

HOUSE No. 2503**The Commonwealth of Massachusetts**

PRESENTED BY:

Ann-Margaret Ferrante

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to access to capital for business growth in economically distressed communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>	<i>1/15/2015</i>
<i>Paul J. Donato</i>	<i>35th Middlesex</i>	<i>2/4/2015</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>1/30/2015</i>
<i>Claire D. Cronin</i>	<i>11th Plymouth</i>	<i>1/29/2015</i>
<i>Jerald A. Parisella</i>	<i>6th Essex</i>	<i>2/4/2015</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>	<i>2/4/2015</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>1/29/2015</i>
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>	<i>2/4/2015</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>11/18/2019</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>2/2/2015</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>	<i>2/4/2015</i>
<i>Paul A. Schmid, III</i>	<i>8th Bristol</i>	<i>2/4/2015</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>2/4/2015</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>	<i>2/4/2015</i>
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>2/4/2015</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>2/4/2015</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/3/2015</i>
<i>Christopher M. Markey</i>	<i>9th Bristol</i>	<i>2/3/2015</i>

<i>Kevin G. Honan</i>	<i>17th Suffolk</i>	<i>2/4/2015</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	<i>2/4/2015</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/3/2015</i>
<i>Aaron Vega</i>	<i>5th Hampden</i>	<i>2/3/2015</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>2/4/2015</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>2/3/2015</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>2/4/2015</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/4/2015</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>	<i>1/29/2015</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>	<i>2/3/2015</i>
<i>RoseLee Vincent</i>	<i>16th Suffolk</i>	<i>1/29/2015</i>
<i>Robert F. Fennell</i>	<i>10th Essex</i>	<i>2/4/2015</i>
<i>Paul Tucker</i>	<i>7th Essex</i>	<i>2/4/2015</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>1/29/2015</i>
<i>John C. Velis</i>	<i>4th Hampden</i>	<i>2/4/2015</i>
<i>Carole A. Fiola</i>	<i>6th Bristol</i>	<i>2/1/2015</i>
<i>Alan Silvia</i>	<i>7th Bristol</i>	<i>2/4/2015</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>2/3/2015</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>11/18/2019</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>	<i>2/4/2015</i>
<i>John J. Mahoney</i>	<i>13th Worcester</i>	<i>2/4/2015</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>	<i>2/4/2015</i>
<i>Paul W. Mark</i>	<i>2nd Berkshire</i>	<i>2/4/2015</i>
<i>Donald H. Wong</i>	<i>9th Essex</i>	<i>11/18/2019</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>	<i>1/30/2015</i>
<i>Dennis A. Rosa</i>	<i>4th Worcester</i>	<i>2/4/2015</i>
<i>Linda Dean Campbell</i>	<i>15th Essex</i>	<i>1/30/2015</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/4/2015</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>1/29/2015</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>2/4/2015</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>1/31/2015</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>	<i>2/4/2015</i>

HOUSE No. 2503

By Ms. Ferrante of Gloucester, a petition (accompanied by bill, House, No. 2503) of Ann-Margaret Ferrante and others relative to access to capital for business growth in economically distressed communities. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to access to capital for business growth in economically distressed communities.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 63 of the General Laws is hereby amended by inserting after
2 section 38FF the following section:-

3 Section 38GG. MASSACHUSETTS NEW MARKETS TAX CREDIT

4 (a) For the purposes of this section, the following words shall have the following
5 meanings unless the context clearly requires otherwise:

6 "Applicable percentage", means zero percent for the first two credit allowance dates,
7 eight percent for the third through sixth credit allowance dates and seven percent for the seventh
8 credit allowance date.

9 "Department", means the department of housing and economic development.

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

11 (i) the date on which such investment is initially made; and

12 (ii) each of the six anniversary dates of such date thereafter.

13 "Long-term debt security", any debt instrument issued by a qualified community
14 development entity at par value with an original maturity date of at least seven years from the
15 date of its issuance, with no acceleration of repayment, amortization, or prepayment features
16 prior to its original maturity date. The qualified community development entity that issues the
17 debt instrument shall not make cash interest payments on the debt instrument during the period
18 beginning on the date of issuance and ending on the final credit allowance date in an amount that
19 exceeds the cumulative operating income, as defined by regulations adopted under Section 45D,
20 Internal Revenue Code of 1986, as amended, of the qualified community development entity for
21 that period prior to giving effect to the expense of such cash interest payments. The foregoing
22 shall in no way limit the holder's ability to accelerate payments on the debt instrument in
23 situations where the issuer has defaulted on covenants designed to ensure compliance with this
24 Chapter or Section 45D of the Internal Revenue Code of 1986, as amended.

25 "Purchase price", the amount paid to the issuer of a qualified equity investment for such
26 qualified equity investment.

27 "Qualified active low-income community business", as defined in Section 45D of the
28 Internal Revenue Code of 1986, as amended, and 26 C.F.R. Sec. 1.45D-1. A business shall be
29 considered a qualified active low-income community business for the duration of the qualified
30 community development entity's investment in, or loan to, the business if the entity reasonably
31 expects, at the time it makes the investment or loan, that the business will continue to satisfy the
32 requirements for being a qualified active low-income community business, throughout the entire

period of the investment or loan. The term shall exclude any business that derives or projects to derive fifteen percent or more of its annual revenue from the rental or sale of real estate. This exclusion shall 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 percent 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 first business.

"Qualified community development entity", (i) the meaning given such term in Section 45D of the Internal Revenue Code of 1986, as amended; provided that such entity has entered into, for the current year or any prior year, 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, which includes Massachusetts within the service area set forth in such allocation agreement. The term shall include subsidiary community development entities or affiliates of any such qualified community development entity, all of which shall be treated as a single applicant for purposes of subsection (d) of this section. (ii) The term "qualified community development entity" shall not include any regulated financial institution that is subject to the provisions of the Community Reinvestment Act of 1977 (12 U.S.C. Ch. 30), or any subsidiary or affiliate thereof. (iii) Subparagraph (ii) shall not apply to a regulated financial institution, or subsidiary or affiliate thereof, if such regulated financial institution is chartered by, or headquartered in, the Commonwealth of Massachusetts and the regulated financial institution otherwise meets the requirements of subparagraph (i).

"Qualified Equity Investment", any equity investment in, or long-term debt security issued by, a qualified community development entity that: (i) is acquired after September 1, 2015 at its original issuance solely in exchange for cash; (ii) has at least eighty-five percent of its cash

purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date; and (iii) is designated by the issuer as a qualified equity investment under this subsection and is certified by the department as not exceeding the limitation contained in clause (v) of subsection (d); provided, however, that notwithstanding the restrictions on transferability contained in subsection (c) of this section, “qualified equity investment” shall include any qualified equity investment that does not meet the provisions of this subsection if such investment: (1) is transferred to a subsequent holder; and (2) was a qualified equity investment in the hands of any prior holder;

"Qualified low-income community investment", a capital or equity investment in, or loan to, any qualified active low-income community business; provided, however, that with respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments that may be made in the business, on a collective basis with all of its affiliates, with the proceeds of qualified equity investments that have been certified under subsection (d) of this section shall be \$5,000,000 whether made by one or several qualified community development entities;

"State premium tax liability", any liability incurred by any entity under applicable General Laws regarding state premium tax.

“Refundable performance fee”, a fee that a qualified community development entity seeking to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under subsection (d) of this section shall pay to the department as assurance of compliance with certain requirements of this section; provided,

however, that the amount of the fee shall be equal to one-half of one percent of the amount of the equity investment or long-term debt security requested to be designated as a qualified equity investment.

“Affiliate”, any entity, without regard to whether such entity otherwise constitutes a qualified community development entity under this subsection that is the initial holder, either directly or through one or more special purpose entities, of a qualified equity investment in such qualified community development entity and any entity, without regard to whether such entity otherwise constitutes a qualified community development entity under this subsection that provides insurance or any other form of guaranty to the ultimate recipient of tax credits under subsection (b) with respect to a recapture or forfeiture of such tax credits under subsection (e), either directly or through the guaranty of any other economic benefit that is paid in lieu of the tax credits allowable under subsection (b); provided, however, that for purposes of this section, the determination of whether an entity is an affiliate shall be made by taking into account all relevant facts and circumstances, including the description of the proposed amount, structure and initial purchaser of the qualified equity investment required by clause (iv) of subsection (d) and such determination shall assume that the information provided pursuant to said clause (iv) is true and complete as of the date an application is submitted pursuant to said subsection (d).

(b) Any entity that makes a qualified equity investment earns a vested right to credit against the entity’s state premium tax liability on a premium tax report filed under this subtitle that may be utilized as follows:

(1) On each credit allowance date of such qualified equity investment the entity, or subsequent holder of the qualified equity investment, shall be entitled to utilize a portion of such credit during the taxable year including such credit allowance date.

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

(3) The amount of the credit claimed by an entity shall not exceed the amount of such entity's state premium tax liability for the tax year for which the credit is claimed. Any amount of tax credit that the entity is prohibited from claiming in a taxable year as a result of this section may be carried forward for use in any subsequent taxable year.

(4) An entity claiming a credit under this section is not required to pay any additional retaliatory tax levied under section 159 of chapter 175 as a result of claiming that credit. An entity claiming a credit under this section shall not be required to pay any additional tax that may arise as a result of claiming that credit.

(5) The total amount of tax credits that may be awarded by the department pursuant to this section shall be limited to an appropriate level of investment to be determined. Once the department has certified a cumulative amount of qualified equity investments that can result in the utilization of this total amount of tax credits in a fiscal year, the department shall not certify any more qualified equity investments. This limitation on qualified equity investments shall be based on scheduled utilization of tax credits without regard to the potential for taxpayers to carry forward tax credits to subsequent tax years.

(c) No tax credit claimed under this section shall be refundable or saleable on the open market; provided, however, that a participating investor may transfer credits to an affiliated insurance company if it gives prior written notice to the department. 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 such entity for their direct use in accordance with the provisions of any agreement among such partners, members, or shareholders. Any allocation of tax credits made to a partner, member, or shareholder in accordance with this subsection shall not be considered a sale of such tax credits for purposes of this subsection.

(d) (1) 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 department shall begin accepting applications on September 1, 2015. As its application, the qualified community development entity shall submit the following:

(i) evidence of the applicant's certification as a qualified community development entity, including evidence of the service area of the entity that includes Massachusetts;

(ii) a copy of the allocation agreement executed by the applicant, or its controlling entity, and the Community Development Financial Institutions Fund;

(iii) a certificate executed by an executive officer of the applicant attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund'

(iv) evidence that the applicant or its controlling entity has received more than one allocation of qualified equity investment authority from the Community Development Financial Institutions Fund, at least one of which shall have been received on or after January 1, 2014;

(v) evidence that the applicant, its controlling entity, and subsidiary qualified community development entities of the controlling entity have collectively made at least \$50,000,000 in qualified low-income community investments under the Federal New Markets Tax Credit Program and/or other states new markets tax credit programs with a maximum qualified low-income community investment size of \$5,000,000 per business;

(vi) a description of the proposed amount, structure, and initial purchaser of the qualified equity investment including, but not limited to, a description of any insurance or guaranties that are anticipated to be provided to the purchaser of the qualified equity investment or the direct or indirect members of such purchaser, and the identity of the entity providing such insurance or guaranty;

(vii) the minimum amount of qualified equity investment the qualified community development is willing to accept in the event the amount proposed to be certified pursuant to paragraph (4) is less than the applicant's proposed amount of qualified equity investment;

(viii) a plan describing the proposed investment of the proceeds of the qualified equity investment, including the types of qualified active low income businesses in which the applicant expects to invest. Applicants shall not be required to identify qualified active low-income community businesses in which they will invest when submitting an application;

(ix) a nonrefundable application fee of \$5,000, which shall be paid to the department and shall be required of each application submitted; and

(x) the refundable performance fee required by clause (i) of subsection (g).

Clauses (iv) and (v) above shall not apply to a qualified community development entity incorporated or headquartered in the Commonwealth of Massachusetts.

(2) Within 30 days after receipt of a completed application containing the information set forth in paragraph (1), including the payment of the application fee and the refundable performance 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 shall remain denied and shall be resubmitted in full with a new submission date.

(3) If the application is 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 paragraph (5). The department shall provide written notice of the certification to the qualified community development entity. The notice shall include the name of the initial purchaser of the qualified equity investment and the credit amount. Before any tax credits are claimed under this section, the qualified community development entity shall provide written notice to the department of the names of the entities eligible to claim such credits as a result of holding a qualified equity investment. If the names of the entities that are eligible to utilize the credits change due to a transfer of a qualified equity

investment or an allocation or affiliate transfer pursuant to subsection (c) of this section, the qualified community development entity shall notify the department of such change.

(4) 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 that are complete and received on the same day, the department shall certify, consistent with remaining qualified equity investment capacity, the 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. If any amount of qualified equity investment that would be certified pursuant to this subsection is less than the acceptable minimum amount specified in the application as required by clause (v) of paragraph (1) of this subsection, such application shall be deemed withdrawn and such amount of qualified equity investment shall be proportionately allocated among the other applicants pursuant to this paragraph.

(5) An approved applicant may transfer all or a portion of its certified qualified equity investment authority to its controlling entity or any subsidiary qualified community development entity of the controlling entity, provided that the applicant provides the information required in the application with respect to such transferee and the applicant notifies the department of such transfer within 30 days of the transfer.

(6) Within 60 days of the applicant receiving notice of certification, the qualified community development entity or any transferee under paragraph (5) shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified

community development entity or transferee under paragraph (5) shall provide the department with evidence of the receipt of the cash investment within 10 business days after receipt. If the qualified community development entity or any transferee under paragraph (5) does not receive the cash investment and issue the qualified equity investment within 60 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. Lapsed certifications revert back to the department and shall be reissued, first, pro rata to other applicants whose qualified equity investment allocations were reduced under paragraph (4) and, thereafter, in accordance with application process.

(e) The department shall recapture tax credits earned as a result of holding a qualified equity investment, if:

(1) any amount of federal tax credit that might be available with respect to the qualified equity investment that generated the tax credit under this section is recaptured under 26 U.S.C. sec. 45D. In such case, the department's recapture shall be proportionate to the federal recapture with respect to the qualified equity investment;

(2) the issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh anniversary of the issuance of such qualified equity investment. In such case the department's recapture of tax credits shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment;

(3) The issuer fails to invest an amount equal to eighty-five percent of the purchase price of the qualified equity investment in qualified low-income community investments in the Massachusetts within 12 months of the issuance of the qualified equity investment and maintain

at least 100 percent of such level of investment in qualified low-income community investments in Massachusetts until the last credit allowance date for the 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 if 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 within 12 months of the receipt of such capital. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth 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 seventh anniversary of the qualified equity investment's issuance.

(f) Enforcement of recapture provisions shall be subject to a 6-month cure period. No recapture shall occur until the qualified community development entity has been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

(g) (1) 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 pay a refundable performance fee to the department for deposit in the New Markets Performance Guarantee Account, which is hereby established. The entity shall forfeit:

(i) the performance fee in its entirety if the qualified community development entity and its subsidiary qualified community development entities fail to issue the total amount of qualified

equity investments certified by the department and receive cash in the total amount certified under paragraph (3) of subsection (d) of this section; or

(ii) such amount of the performance fee equal to the product of the original amount of the refundable performance fee multiplied by the percentage of the remaining amount of the proceeds of the qualified equity investment not used to make qualified low-income equity investments if the qualified community development entity or any subsidiary qualified community development entity that issues a qualified equity investment certified under this section fails to meet the investment requirement under paragraph (2) of subsection (e) of this section by the second credit allowance date of such qualified equity investment. Forfeiture of the fee or any portion thereof under this subsection shall be subject to the 6-month cure period established under subsection (f); or

(2) the fee required under paragraph (1) shall be paid to the department and held in the New Markets Performance Guarantee Account until such time as compliance with the provisions of this subsection shall have been established. The qualified community development entity may request a refund of the fee from the department no sooner than 30 days after having met all the requirements of paragraph (1). The department shall have 30 days to comply with such request or give notice of noncompliance.

(h) Before making a proposed qualified low-income community investment, a qualified community development entity may request from the department a written determination that the proposed investment will qualify as a qualified low-income community investment and will satisfy all applicable provisions of the this section. The department shall notify a qualified community development entity within 10 business days from the receipt of a request of its

determination and an explanation thereof. Any determination made by the department pursuant to this subsection shall be binding on the department.

(i) A qualified community development entity, its controlling entity, and its affiliates shall not contract with or otherwise use any third party or its affiliates to manage, control the direction of, or source qualified low income community investments into qualified low income community businesses that is approved for qualified investment pursuant to this program, if such third party is another qualified community development entity or otherwise performing such functions for another qualified community development entity.

(j) (1) A qualified community development entity that issues qualified equity investments shall submit a report to the department within the first 5 business days after the first anniversary of the initial credit allowance that provides documentation as to the investment of 100 percent of the purchase price in qualified low-income community investments in qualified active low-income community businesses located in the Commonwealth. The report shall include:

(i) A bank statement of the qualified community development entity evidencing each qualified low-income community investment; and

(ii) Evidence that the business was a qualified active low-income community business at the time of the qualified low-income community investment.

(2) After the initial report under paragraph (1), a qualified community development shall submit a report annually to the department each year during the compliance period. An annual report shall not be due before the first anniversary of the initial credit allowance date. The annual report shall include:

292 (i) A list of all qualified active low-income community businesses in which it has made a
293 qualified low-income community investment;

294 (ii) the type and amount of investment in each business, the address of the principal
295 location of each business and the industry of the business as identified by the North American
296 Industry Classification System Code;

297 (iii) the number of employment positions created and retained as a result of qualified low-
298 income community investments along with the average salary of such positions; and

299 (iv) the certification from the qualified community development entity that the grounds
300 for recapture under subsection (e) of this section have not occurred.

301 SECTION 2. This act shall apply only to a premium tax return originally due on or after
302 the effective date of this act.

303 SECTION 3. This act shall take effect September 1, 2015.