



## 2009 ASSEMBLY BILL 642

January 4, 2010 – Introduced by Representatives BARCA, GARTHWAITE, ZIGMUNT, HILGENBERG, RADCLIFFE, CLARK, PASCH, MOLEPSKE JR., RIPP, DEXTER, BERCEAU and SINICKI, cosponsored by Senators COGGS, KREITLOW and HOLPERIN. Referred to Committee on Jobs, the Economy and Small Business.

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.

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### ***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 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.

This bill authorizes the Department of Commerce (Commerce) to certify an individual who applies to Commerce, has made an investment in a QCDE, and is eligible to receive the federal New Markets Tax Credit to receive a credit against state income and franchise taxes and against license fees paid by insurers. Prior to certification, Commerce must verify that the person has made an investment in a QCDE with the primary mission of serving or providing investment capital for low-income communities or low-income persons in this state. Commerce must

**ASSEMBLY BILL 642**

annually verify that the person continues to hold the investment in any year the person seeks to claim the credit.

The credit may be claimed for seven consecutive taxable years beginning with the taxable year in which the taxpayer makes an investment in a QCDE. 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 three taxable years, 5 percent.
2. For the next four taxable years, 6 percent.

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

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***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) SUPPLEMENT TO FEDERAL NEW MARKETS CREDIT.** (a) *Definition.* In this  
3 subsection, “claimant” 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, a claimant may claim as a credit against the taxes imposed under ss.  
6 71.02 and 71.08, up to the amount of the taxes, the amount the claimant paid to a  
7 qualified community development entity, as defined under 26 USC 45D (c), for a  
8 qualified equity investment, as defined under 26 USC 45D (b), at its original issue,  
9 multiplied by the following percentage:

10           1. For the taxable years that correspond to the first 3 credit allowance dates,  
11 as defined under 26 USC 45D (a) (3), 5 percent.

12           2. For the taxable years that correspond to the 4 credit allowance dates, as  
13 defined under 26 USC 45D (a) (3), following the credit allowance dates described in  
14 subd. 1., 6 percent.

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

**ASSEMBLY BILL 642**

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. The tax basis of a claimant’s interest in a partnership, limited liability  
18 company, or tax–option corporation shall be reduced, but not below zero, by the  
19 amount of any credit claimed under this subsection. The credit claimed under this  
20 subsection shall not be limited to the amount of the adjusted tax basis for the  
21 claimant’s interest in a partnership, limited liability company, or tax–option  
22 corporation.

23 3. 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

**ASSEMBLY BILL 642**

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

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

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

12 **SECTION 2.** 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act  
13 28, is amended to read:

14 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married  
15 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under  
16 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),  
17 (3q), (3r), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e), (8r), and (9e),  
18 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),  
19 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),  
20 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s.  
21 71.07 (7), is less than the tax under this section, there is imposed on that natural  
22 person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02,  
23 an alternative minimum tax computed as follows:

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

25 71.10 (4) (fm) Supplement to federal new markets credit under s. 71.07 (5n).

**ASSEMBLY BILL 642**

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

2           **71.28 (5n) SUPPLEMENT TO FEDERAL NEW MARKETS CREDIT.** (a) *Definition.* In this  
3 subsection, “claimant” 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, a claimant may claim as a credit against the taxes imposed under s.  
6 71.23, up to the amount of the taxes, the amount the claimant paid to a qualified  
7 community development entity, as defined under 26 USC 45D (c), for a qualified  
8 equity investment, as defined under 26 USC 45D (b), at its original issue, multiplied  
9 by the following percentage:

10           1. For the taxable years that correspond to the first 3 credit allowance dates,  
11 as defined under 26 USC 45D (a) (3), 5 percent.

12           2. For the taxable years that correspond to the 4 credit allowance dates, as  
13 defined under 26 USC 45D (a) (3), following the credit allowance dates described in  
14 subd. 1., 6 percent.

15           (c) *Limitations.* 1. A partnership, limited liability company, or tax–option  
16 corporation may not claim the credit under this subsection. The partners of a  
17 partnership, members of a limited liability company, or shareholders in a tax–option  
18 corporation may claim the credit under this subsection based on eligible costs  
19 incurred by the partnership, company, or tax–option corporation. The partnership,  
20 limited liability company, or tax–option corporation shall calculate the amount of the  
21 credit which may be claimed by each partner, member, or shareholder and shall  
22 provide that information to the partner, member, or shareholder. For shareholders  
23 of a tax–option corporation, the credit may be allocated in proportion to the  
24 ownership interest of each shareholder. Credits computed by a partnership or  
25 limited liability company may be claimed in proportion to the ownership interests

**ASSEMBLY BILL 642**

1 of the partners or members or allocated to partners or members as provided in a  
2 written agreement among the partners or members that is entered into no later than  
3 the last day of the taxable year of the partnership or limited liability company, for  
4 which the credit is claimed. Any partner or member who claims the credit as  
5 provided under this paragraph shall attach a copy of the agreement, if applicable, to  
6 the tax return on which the credit is claimed. A person claiming the credit as  
7 provided under this paragraph is solely responsible for any tax liability arising from  
8 a dispute with the department of revenue related to claiming the credit.

9 2. The tax basis of a claimant's interest in a partnership, limited liability  
10 company, or tax-option corporation shall be reduced, but not below zero, by the  
11 amount of any credit claimed under this subsection. The credit claimed under this  
12 subsection shall not be limited to the amount of the adjusted tax basis for the  
13 claimant's interest in a partnership, limited liability company, or tax-option  
14 corporation.

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

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

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

**ASSEMBLY BILL 642**

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

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

5           71.30 **(3)** (dn) Supplement to federal new markets credit under s. 71.28 (5n).

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

7           71.47 **(5n)** SUPPLEMENT TO FEDERAL NEW MARKETS CREDIT. (a) *Definition.* In this  
8           subsection, "claimant" means a person who files a claim under this subsection.

9           (b) *Filing claims.* Subject to the limitations provided under this subsection and  
10          s. 560.2065, a claimant may claim as a credit against the taxes imposed under s.  
11          71.43, up to the amount of the taxes, the amount the claimant paid to a qualified  
12          community development entity, as defined under 26 USC 45D (c), for a qualified  
13          equity investment, as defined under 26 USC 45D (b), at its original issue, multiplied  
14          by the following percentage:

15           1. For the taxable years that correspond to the first 3 credit allowance dates,  
16          as defined under 26 USC 45D (a) (3), 5 percent.

17           2. For the taxable years that correspond to the 4 credit allowance dates, as  
18          defined under 26 USC 45D (a) (3), following the credit allowance dates described in  
19          subd. 1., 6 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

**ASSEMBLY BILL 642**

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. The tax basis of a claimant's interest in a partnership, limited liability  
15 company, or tax-option corporation shall be reduced, but not below zero, by the  
16 amount of any credit claimed under this subsection. The credit claimed under this  
17 subsection shall not be limited to the amount of the adjusted tax basis for the  
18 claimant's interest in a partnership, limited liability company, or tax-option  
19 corporation.

20 3. Any claimant who transfers an interest in a partnership, limited liability  
21 company, or tax-option corporation after the first credit allowance date, as defined  
22 under 26 USC 45D (b), but before the final credit allowance date for the credit  
23 allowed under this subsection shall be entitled to claim the credit for the remaining  
24 credit allowance dates by filing with the claimant's return a written agreement



**ASSEMBLY BILL 642**

1 between the claimant and the transferee of the interest that specifies that the  
2 claimant, not the transferee, is the person entitled to claim the credit.

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

5 2. No credit may be allowed under this subsection unless the claimant includes  
6 with the claimant's return a copy of the claimant's certification for tax benefits under  
7 s. 560.2065 (2).

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

9 71.49 (1) (dn) Supplement to federal new markets credit under s. 71.47 (5n).

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

11 **76.639 New markets credit. (1) FILING CLAIMS.** Subject to the limitations  
12 provided under this section and s. 560.2065, an insurer may claim as a credit against  
13 the fees imposed under s. 76.60, 76.63, 76.65, 76.66, or 76.27 the amount the insurer  
14 paid to a qualified community development entity, as defined under 26 USC 45D (c),  
15 for a qualified equity investment, as defined under 26 USC 45D (b), at its original  
16 issue, multiplied by the following percentage:

17 1. For the taxable years that correspond to the first 3 credit allowance dates,  
18 as defined under 26 USC 45D (a) (3), 5 percent.

19 2. For the taxable years that correspond to the 4 credit allowance dates, as  
20 defined under 26 USC 45D (a) (3), following the credit allowance dates described in  
21 subd. 1., 6 percent.

22 **(2) LIMITATIONS.** No credit may be allowed under this section unless the insurer  
23 includes with the insurer's annual return under s. 76.64 a copy of the claimant's  
24 certification for tax benefits under s. 560.2065 (2).

**ASSEMBLY BILL 642**

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

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

8           **560.2065 Supplement to federal new markets credit. (1) DEFINITIONS.**

9           In this section:

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

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

14           (c) “Qualified equity investment” means a qualified equity investment as  
15 defined under 26 USC 45D (b).

16           **(2) CERTIFICATION.** The department may certify a person to receive tax benefits  
17 under this section if all of the following apply:

18           (a) The person applies to the department for certification under this section and  
19 includes with the application documentation from the federal internal revenue  
20 service indicating that all of the following apply:

21           1. The person made a qualified equity investment in a qualified community  
22 development entity described in subd. 2.

23           2. The qualified community development entity’s primary mission is serving,  
24 or providing investment capital for, low-income communities or low-income persons  
25 in this state.

**ASSEMBLY BILL 642**

1           3. The person is eligible to receive new markets tax credits under 26 USC 45D  
2 for the qualified equity investment described in subd. 1.

3           (b) The department verifies the information submitted under par. (a).

4           **(3) ELIGIBILITY.** A person certified under sub. (2) is eligible to receive tax credits  
5 under ss. 71.07 (5n), 71.28 (5n), 71.47 (5n), and 76.639 in each taxable year in which  
6 a credit allowance date falls if the person continues to hold the qualified equity  
7 investment described in sub. (2) (a) 1. in the taxable year in which the credit is  
8 claimed.

9           **(4) DUTIES OF THE DEPARTMENT.** (a) The department of commerce shall notify  
10 the department of revenue of all of the following:

11           1. Every certification issued under sub. (2) and the date on which any such  
12 certification is revoked.

13           2. The maximum amount of the tax credits under ss. 71.07 (5n), 71.28 (5n),  
14 71.47 (5n), and 76.639 that a person certified under sub. (2) may claim in each taxable  
15 year in which a credit allowance date falls.

16           (b) Annually, the department shall verify to the department of revenue that  
17 each person certified under sub. (2) is the holder of a qualified equity investment in  
18 the taxable year for which the person files a claim under s. 71.07 (5n), 71.28 (5n),  
19 71.47 (5n), or 76.639.

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

22           1. Deadlines for the submission of an application for certification under this  
23 section.

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

**ASSEMBLY BILL 642**

1 3. Criteria for reviewing and prioritizing applications for certification under  
2 this section.

3 (d) In consultation with the department of revenue, the department of  
4 commerce may promulgate rules governing the recapture of tax benefits awarded to  
5 a person certified under this section.

6 **SECTION 10. Nonstatutory provisions.**

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

11 (b) Using the procedure under section 227.24 of the statutes, the department  
12 of commerce may promulgate rules required under section 560.2065 (4) (c) of the  
13 statutes, as created by this act, for the period before the effective date of the rules  
14 submitted under paragraph (a), but not to exceed the period authorized under section  
15 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b),  
16 and (3) of the statutes, the department is not required to provide evidence that  
17 promulgating a rule under this paragraph as an emergency rule is necessary for the  
18 preservation of the public peace, health, safety, or welfare and is not required to  
19 provide a finding of emergency for a rule promulgated under this paragraph.

20 **SECTION 11. Initial applicability.**

21 (1) This act first applies to taxable years beginning on January 1, 2010.

22 (END)