

This document is from August 2012.

HOUSE No. 4352

An Act relative to infrastructure investment, enhanced competitiveness and economic growth in the Commonwealth.

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

SECTION 2.

*Executive Office of Housing and Economic Development
Department of Housing and Community Development*

7004-2027 For the community investment grant program established in section 81....\$1,500,000

SECTION 29. Said chapter 62 is hereby further amended by inserting after section 6L the 1080 following section:

Section 6M. (a) The purpose of this section shall be to enable local residents and stakeholders to work with and through community development corporations to partner with nonprofit, public and private entities to improve economic opportunities for low and moderate income households and other residents in urban, rural and suburban communities across the commonwealth.

(b) For this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Community development corporation”, a corporation certified as a community development corporation by the department consistent with chapter 40H.

“Community investment plan”, an organizational business plan developed by a certified community development corporation that details its goals, outcomes, strategies, programs and activities for a 3 to 5 year period and its financial plans for supporting its strategy; provided, however, that the plan shall be designed to engage local residents and businesses to work together to undertake community development programs, projects and activities which develop and improve urban, rural or suburban communities in sustainable ways that create and expand economic opportunities for low and moderate income households; and provided further that the specific format and content of a community investment plan may be adapted to the particular organization and community, but shall include the following elements: (i) a description of the community to be served by the organization, including the neighborhoods, towns, or cities to be served as well as any particular constituencies that the organization is dedicated to serving; (ii) a description of how community residents and stakeholders were engaged in the development of the plan and their role in monitoring and implementing the organization’s activities during the time period of the plan; (iii) the goals sought to be achieved during the time period of the plan, including how low and moderate income households or low and moderate income communities will benefit and how the entire

community will benefit; (iv) the activities to be pursued to achieve those goals; (v) the manner in which success shall be measured and evaluated; (vi) a description of the collaborative efforts that shall support implementation of the plan, including collaborative efforts with nonprofit, for-profit or public entities; (vii) a description of how the different activities within the plan fit together and how the entire plan fits into a larger strategy or vision for the community; (viii) the financial strategy to be deployed to support these activities; and (ix) other information regarding the history and track record of the organization as determined by the department.

“Community investment tax credit”, the tax credit described in subsection (d).

“Community investment tax credit allocation”, an award provided by the department through a competitive process that enables the recipient of the allocation to solicit and receive qualified investments from taxpayers and to provide those taxpayers with a community investment tax credit.

“Community partner”, a community development corporation or a community support organization selected by the department through a competitive process to receive a community investment tax credit allocation.

“Community partnership fund”, a fund administered by a nonprofit organization selected by the department to receive qualified investments from taxpayers for the purpose of allocating such investments to community partners.

“Community support organization”, any nonprofit organization which is not a community development corporation but has a focus on and track record of providing capacity building services to community development corporations.

“Department”, the department of housing and community development.

“Gateway municipality”, a gateway municipality as defined in section 3A of chapter 23A.

“Low and moderate income community”, an economic target area as defined in section 3A of chapter 23A, an enhanced economic enterprise community or empowerment zone as designated by the United States Department of Housing and Urban Development, or 1 or more contiguous census tracts as designated by a city or town, in which either: (i) a majority of the households are low and moderate income households as defined herein; or (ii) the unemployment rate is at least 25 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is less than or equal to 5 per cent or the unemployment rate is at least 10 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is greater than 5 per cent.

“Low and moderate income households”, households which have incomes that do not exceed 80 per cent of the median income for the area, with adjustments made for smaller and larger families, as such median shall be determined from time to time by the secretary of the United States

Department of Housing and Urban Development pursuant to 42 U.S.C. 1437(a)(B)(2) or any successor legislation and the regulations promulgated thereunder.

“Qualified investment”, a cash contribution made to a specific community partner to support the implementation of its community investment plan or to a community partnership fund, as defined by this section.

“Taxpayer”, any person, firm, or other entity subject to the personal income tax under the provisions of this chapter or any corporation subject to an excise under the provisions of chapter 63.

(c) The department shall promulgate regulations concerning the process by which community development corporations apply to become a community partner and receive qualified investments, provided, however, that:

(1) the department shall design a competitive process to review applications by community development corporations and community support organizations; provided, however, that community support organizations may qualify, but not more than 2 such organizations shall, at any given time, be awarded community investment tax credits.

(2) the selection process shall favor community development corporations with the highest quality community investment plans and strong track records and shall strive to ensure that all regions of the commonwealth are able to fairly compete for allocations, including gateway municipalities, rural areas and suburban areas; provided, however, that at least 30 per cent of the community partners shall be located in or serving gateway municipalities and at least 20 per cent of the community partners shall be located in or serving rural areas, as defined by the department, unless the department finds that there are not a sufficient number of qualified applications from those areas. (3) the department shall implement at least one such allocation process each year; provided, however that each tax credit allocation shall be valid for a period of up to 3 years, contingent upon the community partner satisfactorily meeting the reporting requirements of the department; provided further, that community partners who have not fully utilized their community investment tax credit allocations within 3 years may apply to the department for a 1 year extension; and provided further, that community investment tax credit allocations may be revoked after 2 years from the date of the award by the department if (i) the community partner has been unable to secure donation commitments for at least 50 per cent of total allocation by that time, (ii) if the community partner is found to be in noncompliance with this statute or the department’s regulations promulgated hereunder, (iii) if the community partner is determined by the department to be making inadequate progress on its community investment plan, or (iv) for other good cause as determined by the department.

(4) no community partner shall receive a community investment tax credit allocation of less than \$50,000 or more than \$150,000 in any 1 fiscal year and no community partner shall receive a subsequent allocation unless it has utilized at least 95 per cent of the 3 year total of any prior allocation.

(5) community partner may receive qualified investments directly from 1 or more taxpayers or it may transfer some or all of its community investment tax credit allocation to a community partnership fund and receive qualified investments from that fund.

(6) before receiving a qualified investment from a taxpayer or from a community partnership fund, the community partner shall first receive certification from the department that it has been awarded a community investment tax credit allocation.

(7) the department may authorize up to 2 nonprofit organizations to operate community investment partnership funds. In selecting 1 or 2 nonprofit organizations to serve in this function the department shall seek organizations which demonstrate that they have the capacity to solicit, administer and re-grant qualified investments and can advance the purposes of this statute.

(8) the department, in consultation with the commissioner shall prescribe regulations necessary to carry out this subsection. Such regulations shall include requirements for annual reports from community partners and community partnership funds regarding outcomes achieved during the prior year . and those reports shall be made available to the public; provided further, that the department shall maintain a list of all community partners and community partnership funds on its website; and provided further, that the department shall produce an annual report not later than April 30 for the general court and the public that describes the outcomes achieved through the program.

(d) There is hereby established a Massachusetts community investment tax credit.

(f) The total of all tax credits available to a taxpayer under this section shall not exceed \$1,000,000 in any 1 tax year and no tax credit shall be allowed to any taxpayer for participating in a qualified community investment activity of less than \$1,000.

(g) A taxpayer that makes a qualified investment shall be allowed a credit, to be computed as hereinafter provided, against taxes owed to the commonwealth under chapter 62 or chapter 63 or other applicable law. The credit shall be equal to 50 per cent of the total qualified investments made by the taxpayer, subject to the cap described in paragraph (4) of subsection (c). The department shall issue a certification to the taxpayer after the taxpayer makes a qualified investment. Such certification shall be acceptable as proof that the expenditures related to such investment qualify as qualified investment for purposes of the credit allowed under this section.

(h) The credit allowable under this section shall be allowed for the taxable year in which a qualified investment is made. A taxpayer allowed a credit under this section for a taxable year may carry over and apply against such taxpayer's tax liability in any of the succeeding 5 taxable years, the portion, as reduced from year to year, of those credits which exceed the tax for the taxable year.

(i) Community investment tax credits allowed to a partnership or a limited liability company taxed as a partnership shall be passed through to the persons designated as partners, members or owners, respectively, pro rata or pursuant to an executed agreement among the persons designated

as partners, members or owners documenting an alternative distribution method without regard to their sharing of other tax or economic attributes of the entity.

(j) Taxpayers eligible for the community investment tax credit may, with prior notice to and in accordance with regulations adopted by the commissioner, transfer the credits, in whole or in part, to any taxpayer, and the transferee shall be entitled to apply the credits against the tax with the same effect as if the transferee had made the qualified investment itself. The transferee shall use the credit in the year it is transferred. If the credit allowable for any taxable year exceeds the transferee's tax liability for that tax year, the transferee may carry forward and apply in any subsequent taxable year, the portion, as reduced from year to year, of those credits which exceeds the tax for the taxable year; provided, however, the carryover period shall not exceed 5 taxable years after the close of the taxable year during which the qualified investment was made as provided for in this section.

(k) The commissioner, in consultation with the department, shall prescribe regulations necessary to carry out the tax credit established in subsection (d).

SECTION 35 repeats Section 29 verbatim but inserts language into Chapter 63 which is the corporate tax code in addition to Chapter 62 which is for individual taxpayers.

SECTION 81. (a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Community investment plan”, an organizational business plan developed by a certified community development corporation that details its goals, outcomes, strategies, programs and activities for a 3 to 5-year period and its financial plans for supporting its strategy; provided, however, that the plan shall be designed to engage local residents and businesses to work together to undertake community development programs, projects and activities which develop and improve urban, rural or suburban communities in sustainable ways that create and expand economic opportunities for low and moderate income households; provided further, that the specific format and content of a community investment plan may be adapted to the particular organization and community, but shall include the following elements: (i) a description of the community to be served by the organization, including the neighborhoods, towns or cities to be served and any particular constituencies that the organization is dedicated to serving; (ii) a description of how community residents and stakeholders were engaged in the development of the plan and their role in monitoring and implementing the organization's activities during the time period of the plan; (iii) the goals sought to be achieved during the time period of the plan, including how low and moderate income households or low and moderate income communities will benefit and how the entire community will benefit; (iv) the activities to be pursued to achieve those goals; (v) the manner in which success shall be measured and evaluated; (vi) a description of the collaborative efforts that shall support implementation of the plan, including collaborative efforts with nonprofit, for profit or public entities; (vii) a description of how the different activities within the plan fit together and how the entire plan fits into a larger strategy or vision for the community; (viii) the financial

strategy to be deployed to support these activities; and (ix) other information regarding the history and track record of the organization as determined by the department.

“Community partner”, a community development corporation or a community support organization selected by the department through a competitive process to receive a community investment grant.

“Community support organization”, any nonprofit organization which is not a community development corporation but has a focus on and track record of providing capacity building services to community development corporations.

“Department”, the department of housing and community development.

“Gateway municipality”, a gateway municipality as defined in section 3A of chapter 23A.

“Low and moderate income community”, an economic target area as defined in section 3A of chapter 23A, an enhanced economic enterprise community or empowerment zone as designated by the United States Department of Housing and Urban Development or 1 or more contiguous census tracts as designated by a city or town, in which either: (i) a majority of the households are low and moderate income households; or (ii) the unemployment rate is at least 25 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is less than or equal to 5 per cent or the unemployment rate is at least 10 per cent higher than the annual statewide average unemployment rate at a time when the statewide unemployment rate is greater than 5 per cent.

“Low and moderate income households”, households which have incomes that do not exceed 80 per cent of the median income for the area, with adjustments made for smaller and larger families, as such median shall be determined from time to time by the secretary of the United States Department of Housing and Urban Development under 42 U.S.C. 1437(a)(B)(2) or any successor legislation and the regulations promulgated thereunder.

(b) The department shall promulgate regulations concerning the process by which community development corporations apply to become a community partner; provided, however, that:

- (1) the department shall design a competitive process to review applications by community development corporations and community support organizations; provided, however, that community support organizations may qualify but not more than 2 such organizations may, at any given time, be awarded community investment grants;
- (2) the selection process shall favor community development corporations with the highest quality community investment plans and strong track records and shall strive to ensure that all regions of the commonwealth are able to fairly compete for allocations, including gateway municipalities, rural areas and suburban areas; provided, however, that at least 30 per cent of the community partners shall be located in or serving gateway municipalities and at least 20 per cent of the community partners shall be located in or serving rural areas, as defined by the department, unless

the department finds that there are not a sufficient number of qualified applications from those areas;

(3) the department shall, subject to appropriation, implement at least 1 such allocation process each year; provided, however, that each grant shall be valid for up to 3 years, contingent upon the community partner satisfactorily meeting the reporting requirements of the department; provided further, that community partners who have not fully utilized their community investment grant within 3 years may apply to the department for a 1-year extension; provided further, that community investment grants may be revoked after 2 years from the date of the award by the department if: (i) the community partner is found to be in noncompliance with this section or the department's regulations promulgated hereunder; (ii) if the community partner is determined by the department to be making inadequate progress on its community investment plan; or (iii) for other good cause as determined by the department; and (4) no community partner shall, subject to appropriation, receive a community investment grant of less than \$25,000 or more than \$150,000 in any 1 fiscal year. No community partner shall receive a subsequent allocation unless it has utilized at least 95 per cent of the 3 year total of any prior allocation.

(b) A corporation shall only be eligible for a credit under subsection (a) for the first 3 years in which it is required to file a return under this chapter; provided, however, that such credit shall not be allowed to any corporation with 50 per cent or more of its voting stock owned by another corporation, whether or not such owning corporation is taxable in the commonwealth.

SECTION 82. The commissioner of revenue, in consultation with the department of housing and community development and the office of commonwealth performance, accountability and transparency, shall review the community investment tax credit in section 6M of chapter 62 of the General Laws and section 38EE of chapter 63 of the General Laws and report on the estimate of the anticipated foregone revenue from the tax credit, whether this tax credit achieves the desired outcome and stated public policy purpose of the tax credit and if the tax credit is the most cost effective means of achieving this public policy purpose and whether the tax credit should be subject to a recapture if certain conditions are not met. The commissioner shall file a report, together with any recommendations regarding whether there should be legislative changes to the tax credit or whether the goals of the tax credit can better be served through other means, to the governor and to the clerks of the house and senate who shall forward the report to the joint committee on revenue, the joint committee on economic development and emerging technologies, the house and senate chairs of the joint committee on community development and small businesses and the house and senate ways and means committees not later than March 1, 2013.

SECTION 83. The commissioner of revenue, in consultation with the department of housing and community development, shall authorize annually an amount not to exceed \$3,000,000 in 2014 and \$6,000,000 in 2015 to 2019, inclusive, for the community investment tax credit in section 6M of chapter 62 of the General Laws and section 38EE of chapter 63 of the General Laws.