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INSURANCE

General Provisions: Amend Chapter 1 of Title 33 of the Official Code of Georgia Annotated, Relating to General Provisions Regarding Insurance, so as to Establish Qualified Low-Income Community Investment; Provide for a Short Title; Provide for Definitions; Provide That Certain Entities May Earn Credit Against State Tax Liability; Provide for Certification of Qualified Equity Investments; Provide for Recapture of Credit Claimed Under Certain Circumstances; Provide for Certain Refundable Fees; Provide for a Retaliatory Tax; Provide for Decertification; Amend Chapter 10 of Title 10 of the Official Code of Georgia Annotated, Relating to Seed-Capital Funds, so as to Establish the Invest Georgia Tax Credit; Provide a Short Title, Provide Definitions; Authorized the Board to Sell Tax Credits; Set Limits for Sell of Tax Credits; Provide for Certain Allocations of Tax Credits; Provide for Reporting of Present Value; Provide for an Effective Date and Applicability; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 10-10-21 (new); 33-1-24 (new)
BILL NUMBER:	HB 439
ACT NUMBER:	N/A
VETO NUMBER:	2
GEORGIA LAWS:	N/A
SUMMARY:	The bill would have created $55 million in new tax credits that could have been used by an insurance company and credited towards its state insurance premium tax liability for equity investments in low-income community developments. The bill also would have allocated and authorized the Invest Georgia Fund to sell $55 million in tax credits.
EFFECTIVE DATE:	N/A

History

On December 21, 2000, President Clinton signed the New Markets Tax Credit (NMTC) program into law as part of the Community Renewal Tax Relief Act.[1] The NMTC program provided a 39% tax credit against federal income taxes to investors in Community Development Entities, investment intermediaries that make loans or investments to businesses operating in low-income communities.[2] The program proved to be successful.[3]

States noticed the success of the federal NMTC program and enacted similar programs to stimulate job creation.[4] Georgia legislators also attempted to create a similar NMTC program in the past,[5] but their numerous attempts failed.[6] In past years, a poor economy prevented Georgia legislators from creating an NMTC program.[7] Representative Jason Shaw (R-176th), however, sponsored the bill in 2015 because he believed the Georgia economy had

1. Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763A-605 (codified in scattered sections of Title 26 of the U.S. Code); Julia S. Rubin & Gregory M. Stankiewicz, *Evaluating the Impact of Federal Community Economic Development Policies on Targeted Populations: The Case of the New Markets Initiatives of 2000*, FED. RES. SYS. 2 (July 2003), http://www.federalreserve.gov/communityaffairs/national/ca_conf_suscommdev/pdf/rubinjulia.pdf.

2. *10 Year Report*, NEW MKTS. TAX CREDIT COALITION, http://nmtccoalition.org/10th-anniversary-report/ (last visited Oct. 15, 2015).

3. *See id.* By 2010, the NMTC program had created over 744,000 jobs. *A Decade of the New Markets Tax Credit*, NEW MKTS. TAX CREDIT COALITION 4 (Dec. 2014), http://www.novoco.com/new_markets/resource_files/reports/a_decade_of_the_nmtc_nmtc_coalition_121014.pdf. Additionally, a study showed that the NMTC program generated $8 of investments in low-income communities for every $1 of forgone federal revenue. *10th Anniversary Report*, NEW MKTS. TAX CREDIT COALITION 8 (Dec. 2010), http://nmtccoalition.org/wp-content/uploads/NMTCC-10th-Anniversary-Report.pdf. *But see* Kyle Pomerleau, *Two New Reports on the "New Markets Tax Credit,"* TAX FOUNDATION (Aug. 11, 2014), http://taxfoundation.org/blog/two-new-reports-new-markets-tax-credit (explaining that big banks benefitted largely from the program as opposed to low-income communities).

4. Kevin Beattie, *More States Offering Their Own NMTC Programs*, COHNREZNICK (Jan. 2014), http://www.cohnreznick.com/more-states-offering-their-own-nmtc-programs. Some examples of similar state NMTC programs include Alabama (2012 Ala. Acts 483), Florida (2013 Fla. Laws 42), and Louisiana (Act 265, 2013 La. Reg. Session).

5. Audio Recording of Senate Insurance and Labor Committee, Mar. 23, 2015 at 4 min., 8 sec. (remarks by Rep. Jason Shaw (R-176th)) (on file with the Georgia State University Law Review) [hereinafter Senate Committee Recording].

6. *See* HB 395, as introduced, 2013 Ga. Gen. Assem.; HB 298 (HCS), 2011 Ga. Gen. Assem.; Interview with Wesley Tharpe, Senior Policy Analyst, Ga. Budget & Policy Inst. (Apr. 23, 2015) [hereinafter Tharpe Interview].

7. Senate Committee Recording, *supra* note 5, at 3 min., 55 sec. (remarks by Rep. Jason Shaw (R-176th)).

recovered, and as a result, Georgia could fund its own NMTC program.[8] The bill also improved upon past attempts to create an NMTC program in Georgia by including a previous recommendation—requiring qualified community development entities to submit annual reports.[9] Additionally, Representative Shaw believed the bill would bring equity investments to low-income areas in Georgia, which was otherwise difficult to do.[10]

Georgia legislators benefitted from the experience and history in seeing other states' versions of the NMTC program because the State failed to create its own NMTC program on numerous occasions.[11] Many states successfully implemented their own NMTC programs, and several states even re-authorized the program in subsequent years.[12] According to Representative Shaw, states with their own NMTC programs succeeded in bringing private enterprises to areas lacking access to sufficient capital, particularly rural and low-income communities.[13] With a need to increase investment in rural and low-income communities in Georgia, Representative Shaw introduced House Bill (HB) 439 during the 2015 legislative session.[14]

Bill Tracking of HB 439

Consideration and Passage by the House

Representatives Jason Shaw (R-176th), Stacey Abrams (D-89th), Terry England (R-116th), Matt Hatchett (R-150th), David Knight (R-130th), and Patty Bentley (D-139th) sponsored HB 439.[15] The House read the bill for the first time on February 23, 2015.[16] The House read

8. *Id.*
9. HB 439 (HCS), § 1, p. 12, ln. 392–401, 2015 Ga. Gen. Assem.; Video Recording of House Insurance Committee Meeting, Mar. 4, 2015 at 8 min., 0 sec. (remarks by Rep. Jason Shaw (R-176th)), http://media.legis.ga.gov/hav/15_16/2015/committees/insur/insur030415EDITED.wmv.
10. Senate Committee Recording, *supra* note 5, at 4 min., 30 sec. (remarks by Rep. Jason Shaw (R-176th)).
11. *Id.*; Tharpe Interview, *supra* note 6.
12. Senate Committee Recording, *supra* note 5, at 4 min., 8 sec. (remarks by Rep. Jason Shaw (R-176th)).
13. *Id.*
14. HB 439, as introduced, 2015 Ga. Gen. Assem.
15. Georgia General Assembly, HB 439, Bill Tracking, http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/439.
16. State of Georgia Final Composite Status Sheet, HB 439, May 14, 2015.

the bill for the second time on February 24, 2015.[17] The bill was then assigned to the House Committee on Insurance,[18] which recommended several changes to the bill.[19] The Committee favorably reported the bill by substitute on March 4, 2015.[20]

Substantively, the Committee substitute differed only slightly from the bill as first introduced.[21] The Committee included technical changes to tighten the qualifications for having equity investments or long-term debt instruments designated as qualified equity investments.[22] Specifically, the Committee changed the language to require consideration of the cumulative value of allocations awarded to a qualified community development entity, not only under Georgia's scheme, but also by any other states' new markets program.[23] The House read the Committee substitute as amended on March 11, 2015.[24] The House passed the Committee substitute by a vote of 151 to 18.[25]

Consideration and Passage by the Senate

Senator Charlie Bethel (R-54th) sponsored HB 439 in the Senate.[26] The Senate read the bill for the first time on March 13, 2015, and was assigned to the Senate Insurance and Labor Committee.[27] The Committee amended HB 439 to include the Invest Georgia Tax Credit.[28] Designed to spur in-state corporate growth, the Invest Georgia program would have authorized the state to sell up to $55 million in tax credits to qualified taxpayers willing to invest in high-growth Georgia companies likely to yield a benefit to taxpayers.[29]

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17. *Id.*
18. *Id.*
19. *See* HB 439 (HCS), 2015 Ga. Gen. Assem.
20. State of Georgia Final Composite Status Sheet, HB 439, May 14, 2015.
21. *Compare* HB 439, as introduced, 2015 Ga. Gen. Assem., *with* HB 439 (HCS), 2015 Ga. Gen. Assem.
22. HB 439 (HCS), § 1, p. 4–5, ln. 127–32, 144–51, 2015 Ga. Gen. Assem.
23. *Id.*
24. State of Georgia Final Composite Status Sheet, HB 439, May 14, 2015.
25. Georgia House of Representatives Voting Record, HB 439 (Mar. 11, 2015).
26. Georgia General Assembly, HB 439, Bill Tracking, http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/439.
27. State of Georgia Final Composite Status Sheet, HB 439, May 14, 2015.
28. HB 439 (SCS), § 2, p. 13–15, ln. 445–539, 2015 Ga. Gen. Assem.
29. *Id.*

The Committee reported the bill, including the Invest Georgia Tax Credit, by substitute on March 26, 2015.[30] The Senate read the bill as amended by substitute on March 26, 2015.[31] The following day, the bill was engrossed and read for the third time,[32] after which the Senate passed the Committee substitute by a vote of 41 to 9.[33]

Reconsideration and Passage by the House

When the bill was returned to the House, Representative Shaw recommended five changes to the Senate's substitute through a floor amendment.[34] Those alterations were largely technical[35] and were adopted by the House along with the Senate's substitute on April 2, 2015, by a vote of 133 to 24.[36] The Senate agreed to the floor amendment and to its substitute on April 2, 2015,[37] by a vote of 41 to 9.[38] The House sent HB 439 to Governor Nathan Deal (R) on April 14, 2015.[39]

Veto

Governor Deal vetoed the bill on May 12, 2015.[40] In his veto statement, Governor Deal expressed concern over implementing the New Markets Program and Invest Georgia Tax Credit in a single piece of legislation because the bill would have too great an impact on the general fund given Georgia's budget environment.[41]

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30. State of Georgia Final Composite Status Sheet, HB 439, May 14, 2015.
31. *Id.*
32. *Id.*
33. Georgia Senate Voting Record, HB 439 (Mar. 27, 2015).
34. HB 439 (HFA), 2015 Ga. Gen. Assem.
35. *See id.* The changes were made so that the bill referenced the appropriate section of the Federal Tax Code and ensured tax credits could be used against a qualified equity investor's full tax liability. *Id.* Notably, however, the amendment removed language from the House Committee's substitution, thereby shielding applicants from having to disclose investments made under other states' new market programs. *Id.*
36. Georgia House of Representatives Voting Record, HB 439 (Apr. 2, 2015).
37. State of Georgia Final Composite Status Sheet, HB 439, May 14, 2015.
38. Georgia Senate Voting Record, HB 439 (Apr. 2, 2015).
39. State of Georgia Final Composite Status Sheet, HB 439, May 14, 2015.
40. Press Release, Ga. Office of the Governor, Deal Issues 2015 Veto Statements (May 12, 2015), http://gov.georgia.gov/press-releases/2015-05-12/deal-issues-2015-veto-statements [hereinafter Governor's Press Release].
41. *Id.*

The Bill

The bill would have amended Title 33 of the Official Code of Georgia Annotated by adding Code section 33-1-24.[42] This section would have provided certain entities the opportunity to earn credit against their state tax liabilities by making qualified equity investments.[43] It also would have established the limitations of the tax credit program, such as various recapture provisions.[44] Additionally, the bill would have amended Title 10 of the Official Code of Georgia Annotated by adding Code section 10-10-21.[45] The bill would have created the Invest Georgia Tax Credit and authorized the Invest Georgia Board to sell the tax credits.[46]

Section 1 of the bill would have added Code section 33-1-24 relating to general provisions regarding insurance and created the Georgia New Markets Jobs Act.[47] The bill would have given entities a credit against their state insurance tax liabilities for qualified equity investments,[48] which requires an entity to make an investment in a qualified community development entity.[49]

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42. HB 439, as passed, § 1, p. 1, ln. 15–17, 2015 Ga. Gen. Assem.
43. *Id.* p. 1, ln. 1–7.
44. *Id.*
45. *Id.* § 2, p. 13, ln. 444–46.
46. *Id.* § 2, p. 13, ln. 447, 478–83.
47. *Id.* § 1, p. 1, ln. 15–16, 18–19.
48. HB 439, as passed, § 1, p. 4, ln. 104–05, 2015 Ga. Gen. Assem. "A 'qualified equity investment' means[:]"

> [A]ny equity investment in, or long-term debt security issued by, a qualified community development entity that:
> (A) Is acquired after the effective date of this Code section at its original issuance solely in exchange for cash;
> (B) Has at least 85 percent of its cash purchase price used by the qualified community development entity 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
> (C) Is designated by the qualified community development entity as a qualified equity investment under this paragraph and is certified by the department as not exceeding the limitation contained in subsection (g) of this Code section.

Id. § 1, p. 3, ln. 77–87.

49. *Id.*

> 'Qualified community development entity' [has] the same 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 United States Treasury Department with respect to credits authorized by Section 45D of the Internal Revenue Code of 1986, as amended, which

Section 1 also would have established the limitations of the Georgia New Markets Jobs Act. First, it would have prevented entities from selling their tax credits on the open market.[50] Second, it would have created the application process for designating an equity investment or long-term debt security as a qualified equity investment.[51] Some of the requirements of the application process included having a qualified community development entity applicant demonstrate it is certified as a qualified community development entity,[52] describe the proposed amount, the structure, and the purchaser of the qualified equity investment,[53] and list examples of the types of qualified active low-income businesses in which it has already invested.[54] Third, Section 1 would have set a state certification limit of $100 million in total qualified equity investments.[55]

Moreover, Section 1 contained provisions to recapture tax credits that no longer qualified under the Georgia New Markets Jobs Act.[56] One of the main recapture provisions required qualified community development entities to invest at least 85% of the purchase price of the qualified equity investment in qualified low-income community investments in Georgia within twelve months of issuing a qualified equity investment.[57] Furthermore, the qualified community development entity would have been required to maintain at least an 85% "level of investment in qualified low-income community investments . . . until the last credit allowance date for the qualified equity investment."[58]

Finally, Section 1 would have required a qualified community development entity to invest at least 25% "of the purchase price of all

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> includes the State of Georgia within the service area set forth in such allocation agreement. Such term shall include subsidiary community development entities of any such qualified community development entity.

Id. § 1, p. 3, ln. 69–76.

50. *Id.* § 1, p. 4, ln. 119–20.

51. *Id.* § 1, p. 4–5, ln. 125–57. Section 1 would have set out the qualified community development entities' application requirements. *Id.* § 1, p. 4–7, ln. 125–234.

52. *Id.* § 1, p. 4, ln. 130–31.

53. *Id.* § 1, p. 5, ln. 139–40.

54. HB 439, as passed, § 1, p. 5, ln. 141–45, 2015 Ga. Gen. Assem.

55. *Id.* § 1, p. 7, ln. 235–36.

56. *Id.* § 1, p. 7–8, ln. 240–77.

57. *Id.* § 1, p. 7–8, ln. 240–41, 252–57.

58. *Id.* § 1, p. 8, ln. 255–57.

qualified equity investments issued by the qualified community development entity . . . in qualified active low-income community businesses located in nonmetropolitan counties . . . ."[59]

Section 2 of the bill would have added Code section 10-10-21 relating to seed-capital funds.[60] It would have established the Invest Georgia Tax Credit[61] and authorized the Invest Georgia Fund[62] "to sell up to $55 [million] of tax credits to qualified taxpayers."[63] The tax credits, however, could only be credited against an entity's state premium tax liability.[64]

Analysis

"All levels of government pursue policies to attract new businesses with the hope that these enterprises will create local economic growth."[65] Chief among these growth strategies are tax credit programs. Though tax credits and incentives receive a fair share of criticism, they are a reality in the current economic environment that is fueled by competitive business practices.[66] Accordingly, states race to adopt attractive tax legislation designed to lure companies and

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59. *Id.* § 1, p. 12, ln. 401–09.

60. HB 439, as passed, § 2, p. 13, ln. 444–45, 2015 Ga. Gen. Assem.

61. *Id.* § 2, p. 13, ln. 447.

62. The Invest Georgia Fund is a fund that was created:

> to increase the amount of private investment capital available in this state for Georgia based business enterprises in the seed, early, or growth stages of business development and which require funding, as well as for established Georgia based business enterprises developing new methods or technologies, including the promotion of research and development purposes, thereby increasing employment, creating additional wealth, and otherwise benefitting the economic welfare of the people of this state.

O.C.G.A. § 10-10-10 (2013).

63. HB 439, as passed, § 2, p. 14, ln. 476–77, 2015 Ga. Gen. Assem. A "qualified taxpayer" can be an insurance company that is authorized to do business in Georgia or holding company that has at least one insurance company subsidiary and is authorized to do business in Georgia. *Id.* § 2, p. 14, ln. 466–68. However, the entity must also have insurance premiums tax liability and contribute capital to purchase premiums tax credits for it to qualify as a qualified taxpayer. *Id.* § 2, p. 13, ln. 464–65.

64. *Id.* § 2, p. 14, ln. 474–75.

65. Kaitlyn Harger & Amanda Ross, *Do Capital Tax Incentives Attract New Businesses? Evidence across Industries from the New Markets Tax Credit* 1 (W. Va. Univ. Coll. of Bus. & Econ., Working Paper No. 14-14, 2014), *available at* be.wvu.edu/phd_economics/pdf/14-14.pdf.

66. Jennifer Zimmerman, *April 2015 State Tax Credit and Incentive Update*, NAT'L L. REV. (May 7, 2015), http://www.natlawreview.com/article/april-2015-state-tax-credit-and-incentive-update.

investments, or alternatively, to prevent corporate flight to other states.[67]

The New Markets Debate

The aim of the New Markets portion of HB 439 was to incite the economic development of low-income or underserved communities through a state-based tax credit program.[68] The program was designed to stimulate private investments in urban and rural areas that lacked the capital necessary to support local businesses or attract new businesses.[69] It was modeled largely after the federal NMTC,[70] and proponents of HB 439 point to the achievements of the federal policy[71] and the success of state analogues.[72]

To date, fourteen states have enacted some form of a new markets tax credit program based on the federal law's reputation.[73] Their reason for leveraging on the federal efficiencies is straightforward: the administrative costs associated with the NMTC are prodigious and ongoing; therefore, by utilizing the federal screening and monitoring processes at the state level, states can offer tax credits and derive benefits for local communities at a substantially reduced price to the public.[74]

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67. *See supra* note 4 and accompanying text.

68. *See generally* HB 439, as passed, 2015 Ga. Gen. Assem.

69. *Id.*; Senate Committee Recording, *supra* note 5, at 3 min., 55 sec. (remarks by Rep. Jason Shaw (R-176th)).

70. Senate Committee Recording, *supra* note 5, at 3 min., 55 sec. (remarks by Rep. Jason Shaw (R-176th)).

71. Since the program's inception, 912 awards have been made "allocating a total of $43.5 billion in tax credit authority to" community development entities. *New Market Tax Credits Program*, U.S. DEP'T OF THE TREASURY, CMTY. DEV. FIN. INST. FUND, http://www.mycdfi.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last updated Sept. 3, 2015); *see also supra* note 3 and accompanying text.

72. Senate Committee Recording, *supra* note 5, at 3 min., 55 sec. (remarks by Rep. Jason Shaw (R-176th) (citing the success of Louisiana, Florida, and Alabama).

73. *See New Markets Tax Credit: State Programs*, NOVOGRADAC, http://www.novoco.com/new_markets/nmtc/state_nmtc_programs.php (last visited Oct. 19, 2015) (providing a list of all states that have implemented new markets programs, and details regarding those programs). This list notably includes several southern states including Georgia's neighbors, Alabama and Florida, as well as Arkansas, Kentucky, Louisiana, and Mississippi. *Id.*

74. Laura Molloy, *New Markets Tax Credits: A Success at Federal and State Levels*, J. MULTISTATE TAX'N & INCENTIVES, Nov.–Dec. 2013, at 25 ("Generally the state-level programs provide credits for investments in [community development entities] that have received federal allocations and include the state in their service area. . . . [which] is extremely cost-effective in that state governments forgo the

In addition to the long-term goal of cultivating rural or underdeveloped regions, projected benefits from state new markets programs consist of tax revenue from new investments and the earnings of new employees, higher-grossing households, and other indirect economic activity.[75] A research study conducted by Ball State University projected that state-level new markets programs could reasonably enjoy effects similar to the federal program.[76] The study anticipated that "[i]n states with a [thirty-nine] percent credit rate, an additional $17.8 million to $65.9 million in annual investment will occur" in targeted low-income areas, and "[i]n states with a [fifty] percent credit, an additional annual investment will occur, between $22.8 million and $84.45 million."[77] Such benefits might be the result of competitive policy-making, allowing the respective state to capture investments that would have otherwise flocked to other states.[78]

However, the effectiveness of state-level new markets programs is disputable. For example, a report by the Oklahoma Tax Commission illuminated the shortcomings of Oklahoma's new markets scheme.[79] The Oklahoma law provided a 20% tax credit against income for qualified investments made in qualified small businesses and business ventures.[80] The report showed that the state forfeited approximately $18 million in tax revenue through the use of credits, and the result was only twenty-one new jobs.[81] The state's policy

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expense of screening, selection, certification, and monitoring of the entities.").

75. Michael J. Hicks & Dagney Faulk, *An Estimate: The Effect of State-Level Add-On Legislation to the Federal New Market Tax Credit Program*, BALL ST. UNIV. CTR. FOR BUS. & ECON. RES. 6 (Feb. 2012), *available at* https://www.novoco.com/new_markets/resource_files/reports/ball_state_effect_of_state-level_add-on_legislation_to_the_federal_nmtc_program.pdf.

76. *Id.* Notably, the study assumed that, like the NMTC, 10.7% of new markets investments would actually be new in-state investment. *Id.* at 7.

77. *Id.* at 5–6. The study further conducted a "what if" analysis, and deduced that "had Indiana implemented a [thirty-nine] percent state New Market Tax Credit in 2010 . . . that over a seven year period, the NMTC . . . would have resulted in roughly $433 million in investment in distressed regions, with 4,665 total jobs." *Id.* at 7. And of that $433 million, "$46 million would have been discrete new investment and a total of 499 discrete new jobs in Indiana's distressed communities." *Id.*

78. Molloy, *supra* note 74, at 23–24.

79. *See* OKLA. TAX COMM'N, REPORT OF QUALIFIED INVESTMENTS IN SMALL BUSINESS CAPITAL COMPANIES AND RURAL SMALL BUSINESS CAPITAL COMPANIES 2–5 (Oct. 13, 2011) (on file with the Georgia State University Law Review) (analyzing Oklahoma's "'Small Business Capital Formation Incentive Act' (68 O.S. §2357.60 et seq.) and the 'Rural Venture Capital Formation Incentive Act' (68 O.S. §2357.71 et seq.)").

80. *Id.* at 2–3.

81. *Id.* at 3.

targeting rural development, however, performed relatively better.[82] There, approximately $40 million in reported tax credits created seventy-eight new jobs in the state, in addition to twenty-two new contract jobs and 474 temporary jobs.[83] Still, Oklahoma observed inadequacies and ended its tax credit program effective January 1, 2012.[84]

In addition, legislation to renew Missouri's new markets tax credit program failed in 2013.[85] According to one source, the policy "only added 823 new jobs [in nearly seven years], while retaining 3,141 jobs, vastly fewer than the 9,679 anticipated jobs."[86] Those "weak employment numbers [coupled] with the overall amount of certified investments" exhibit that "the program facilitated over $900 million dollars in loans over the same period (at a cost of over $225,000 per job attributable to the program)."[87]

HB 439 Compared to Other States' New Markets Initiatives

Like other state-level new markets programs, HB 439 would have implemented an application procedure and screening process that relied heavily on the federal NMTC's processes, conceivably allowing administration of the program at a lower cost.[88] In addition, compared to those states with NMTC policies, HB 439 contained a typical, conservative recapture provision, requiring community development entities to invest at least 85% of its qualified equity investment in an in-state qualified low-income community business

82. *See id.* at 3–4. The Rural Venture Capital portion of the Oklahoma program provided a 30% credit "for qualified investments made in Oklahoma rural small business ventures 'in conjunction' with qualified investment in such ventures made by a qualified rural small business capital company." *Id.* at 4.

83. *Id.*

84. *See* OKLA. STAT. ANN. tit. 68, § 2357.62 (West 2012).

85. *See New Markets Tax Credit Program*, MO. DEP'T OF ECON. DEV., https://www.ded.mo.gov/BCS%20Programs/BCSProgramDetails.aspx?BCSProgramID=73 (last visited Oct. 19, 2015); *see also* MO. ANN. STAT. § 135.680 (West, Westlaw through 2015).

86. *Nothing New About the New Markets Job Act*, S.C. POL'Y COUNCIL (Aug. 5, 2014), http://www.scpolicycouncil.org/research/economic/nmja.

87. *Id.*; *see* MO. DEP'T OF ECON. DEV, *supra* note 85 (explaining the Missouri program). Also, for an interesting discussion of the perspectives of some of Missouri's policy makers, see David A. Lieb, *Job Totals Trail Expectations for Mo. Tax Credit*, SOUTHEAST MISSOURIAN (Apr. 15, 2013), www.semissourian.com/story/1959437.html.

88. *See supra* notes 74, 48–49 and accompanying text.

within twelve months.[89] Finally, unlike some states, tax credits issued under HB 439 would not be transferable on the open market, yet the bill did allow for the transfer of tax credits to a "controlling entity or any subsidiary qualified community development entity" so long as some minor preconditions are met.[90]

Opposition to HB 439's New Markets Provision

Feeding off the success of other states' new markets programs, HB 439 received a warm welcome in both chambers of the Georgia General Assembly.[91] Nevertheless, it was not without opposition.[92] Critics of HB 439 were quick to point out that Georgia's proposal was not a mirror image of the NMTC.[93] Notably, unlike the federal program, HB 439 excluded real estate investment firms as acceptable low-income community businesses.[94] Though property investments may not yield a quick or significant capital return, such ventures guarantee that the asset stays within the state.[95] In addition, the opposition asserted that HB 439's procedure lacked transparency and accountability.[96] To those challengers, as well as skeptics in other states, new markets programs are easily manipulated and, unbeknownst to the public, can result in the reallocation of "wealth from the general populace to those with political connections."[97] Accordingly, many critics felt the new markets program was akin to the Georgia Small Business Investment Company Act, which was

89. *Compare* HB 439, as passed, § 1, p. 7–8, ln. 240–55, 2015 Ga. Gen. Assem., *with* Alabama New Markets Development Program, 2012 Ala. Acts 483 (containing a provision to recapture an amount equal to all credits claimed if the community development entity fails to invest 85% of a qualified equity investment within twelve months and maintain such level of investment until the last credit allowance date).

90. HB 439, as passed, § 1, p. 6–7, ln. 209–13, 2015 Ga. Gen. Assem.; *but see New Markets Tax Credit: State Programs*, *supra* note 73 (noting that credits received under Louisiana's New Markets Jobs Act "can be carried forward 10 years and can be transferred").

91. *See supra* text accompanying notes 25, 33, 36, and 38.

92. *See, e.g.*, James Salzer, *YOUR TAX DOLLARS: Georgia Senate Backs $100M Tax Credit Program*, ATLANTA J.-CONST., May 28, 2015, at B1, *available at* 2015 WLNR 9158846.

93. *See* Tharpe Interview, *supra* note 6.

94. *Id.* Specifically, HB 439 excluded "any business that derives or projects to derive 15 percent or more of its annual revenue from the rental or sale of real estate." HB 439, as passed, § 1, p. 2–3, ln. 63–65, 2015 Ga. Gen. Assem.

95. *See* Tharpe Interview, *supra* note 6.

96. *Id.*

97. S.C. POL'Y COUNCIL, *supra* note 86.

strongly opposed, and ultimately rejected, during the General Assembly's 2011 session.[98] Above all, HB 439's $110 million price tag bothered its opposition, calling into question the state's spending priorities.[99]

Invest Georgia's Role

In 2013, the state attempted to bolster its economy by fostering in-state entrepreneurship and supporting growing businesses.[100] The Invest Georgia program established a "state-owned venture capital fund" charged with "invest[ing] in Georgia-based technology, bioscience, manufacturing, marketing, agriculture, and information related companies."[101] Section 2 of HB 439 would have financed the Invest Georgia Fund by allowing the fund to sell premium tax credits to insurance companies doing business in Georgia. [102] Tax credits are necessary to compensate lenders for the increased risk accompanying these investment projects. The $55 million from HB 439 would have been "a second tranche of funding to fulfill the original Invest Georgia Mission . . . of creating a $100 [million] state-based fund to help grow Georgia-based companies over the next decade."[103] "Invest Georgia was allocated $10 [million] in the 2014 Legislative Session and is now" working to invest that initial allotment.[104]

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98. Wesley Tharpe, *CAPCO: A Bad Investment for Georgia*, GEORGIA BUDGET & POL'Y INST. 1 (Jan. 2012), *available at* http://gbpi.org/wp-content/uploads/2012/01/capco_a_bad_investment_for_georgia01102012t.pdf. That bill would have granted $125 million in tax credits to "certified capital companies" (CAPCOs) that, in turn, would invest in small Georgia businesses. *Id.* It was contested because failed "CAPCO investment programs in other states" resulted in marginal returns while "making huge profits for [the] few large capital firms . . . that handled the money." Salzer, *supra* note 92.

99. Salzer, *supra* note 92. Some opponents to HB 439 noted "the same General Assembly is forcing school districts to come up with extra money if they want to continue providing health insurance for part-time employees, such as bus drivers." *Id.*

100. *See* O.C.G.A. § 10-10-10 (2013); INV. GA. (2015), http://www.investgeorgia.net.

101. Jonathan B. Wilson, *Georgia Legislature Approves Sale of $55 Million in Tax Credits to Fund Venture Capital*, TAYLOR ENGLISH (Apr. 9, 2015), https://www.taylorenglish.com/blogs-emerging-markets,georgia-legislature-approves-sale-of-55-million-in-tax-credits-to-fund-venture-capital. For a full overview of the program, see INV. GA., *supra* note 100.

102. *See* HB 439, as passed, § 2, p. 14, ln. 476–77, 2015 Ga. Gen. Assem.

103. *Update on the Invest Georgia Program: 2015 Legislative Session*, INVEST GA., http://investgeorgia.org/category/invest-georgia/ (last visited Aug. 30, 2015).

104. *Id.*

Notably, critics of HB 439's New Markets Jobs Act did not contest the bill's Invest Georgia initiative.[105] Those individuals explained that, unlike HB 439, Invest Georgia has built-in safeguards that protect taxpayers and increase the likelihood of a capital return for the state.[106] In particular, the program contains stringent reporting requirements.[107] Also, because the state is selecting which businesses receive investments, it is more probable that tax dollars will end up in the hands of high-growth Georgia companies, which, in turn, will benefit the state's economy.[108]

The Governor's Veto

According to Governor Nathan Deal's (R) veto statement, he vetoed HB 439 primarily because the new markets and Invest Georgia tax programs would have weighed too heavily upon the state's current budget.[109] In its 2015 session, Georgia's General Assembly passed eleven different tax bills, and the Governor approved all but one of them.[110] Under those laws, Georgia will sacrifice an estimated $121 million in revenue through 2020.[111] HB 439 would have alone received $110 million in state funds, split between its two programs over the next eight years.[112] To HB 439 skeptics, the Governor's veto "gives lawmakers the chance to separate the good and bad aspects of that bill before possibly reconsidering it in future years."[113]

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105. *E.g.*, Tharpe Interview, *supra* note 6; Wesley Tharpe, *Tax Policy a Quality-of-Life Topic in 2015*, BRYAN COUNTY NEWS (May 27, 2015), http://bryancountynews.com/archives/37255 [hereinafter Tharpe, *Tax*].

106. Tharpe Interview, *supra* note 6.

107. *Id.*

108. *Id.* That is to say, under the New Markets Jobs Act, once a company received tax credits, it could invest in any company it wanted to, so long as it was located in a qualified low-income census tract under federal law, which is very lenient. *Id.* Conversely, under Invest Georgia, a board identifies a Georgia-based fund manager, and that fund manager directs the investment toward businesses that are not necessarily in low-income areas but that, according to the business manager, will likely be beneficial to taxpayers. *Id.*

109. Governor's Press Release, *supra* note 40.

110. Tharpe, *Tax*, *supra* note 105.

111. *Id.*

112. *Id.*

113. *Id.*

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