Assembly adopts a joint resolution granting authority to the Department to approve qualified equity investments for the Illinois new markets development program and clearly describing the amount of tax credits available for the next fiscal year, or otherwise complies with the provisions of this Section, no qualified equity investments may be permitted to be made under this Act. The amount of available tax credits contained in such a resolution shall not exceed the limitation provided under Section 20. Nothing in this Section precludes a taxpayer who makes a qualified equity investment prior to the expiration of authority to make qualified equity investments from claiming tax credits relating to that qualified equity investment for each applicable credit allowance date.

Section 75. The Illinois Insurance Code is amended by changing Sections 409, 444, and 444.1 as follows:

(215 ILCS 5/409) (from Ch. 73, par. 1021)

Sec. 409. Annual privilege tax payable by companies.

(1) As of January 1, 1999 for all health maintenance organization premiums written; as of July 1, 1998 for all

premiums written as accident and health business, voluntary health service plan business, dental service plan business, or limited health service organization business; and as of January 1, 1998 for all other types of insurance premiums written, every company doing any form of insurance business in this State, including, but not limited to, every risk retention group, and excluding all fraternal benefit societies, all farm mutual companies, all religious charitable risk pooling trusts, and excluding all statutory residual market and special purpose entities in which companies are statutorily required to participate, whether incorporated or otherwise, shall pay, for the privilege of doing business in this State, to the Director for the State treasury a State tax equal to 0.5% of the net taxable premium written, together with any amounts due under Section 444 of this Code, except that the tax to be paid on any premium derived from any accident and health insurance or on any insurance business written by any company operating as a health maintenance organization, voluntary health service plan, dental service plan, or limited health service organization shall be equal to 0.4% of such net taxable premium written, together with any amounts due under Section 444. Upon the failure of any company to pay any such tax due, the Director may, by order, revoke or suspend the company's certificate of authority after giving 20 days written notice to the company, or commence proceedings for the suspension of business in this State under the procedures set forth by

Section 401.1 of this Code. The gross taxable premium written shall be the gross amount of premiums received on direct business during the calendar year on contracts covering risks in this State, except premiums on annuities, premiums on which State premium taxes are prohibited by federal law, premiums paid by the State for health care coverage for Medicaid eligible insureds as described in Section 5-2 of the Illinois Public Aid Code, premiums paid for health care services included as an element of tuition charges at any university or college owned and operated by the State of Illinois, premiums on group insurance contracts under the State Employees Group Insurance Act of 1971, and except premiums for deferred compensation plans for employees of the State, units of local government, or school districts. The net taxable premium shall be the gross taxable premium written reduced only by the following:

(a) the amount of premiums returned thereon which shall be limited to premiums returned during the same preceding calendar year and shall not include the return of cash surrender values or death benefits on life policies including annuities;

(b) dividends on such direct business that have been paid in cash, applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants. In the case of life insurance, no deduction shall be made for the payment of deferred dividends paid in cash to

policyholders on maturing policies; dividends left to accumulate to the credit of policyholders or annuitants shall be included as gross taxable premium written when such dividend accumulations are applied to purchase paid-up insurance or to shorten the endowment or premium paying period.

(2) The annual privilege tax payment due from a company under subsection (4) of this Section may be reduced by: (a) the excess amount, if any, by which the aggregate income taxes paid by the company, on a cash basis, for the preceding calendar year under subsections (a) through (d) of Section 201 of the Illinois Income Tax Act exceed 1.5% of the company's net taxable premium written for that prior calendar year, as determined under subsection (1) of this Section; and (b) the amount of any fire department taxes paid by the company during the preceding calendar year under Section 11-10-1 of the Illinois Municipal Code. Any deductible amount or offset allowed under items (a) and (b) of this subsection for any calendar year will not be allowed as a deduction or offset against the company's privilege tax liability for any other taxing period or calendar year.

(3) If a company survives or was formed by a merger, consolidation, reorganization, or reincorporation, the premiums received and amounts returned or paid by all companies party to the merger, consolidation, reorganization, or reincorporation shall, for purposes of determining the amount

of the tax imposed by this Section, be regarded as received, returned, or paid by the surviving or new company.

(4)(a) All companies subject to the provisions of this Section shall make an annual return for the preceding calendar year on or before March 15 setting forth such information on such forms as the Director may reasonably require. Payments of quarterly installments of the taxpayer's total estimated tax for the current calendar year shall be due on or before April 15, June 15, September 15, and December 15 of such year, except that all companies transacting insurance in this State whose annual tax for the immediately preceding calendar year was less than $5,000 shall make only an annual return. Failure of a company to make the annual payment, or to make the quarterly payments, if required, of at least 25% of either (i) the total tax paid during the previous calendar year or (ii) 80% of the actual tax for the current calendar year shall subject it to the penalty provisions set forth in Section 412 of this Code.

(b) Notwithstanding the foregoing provisions, no annual return shall be required or made on March 15, 1998, under this subsection. For the calendar year 1998:

(i) each health maintenance organization shall have no estimated tax installments;

(ii) all companies subject to the tax as of July 1, 1998 as set forth in subsection (1) shall have estimated tax installments due on September 15 and December 15 of 1998 which installments shall each amount to no less than

one-half of 80% of the actual tax on its net taxable premium written during the period July 1, 1998, through December 31, 1998; and

(iii) all other companies shall have estimated tax installments due on June 15, September 15, and December 15 of 1998 which installments shall each amount to no less than one-third of 80% of the actual tax on its net taxable premium written during the calendar year 1998.

In the year 1999 and thereafter all companies shall make annual and quarterly installments of their estimated tax as provided by paragraph (a) of this subsection.

(5) In addition to the authority specifically granted under Article XXV of this Code, the Director shall have such authority to adopt rules and establish forms as may be reasonably necessary for purposes of determining the allocation of Illinois corporate income taxes paid under subsections (a) through (d) of Section 201 of the Illinois Income Tax Act amongst members of a business group that files an Illinois corporate income tax return on a unitary basis, for purposes of regulating the amendment of tax returns, for purposes of defining terms, and for purposes of enforcing the provisions of Article XXV of this Code. The Director shall also have authority to defer, waive, or abate the tax imposed by this Section if in his opinion the company's solvency and ability to meet its insured obligations would be immediately threatened by payment of the tax due.

(c) This Section is subject to the provisions of Section 10 of the New Markets Development Program Act.

(Source: P.A. 90-583, eff. 5-29-98.)

(215 ILCS 5/444) (from Ch. 73, par. 1056)

Sec. 444. Retaliation.

(1) Whenever the existing or future laws of any other state or country shall require of companies incorporated or organized under the laws of this State as a condition precedent to their doing business in such other state or country, compliance with laws, rules, regulations, and prohibitions more onerous or burdensome than the rules and regulations imposed by this State on foreign or alien companies, or shall require any deposit of securities or other obligations in such state or country, for the protection of policyholders or otherwise or require of such companies or agents thereof or brokers the payment of penalties, fees, charges, or taxes greater than the penalties, fees, charges, or taxes required in the aggregate for like purposes by this Code or any other law of this State, of foreign or alien companies, agents thereof or brokers, then such laws, rules, regulations, and prohibitions of said other state or country shall apply to companies incorporated or organized under the laws of such state or country doing business in this State, and all such companies, agents thereof, or brokers doing business in this State, shall be required to make deposits, pay penalties, fees, charges, and taxes, in

amounts equal to those required in the aggregate for like purposes of Illinois companies doing business in such state or country, agents thereof or brokers. Whenever any other state or country shall refuse to permit any insurance company incorporated or organized under the laws of this State to transact business according to its usual plan in such other state or country, the director may, if satisfied that such company of this State is solvent, properly managed, and can operate legally under the laws of such other state or country, forthwith suspend or cancel the license of every insurance company doing business in this State which is incorporated or organized under the laws of such other state or country to the extent that it insures in this State against any of the risks or hazards which are sought to be insured against by the company of this State in such other state or country.

(2) The provisions of this Section shall not apply to residual market or special purpose assessments or guaranty fund or guaranty association assessments, both under the laws of this State and under the laws of any other state or country, and any tax offset or credit for any such assessment shall, for purposes of this Section, be treated as a tax paid both under the laws of this State and under the laws of any other state or country.

(3) The terms "penalties", "fees", "charges", and "taxes" in subsection (1) of this Section shall include: the penalties, fees, charges, and taxes collected under State law and

referenced within Article XXV exclusive of any items referenced by subsection (2) of this Section, but including any tax offset allowed under Section 531.13 of this Code; the Illinois corporate income taxes imposed under subsections (a) through (d) of Section 201 of the Illinois Income Tax Act after any tax offset allowed under Section 531.13 of this Code; income or personal property taxes imposed by other states or countries; penalties, fees, charges, and taxes of other states or countries imposed for purposes like those of the penalties, fees, charges, and taxes specified in Article XXV of this Code exclusive of any item referenced in subsection (2) of this Section; and any penalties, fees, charges, and taxes required as a franchise, privilege, or licensing tax for conducting the business of insurance whether calculated as a percentage of income, gross receipts, premium, or otherwise.

(4) Nothing contained in this Section or Section 409 or Section 444.1 is intended to authorize or expand any power of local governmental units or municipalities to impose taxes, fees, or charges.

(5) This Section is subject to the provisions of Section 10 of the New Markets Development Program Act.

(Source: P.A. 90-583, eff. 5-29-98.)

(215 ILCS 5/444.1) (from Ch. 73, par. 1056.1)

Sec. 444.1. Payment of retaliatory taxes.

(1) Every foreign or alien company doing insurance business

in this State shall pay the Director the retaliatory tax determined in accordance with Section 444.

(2) (a) All companies subject to the provisions of this Section shall make an annual return for the preceding calendar year on or before March 15 setting forth such information on such forms as the Director may reasonably require. Payments of quarterly installments of the taxpayer's total estimated retaliatory tax for the current calendar year shall be due on or before April 15, June 15, September 15, and December 15 of such year, except that all companies transacting insurance business in this State whose annual tax for the immediately preceding calendar year was less than $5,000 shall make only an annual return. Failure of a company to make the annual payment, or to make the quarterly payments, if required, of at least one-fourth of either (i) the total tax paid during the previous calendar year or (ii) 80% of the actual tax for the current calendar year shall subject it to the penalty provisions set forth in Section 412 of this Code.

(b) Notwithstanding the foregoing provisions of paragraph (a) of this subsection, the retaliatory tax liability of companies under Section 444 of this Code for the calendar year ended December 31, 1997 shall be determined in accordance with this amendatory Act of 1998 and shall include in the aggregate comparative tax burden for the State of Illinois, any tax offset allowed under Section 531.13 of this Code and any income taxes paid for the year 1997 under subsections (a) through (d)

of Section 201 of the Illinois Income Tax Act after any tax offset allowed under Section 531.13 of this Code.

(i) Any annual retaliatory tax returns and payments made for the year ended December 31, 1997 and any quarterly installments of the taxpayer's total estimated 1998 retaliatory tax liability paid prior to the effective date of this Amendatory Act of 1998 that do not include the items specified by subsection (1) of this Section shall be amended and restated, at the taxpayer's election, on forms prepared by the Director so as to provide for the inclusion of such items. An amended and restated return for the year ended December 31, 1997 filed under this subparagraph shall treat any payment of estimated privilege taxes under Section 409 as in effect prior to October 23, 1997 as a payment of estimated retaliatory taxes for the year ended December 31, 1997.

(ii) Any overpayment resulting from such amended return and restated tax liability shall be allowed as a credit against any subsequent privilege or retaliatory tax obligations of the taxpayer.

(iii) In the year 1999 and thereafter all companies shall make annual and quarterly installments of their estimated tax as provided by paragraph (a) of this subsection.

(3) Any tax payment made under this Section and any tax returns prepared in compliance with Section 410 shall give full

consideration to the impact of any future reduction in or elimination of a taxpayer's liability under Section 409, whether such reduction or elimination is due to an operation of law or an Act of the General Assembly.

(4) Any foreign or alien taxpayer who makes, under protest, a tax payment required by Section 409 shall, at the time of payment, file a retaliatory tax return sufficient to disclose the full amount of retaliatory taxes which would be due and owing for the tax period in question if the protest were upheld. Notwithstanding the provisions of the State Officers and Employees Money Disposition Act or any other laws of this State, the protested payment, to the extent of the retaliatory tax so disclosed, shall be deposited directly in the General Revenue Fund; and the balance of the payment, if any, shall be deposited in a protest account pursuant to the provisions of the aforesaid Act, as now or hereafter amended.

(5) The failure of a company to make the annual payment or to make the quarterly payments, if required, of at least one-fourth of either (i) the total tax paid during the preceding calendar year or (ii) 80% of the actual tax for the current calendar year shall subject it to the penalty provisions set forth in Section 412 of this Code.

(6) This Section is subject to the provisions of Section 10 of the New Markets Development Program Act.

(Source: P.A. 90-583, eff. 5-29-98.)

Section 99. Effective date. This Act takes effect upon

becoming law.