



Substitute Senate Bill No. 1216

Public Act No. 11-78

**AN ACT CONCERNING THE URBAN REINVESTMENT ACT AND
THE FEDERAL NEW MARKETS TAX CREDIT PROGRAM AND
CORRECTING AN EFFECTIVE DATE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 32-9t of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2011*):

(a) As used in this section:

(1) "Commissioner" means the Commissioner of Economic and Community Development.

(2) "Eligible industrial site investment project" means a project located within this state for the development or redevelopment of real property: (A) (i) That has been subject to a "spill", as defined in section 22a-452c, (ii) is an "establishment", as defined in subdivision (3) of section 22a-134, or (iii) is a "facility", as defined in 42 USC 9601(9); (B) that, if remediated, renovated or demolished in accordance with applicable law and regulations and the standards of remediation of the Department of Environmental Protection and used for business purposes, will add significant new economic activity and employment in the municipality in which the investment is to be made, and will generate additional tax revenues to the state; (C) for which the use of

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the urban and industrial site reinvestment program will be necessary to attract private investment to the project; (D) the business use of which would be economically viable and would generate direct and indirect economic benefits to the state that exceed the amount of the investment during the period for which the tax credits granted pursuant to public act 00-170 are granted; and (E) that is, in the judgment of the commissioner, consistent with the strategic economic development priorities of the state and the municipality.

(3) "Eligible urban reinvestment project" means a project: (A) That would add significant new economic activity in the eligible municipality in which the project is located, and will generate significant additional tax revenues to the state or the municipality; (B) for which the use of the urban and industrial site reinvestment program will be necessary to attract private investment to an eligible municipality; (C) that is economically viable; (D) for which the direct and indirect economic benefits to the state outweigh the costs of the project; and (E) that is, in the judgment of the commissioner, consistent with the strategic economic development priorities of the state and the municipality.

(4) "Related person" means: (A) A corporation, limited liability company, partnership, association or trust controlled by the taxpayer; (B) an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer; (C) a corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer; or (D) a member of the same controlled group as the taxpayer. For purposes of this section, "control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty per cent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Control", with respect to a trust, means

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ownership, directly or indirectly, of fifty per cent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267(c) of the Internal Revenue Code, [of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended,] other than paragraph (3) of such section.

(5) "Investment" means all amounts invested in an eligible project by or on behalf of a taxpayer, whether directly, through a fund, or through a community development entity or a contractually-bound community development entity including, but not limited to, (A) equity investments made by the taxpayer, and (B) loans.

(6) "Income year" means with respect to entities subject to taxation under chapters 207 to 212a, the income year as determined under each of said chapters, as the case may be.

(7) "Taxpayer" means any person, as defined in section 12-1, whether or not subject to any taxes levied by this state.

(8) "Fund manager" means a fund manager registered in accordance with subsection (d) of this section.

(9) "New job" means a job that did not exist in the business of a subject business in this state prior to the subject business' application to the commissioner for an eligibility certificate under this section for a new facility and that is filled by a new employee, but does not mean a job created when an employee is shifted from an existing location of the subject business in this state to a new facility.

(10) "New employee" means a person hired by a subject business to fill a position for a new job or a person shifted from an existing

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location of the subject business outside this state to a new facility in this state, provided (A) in no case shall the total number of new employees allowed for purposes of this credit exceed the total increase in the taxpayer's employment in this state, which increase shall be the difference between (i) the number of employees employed by the subject business in this state at the time of application for an eligibility certificate to the commissioner plus the number of new employees who would be eligible for inclusion under the credit allowed under this section without regard to this calculation, and (ii) the highest number of employees employed by the subject business in this state in the year preceding the subject business' application for an eligibility certificate to the commissioner, and (B) a person shall be deemed to be a "new employee" only if such person's duties in connection with the operation of the facility are on a regular, full-time, or equivalent thereof, and permanent basis.

(11) "New facility" means a facility which (A) is acquired by, leased to, or constructed by, a subject business on or after the date of the subject business' application to the commissioner for an eligibility certificate under this section, unless, upon application of the subject business and upon good and sufficient cause shown, the commissioner waives the requirement that such activity take place after the application, and (B) was not in service or use during the one-year period immediately prior to the date of the subject business' application to the commissioner for an eligibility certificate under this section, unless upon application of the subject business and upon good and sufficient cause shown, the commissioner consents to waiving the one-year period.

(12) "Eligible municipality" means (A) a municipality with an area designated as an enterprise zone pursuant to section 32-70, (B) a distressed municipality, as defined in subsection (b) of section 32-9p, (C) a municipality that has a population in excess of one hundred

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thousand, or (D) any municipality that the commissioner determines is connected with the relocation of an out-of-state operation or the expansion of an existing facility that will result in a capital investment by a company of not less than fifty million dollars.

(13) "Eligible project" means an eligible urban reinvestment project or an eligible industrial site investment project or both.

(14) "Approved investment" means an investment approved by the commissioner under subsection (g) of this section.

(15) "Recapture amount" means the amount by which the total of tax credits claimed with respect to any approved investment as of the date of calculation exceeds the sum of all state revenue actually generated through such date by the eligible project in which such approved investment was made.

(16) "Pro rata share" means the percentage the amount of the approved investment by an individual investor in an eligible project bears to the total amount of the approved investment in such project, or in the case of a taxpayer to whom credits are transferred under this section, the percentage the amount of credits with respect to an approved investment transferred bears to the total credits with respect to such approved investment.

(17) "Community development entity" means any corporation, limited partnership or limited liability company qualified to do business in this state and which (A) is organized for the purpose of providing investment capital or financing for eligible projects under this section, (B) maintains accountability to residents of more than one eligible municipality through representation on the governing board of the entity, (C) is organized for the purpose of seeking certification and an allocation of new markets tax credits as provided in Section 45D of the Internal Revenue Code, [of 1986, or any subsequent corresponding

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internal revenue code of the United States, as from time to time amended,] and (D) is registered in accordance with subsection (d) of this section. No community development entity shall be eligible for any tax credits under this section unless it is certified under said Section 45D on the date any approved investment is made. A community development entity shall not be deemed a "fund" for purposes of this section.

(18) "Project" means the acquisition, leasing, demolition, remediation, construction, renovation, expansion or other development or redevelopment of real property and improvements within this state, including furniture, fixtures, equipment and other personal property which is reasonably necessary in connection therewith, and associated interest and other financing costs and charges, relocation and start-up costs, and architectural, engineering, legal and other professional services, plans, specifications, surveys, permits, studies and evaluations necessary or incident to the development, financing, completion and placing in operation of such a project. In the case of a contractually-bound community development entity, "project" shall not include any activities, costs or services not included in the terms of the allocation agreement with the community development financial institutions fund under Section 45D of the Internal Revenue Code.

(19) "Contractually-bound community development entity" means a community development entity that (A) has entered into an allocation agreement with the community development financial institutions fund pursuant to Section 45D of the Internal Revenue Code, and (B) whose service area in such allocation agreement includes the state of Connecticut.

(20) "Internal Revenue Code" means the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time.

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(b) There is established an urban and industrial site reinvestment program under which taxpayers who make investments in eligible urban reinvestment projects or eligible industrial site investment projects may be allowed a credit against the tax imposed under chapters 207 to 212a, inclusive, or section 38a-743, or a combination of said taxes, in an amount equal to the percentage of their approved investment determined in accordance with subsection (i) of this section.

(c) No project shall be deemed an eligible project unless such project shall, in the judgment of the commissioner, be of sufficient size, by itself or in conjunction with related new investments, to generate a substantial return to the state economy.

(d) (1) The commissioner may register managers of funds and community development entities created for the purpose of investing in eligible urban reinvestment projects and eligible industrial site investment projects. Any manager, [or] community development entity or contractually-bound community development entity registered under this subsection shall have its primary place of business in this state. Each applicant shall submit an application under oath to the commissioner to be registered and shall furnish evidence satisfactory to the commissioner of its financial responsibility, integrity, professional competence and experience in managing investment funds. Failure to maintain adequate fiduciary standards with respect to investments made under this section shall constitute cause for the commissioner to revoke, after hearing, any registration granted under this section or section 38a-88a. The fund manager, [or] community development entity or contractually-bound community development entity shall make a report on or before the first day of March in each year, under oath, to the Commissioner of Economic and Community Development and the Commissioner of Revenue Services specifying the name, address and Social Security number or employer

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identification number of each investor, the year during which each investment was made by each investor, the amount of each investment, a description of the fund's investment objectives and relative performance, or the entity's projects, as the case may be, and a description, including amounts, of all fees received by such manager or entity in relation to each such fund.

(2) Any manager of funds registered on or before July 1, 2000, pursuant to section 38a-88a shall be deemed registered as a fund manager for all purposes under the provisions of this section upon submission, in writing, to the commissioner of such manager's intention to act as a manager of funds under this section. The commissioner may request from any such manager such information as the commissioner may require relating to such manager's financial responsibility, integrity, professional competence and experience in managing investment funds.

(e) Any taxpayer or fund manager, [or] community development entity or contractually-bound community development entity wishing to make an investment under the provisions of this section shall apply to the commissioner in accordance with the provisions of this section. The application shall contain sufficient information to establish that the project in which the proposed investment will be made is an eligible industrial site investment project or an urban reinvestment project, as appropriate, and information concerning the type of investment proposed to be made, the location of the project, the number of jobs to be created or retained, physical infrastructure that might be created or preserved, feasibility studies or business plans for the project, projected state and local revenue that might derive as a result of the project and other information necessary to demonstrate the financial viability of the project and to demonstrate that the investment will provide net benefits to the economy of, and employment for citizens of, the municipality and the state, and in the

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case of an eligible industrial site investment project, how such project will meet the standards of remediation of the Department of Environmental Protection. The commissioner shall impose a fee for such application as the commissioner deems appropriate.

(f) (1) The commissioner shall determine whether the project in which the proposed investment is to be made is an eligible urban reinvestment project or an eligible industrial site investment project, whether the project is economically viable only with use of the urban and industrial site reinvestment program, the effects of the project on the municipality where the investment will be made, and whether the project would provide a net benefit to economic development and employment opportunities in the state and whether the project will conform to the state plan of conservation and development. The commissioner may require the applicant to submit such additional information as may be necessary to evaluate the application.

(2) The commissioner shall prepare a revenue impact assessment that estimates the state and local revenue that would be generated as a result of the project. The commissioner shall prepare an economic feasibility study relative to such project. The commissioner may retain any such persons as the commissioner deems appropriate to conduct such revenue impact assessment or economic feasibility study.

(g) (1) The commissioner, upon consideration of the application, the revenue impact assessment and any additional information that the commissioner requires concerning a proposed investment, may approve an investment if the commissioner concludes that the project in which such investment is to be made is an eligible urban reinvestment project or an eligible industrial site investment project. If the commissioner rejects an application, the commissioner shall specifically identify the defects in the application and specifically explain the reasons for the rejection. The commissioner shall render a decision on an application not later than ninety days from its receipt.

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The amount of the investment so approved shall not exceed the greater of: (A) The amount of state revenue that will be generated according to the revenue impact assessment prepared under this subsection; or (B) the total of state revenue and local revenue generated according to such assessment in the case of a manufacturing business with standard industrial classification codes of 3999, 2099, 2992 and 2834 which is relocating to a site in Connecticut from out-of-state, provided the relocation will result in new development of at least seven hundred twenty-five thousand square feet in a state-sponsored industrial park.

(2) The approval of an investment by the commissioner may be combined with the exercise of any of the commissioner's other powers, including, but not limited to, the provision of other forms of financial assistance.

(3) The commissioner shall require the applicant to reimburse the commissioner for all or any part of the cost of any revenue impact assessment, economic feasibility study or other activities performed in the exercise of due diligence pursuant to subsection (f) of this section.

(4) There is established an account to be known as the "Connecticut economic impact and analysis account" which shall be a separate, nonlapsing account within the General Fund. The account shall contain any moneys required by law to be deposited in the account and shall be held separate and apart from other moneys, funds and accounts. There shall be deposited in the account any proceeds realized by the state from activities pursuant to this section. Investment earnings credited to the account shall become part of the assets of the account. Any balance remaining in the account at the end of any fiscal year shall be carried forward in the account for the next fiscal year. Amounts in the account may be used by the Department of Economic and Community Development to fund the cost of any activities of the department pursuant to this section, including administrative costs related to such activities.

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(h) Upon approving an investment, the commissioner shall issue a certificate of eligibility certifying that the applicant has complied with the provisions of this section.

(i) (1) There shall be allowed as a credit against the tax imposed under chapters 207 to 212a, inclusive, or section 38a-743, or a combination of said taxes, an amount equal to the following percentage of approved investments made by or on behalf of a taxpayer with respect to the following income years of the taxpayer: (A) With respect to the income year in which the investment in the eligible project was made and the two next succeeding income years, zero per cent; (B) with respect to the third full income year succeeding the year in which the investment in the eligible project was made and the three next succeeding income years, ten per cent; (C) with respect to the seventh full income year succeeding the year in which the investment in the eligible project was made and the next two succeeding years, twenty per cent. The sum of all tax credits granted pursuant to the provisions of this section shall not exceed one hundred million dollars with respect to a single eligible urban reinvestment project or a single eligible industrial site investment project approved by the commissioner. The sum of all tax credits granted pursuant to the provisions of this section shall not exceed five hundred million dollars.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, any applicant may, at the time of application, apply to the commissioner for a credit that exceeds the limitations established by this subsection. The commissioner shall evaluate the benefits of such application and make recommendations to the General Assembly relating to changes in the general statutes which would be necessary to effect such application if the commissioner determines that the proposal would be of economic benefit to the state.

(j) The credits allowed by this section may be claimed by a taxpayer

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who has made an investment (1) directly only if such investment has a total asset value, either alone or in conjunction with other taxpayer investments in an eligible project, of not less than five million dollars or, in the case of an investment in an eligible project for the preservation of an historic facility and redevelopment of the facility for mixed uses that includes at least four housing units, a total asset value of not less than two million dollars; (2) through a fund managed by a fund manager registered under this section only if such fund: (A) Has a total asset value of not less than sixty million dollars for the income year for which the initial credit is taken; and (B) has not less than three investors who are not related persons with respect to each other or to any person in which any investment is made other than through the fund at the date the investment is made; or (3) through a community development entity or a contractually-bound community development entity.

(k) The commissioner shall, upon request, provide a copy of the eligibility certificate issued under subsection (h) of this section to the Commissioner of Revenue Services.

(l) The tax credit allowed by this section, when made through a fund, shall only be available for investments in funds that are not open to additional investments or investors beyond the amount subscribed at the formation of the fund.

(m) (1) The Commissioner of Revenue Services may treat one or more corporations that are properly included in a combined corporation business tax return under section 12-223a as one taxpayer in determining whether the appropriate requirements under this section are met. Where corporations are treated as one taxpayer for purposes of this subsection, then the credit shall be allowed only against the amount of the combined tax for all corporations properly included in a combined return that, under the provisions of subdivision (2) of this subsection, is attributable to the corporations

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treated as one taxpayer.

(2) The amount of the combined tax for all corporations properly included in a combined corporation business tax return that is attributable to the corporations that are treated as one taxpayer under the provisions of this subsection shall be in the same ratio to such combined tax that the net income apportioned to this state of each corporation treated as one taxpayer bears to the net income apportioned to this state, in the aggregate, of all corporations included in such combined return. Solely for the purposes of computing such ratio, any net loss apportioned to this state by a corporation treated as one taxpayer or by a corporation included in such combined return shall be disregarded.

(n) Any taxpayer allowed a credit under this section may assign such credit to another taxpayer or taxpayers, provided such other taxpayer or taxpayers may claim such credit only with respect to a taxable year for which the assigning taxpayer would have been eligible to claim such credit and such other taxpayer or taxpayers may not further assign such credit. The taxpayer or taxpayers allowed such credit, the fund manager, [or] the community development entity or contractually-bound community development entity shall file with the Commissioner of Revenue Services information requested by the commissioner regarding such assignments, including, but not limited to, the current holders of credits as of the end of the preceding calendar year.

(o) No taxpayer shall be eligible for a credit under (1) this section, and (2) section 12-217e or 38a-88a, for the same investment. No two taxpayers shall be eligible for any tax credit with respect to the same investment or the same project costs.

(p) Any credit not used in the income year for which it was allowed may be carried forward for the five immediately succeeding income

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years until the full credit has been allowed.

(q) (1) Any tax credits approved under this section that would constitute in excess of twenty million dollars in total for a single investment shall be submitted by the Commissioner of Economic and Community Development to the joint standing committee of the General Assembly having cognizance of matters relating to finance, revenue and bonding prior to the issuance of a certificate of eligibility for such investment. Said committee shall have thirty days from the date such project is submitted to convene a meeting to recommend approval or disapproval of such investment. If such submittal is withdrawn, altered, amended or otherwise changed, and resubmitted, said committee shall have thirty days from the date of such resubmittal to convene a meeting to recommend approval or disapproval of such investment. If said committee does not act on a submittal or resubmittal, as the case may be, within that time, the investment shall be deemed to be approved by said committee.

(2) While the General Assembly is in session, the House of Representatives or the Senate, or both, may meet not later than thirty days following the date said committee makes a recommendation pursuant to subdivision (1) of this subsection. If such submission is not disapproved by the House of Representatives or the Senate, or both, within such time, the commissioner may issue such certificate.

(3) While the General Assembly is not in regular session, the House of Representatives or the Senate, or both, may meet not later than thirty days following the date said committee makes a recommendation pursuant to subdivision (1) of this subsection. If such submission is not disapproved by the House of Representatives, the Senate, or both, within such time, the commissioner may issue such certificate.

(r) Not later than July first in each year that credits allowed by this

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section are claimed by a taxpayer with respect to an approved investment, the commissioner may retain such persons as said commissioner may deem appropriate to conduct a study to estimate the state revenue that is being and will be generated by the eligible project in which such investment is made. Such economic impact study shall determine whether the state revenue actually generated by such eligible project is equal to the estimate of state revenue made at the time the investment in such eligible project was approved. If the sum of all state revenue actually generated by such eligible project is less than the amount of the total sum of tax credits claimed with respect to the approved investment in such project on the date of such analysis, the commissioner may determine from the person retained pursuant to this subsection the applicable recapture amount and may revoke the certificate of eligibility issued under subsection (h) of this section. The commissioner may require the taxpayer, the fund manager, [or] community development entity or contractually-bound community development entity that made such approved investment to reimburse the commissioner for all or any part of the cost of any economic impact study performed under this subsection.

(s) (1) Any taxpayer which has claimed credits allowed by this section related to an investment concerning which the commissioner has revoked the certificate of eligibility issued under subsection (h) of this section, shall be required to recapture such taxpayer's pro rata share of the recapture amount as determined under the provisions of subdivision (2) of this subsection and no subsequent credit shall be allowed unless such certificate of eligibility is reinstated under the provisions of subdivision (3) of this subsection.

(2) If the taxpayer is required under the provisions of subdivision (1) of this subsection to recapture its pro rata share of the recapture amount during (A) the first year such credit was claimed, then ninety per cent of such share shall be recaptured on the tax return required to

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be filed for such year, (B) the second of such years, then sixty-five per cent of such share shall be recaptured on the tax return required to be filed for such year, (C) the third of such years, then fifty per cent of such share shall be recaptured on the tax return required to be filed for such year, (D) the fourth of such years, then thirty per cent of such share shall be recaptured on the tax return required to be filed for such year, (E) the fifth of such years, then twenty per cent of such share shall be recaptured on the tax return required to be filed for such year, and (F) the sixth or subsequent of such years, then ten per cent of such share shall be recaptured on the tax return required to be filed for such year. The Commissioner of Revenue Services may recapture such share from the taxpayer who has claimed such credits. If the commissioner is unable to recapture all or part of such share from such taxpayer, the commissioner may seek to recapture such share from any taxpayer who has assigned credits in an amount at least equal to such share to another taxpayer. If the commissioner is unable to recapture all or part of such share from any such taxpayer, the commissioner may recapture such share from any fund through which the investment was made.

(3) If the commissioner has revoked the certificate of eligibility issued under subsection (h) of this section, such certificate of eligibility shall be reinstated by the commissioner if, upon a request made by the taxpayer, fund manager or community development entity who made such approved investment, an economic impact study conducted pursuant to subsection (r) of this section shall determine that the sum of all state revenue actually generated by the project in which such investment was made is greater than the amount of the total sum of tax credits claimed on the date of such analysis, provided no such request shall be made pursuant to this subsection during the calendar year in which such certificate was revoked. For the purpose of determining whether such certificate shall be reinstated, the commissioner shall, upon receipt of a request made under this subsection, obtain one such

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economic impact study per calendar year and may obtain additional such economic impact studies as the commissioner deems appropriate.

(t) Notwithstanding subsections (r) and (s) of this section, for a contractually-bound community development entity, credit recapture for credits allowed by this section shall be governed by the terms of its allocation agreement with the community development financial institutions fund or, where such agreement is silent, by Section 45D of the Internal Revenue Code and the regulations promulgated by the United States Treasury pursuant to such section.

Sec. 2. *(Effective July 1, 2011)* Section 4 of public act 10-98 shall take effect October 1, 2011, and be applicable to income years commencing on or after January 1, 2012.

Approved July 8, 2011