

2020 First Extraordinary Session

HOUSE BILL NO. 45

BY REPRESENTATIVES DUPLESSIS AND FARNUM

TAX CREDITS: Provides relative to the Louisiana New Markets Jobs tax credit (Item #19)

1 AN ACT

2 To amend and reenact R.S. 47:6016.1(B), (E)(5) and (7), (F), (G), (H)(1)(b), and (J)(1) and  
3 to enact R.S. 47:6016.1(E)(1)(f), relative to the Louisiana New Markets Jobs Act; to  
4 provide for certain definitions; to authorize tax credits for certain impact businesses;  
5 to establish criteria for certain investments; to establish certain caps; to increase the  
6 amount of allocations for certain businesses for purposes of the tax credit; to provide  
7 for the recapture of tax credits; to provide for certain requirements and limitations;  
8 to require certain reports; to provide with respect to the forfeiture of certain funds  
9 under certain circumstances; to provide for an effective date; and to provide for  
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 47:6016.1(B), (E)(5) and (7), (F), (G), (H)(1)(b), and (J)(1) are  
13 hereby amended and reenacted and R.S. 47:6016.1(E)(1)(f) is hereby enacted to read as  
14 follows:

15 §6016.1. Louisiana New Markets Jobs Act; premium tax credit

16 \* \* \*

17 B. As used in this Section, the following words, terms, and phrases have the  
18 meaning ascribed to them unless a different meaning is clearly indicated by the  
19 context:

20 (1) "Applicable percentage", for purposes of qualified equity investments  
21 issued after August 1, 2013, but prior to August 1, 2020, means fourteen percent for

1 the first and second credit allowance dates and eight and one-half percent for the  
2 third and fourth credit allowance dates. "Applicable percentage", for purposes of  
3 qualified equity investments issued after August 1, 2020, means zero percent for the  
4 first three credit allowance dates and fifteen percent for the fourth through seventh  
5 credit allowance dates.

6 (2) "Credit allowance date" means, with respect to any qualified equity  
7 investment, the following:

8 (a) The date on which such investment is initially made.

9 (b) Each of the six anniversary dates of such date thereafter.

10 (3) "Department" means the Department of Revenue, unless otherwise noted.

11 (4) "Impact business" means a qualified active low-income community  
12 business either located in a rural parish or more than fifty percent owned by women,  
13 minorities, or veterans.

14 (5) "Purchase price" means the amount paid to the issuer of a qualified  
15 equity investment for such qualified equity investment.

16 ~~(5)~~(6) "Qualified active low-income community business" has the meaning  
17 given such term in Section 45D of the Internal Revenue Code of 1986, as amended,  
18 and 26 CFR 1.45D-1. For purposes of qualified equity investments issued after  
19 August 1, 2020, the business shall be engaged in an industry assigned a North  
20 American Industry Classification System code with sectors 11, 21, 23, 31, 32, 33, 42,  
21 48, 49, 54, 56, 62, 72, or 81 and have a total number of employees that do not exceed  
22 the greater of two hundred fifty and the number of employees set forth for the  
23 business's North American Industry Classification System code sector in 13 CFR ss  
24 121.201.

25 ~~(6)~~(7) "Qualified community development entity" has the meaning given  
26 such term in Section 45D of the Internal Revenue Code of 1986, as amended;  
27 provided that such entity has entered into, for the current year or any prior year, an  
28 allocation agreement with the Community Development Financial Institutions Fund  
29 of the U.S. Department of the Treasury with respect to credits authorized by Section

1 45D of the Internal Revenue Code of 1986, as amended, which includes the state of  
2 Louisiana within the service area set forth in such allocation agreement. The term  
3 shall include qualified community development entities that are controlled by or  
4 under common control with any such qualified community development entity. For  
5 purposes of qualified equity investments issued after August 1, 2020, the term  
6 excludes any qualified community development entity that, together with its  
7 affiliates, has invested less than one hundred million dollars in Louisiana qualified  
8 active low-income community businesses or other Louisiana investments.

9 ~~(7)~~(8) "Qualified equity investment" means any equity investment in a  
10 qualified community development entity that meets each of the following criteria:

11 (a) Is acquired after August 1, 2013, at its original issuance solely in  
12 exchange for cash or, if not so acquired, was a qualified equity investment in the  
13 hands of a prior holder.

14 (b) ~~Has~~ For purposes of qualified equity investments issued prior to August  
15 1, 2020, has at least one hundred percent of its cash purchase price used by the issuer  
16 to make qualified low-income community investments in qualified active low-  
17 income community businesses located in this state by the first anniversary of the  
18 initial credit allowance date. For purposes of qualified equity investments issued  
19 after August 1, 2020, has at least one hundred percent of its cash purchase price used  
20 by the issuer to make qualified low-income community investments in qualified  
21 active low-income community businesses located in this state within nine months of  
22 the first anniversary of the initial credit allowance date.

23 (c) Is designated by the issuer as a qualified equity investment under this  
24 Paragraph and is certified by the department as not exceeding the limitation  
25 contained in Paragraph (E)(5) of this Section.

26 ~~(8)~~(9) "Qualified low-income community investment" means any capital or  
27 equity investment in, or loan to, any qualified active low-income community  
28 business. With respect to any one qualified active low-income community business,  
29 the maximum amount of qualified low-income community investments made in that

1 business, on a collective basis with all of its affiliates that may be counted towards  
 2 satisfaction of Subparagraph ~~(7)(b)~~ (8)(b) of this Subsection is ten million dollars for  
 3 purposes of qualified equity investments issued prior to August 1, 2020, and five  
 4 million dollars for purposes of qualified equity investments issued after August 1,  
 5 2020, regardless of whether it is issued by one or several qualified community  
 6 development entities. Any amounts returned or repaid by such qualified active low-  
 7 income community business to a qualified community development entity may be  
 8 reinvested in such qualified active low-income community business by such  
 9 qualified community development entity and not be counted against the ~~ten million~~  
 10 dollar limit provided for in this Paragraph.

11 (10) "Rural parish" means a parish with a population of less than one  
 12 hundred thousand people as of the July 1, 2019, census estimate by the United States  
 13 Census Bureau.

14 ~~(9)~~(11) "State premium tax liability" means any liability incurred by any  
 15 entity under the provisions of R.S. 22:831, 836, 838, and 842 except for liability  
 16 incurred pursuant of he provisions of R.S. 22:842(C).

17 \* \* \*

18 E.(1) A qualified community development entity that seeks to have an equity  
 19 investment designated as a qualified equity investment and eligible for tax credits  
 20 under this Section shall apply to the department. On a form prescribed by the  
 21 department, the qualified community development entity shall include each of the  
 22 following in or attached to its application:

23 \* \* \*

24 (f) Evidence that the applicant, on a collective basis with its affiliates, has  
 25 invested at least one hundred million dollars in Louisiana qualified active low-  
 26 income community businesses or other Louisiana investments.

27 \* \* \*

28 (5) A total of fifty-five million dollars of qualified equity investment  
 29 authority shall be available for certification and allocation. The department shall

1 accept applications beginning on August 1, 2013, for allocation and certification of  
2 up to fifty-five million dollars of qualified equity investments. Beginning August  
3 1, 2020, the department shall accept applications for an additional allocation and  
4 certification of up to one hundred million dollars of qualified equity investments.

5 If a pending request cannot be fully certified due to these limits of qualified equity  
6 investment authority, the department shall certify the portion of qualified equity  
7 investment authority that may be certified unless the qualified community  
8 development entity elects to withdraw its request rather than receive partial  
9 certification.

10 \* \* \*

11 (7) Within thirty days of the applicant receiving certification of qualified  
12 equity investment authority, the qualified community development entity or any  
13 transferee under Paragraph (6) of this Subsection shall issue the qualified equity  
14 investment, receive cash in the amount of the certified amount, and, with respect to  
15 qualified equity investments issued prior to August 1, 2020, designate an amount  
16 equal to the certified amount as a federal qualified equity investment with the  
17 Community Development Financial Institutions Fund. The qualified community  
18 development entity or transferee under Paragraph (6) of this Subsection shall provide  
19 the department with evidence of the receipt of the cash investment and, with respect  
20 to qualified equity investments issued prior to August 1, 2020, designation of the  
21 qualified equity investment as a federal qualified equity investment within five  
22 business days after receipt. If the qualified community development entity or any  
23 transferee pursuant to Paragraph (6) of this Subsection does not receive the cash  
24 investment within thirty days following receipt of the certification notice, the  
25 certification shall lapse and the entity may not issue the qualified equity investment  
26 without reapplying to the department for certification. Lapsed certifications revert  
27 back to the department and shall be reissued, first, pro rata to other applicants whose  
28 qualified equity investment allocations were reduced pursuant to Paragraph (4) of  
29 this Subsection and, thereafter, in accordance with the application process.

1 F. The Department of Insurance shall recapture, from the entity that claimed  
2 the credit on a return, the tax credit allowed pursuant to this Section if ~~either~~ any of  
3 the following occur:

4 (1) Any amount of a federal tax credit available with respect to a qualified  
5 equity investment that is eligible for a credit under this Section is recaptured under  
6 Section 45D of the Internal Revenue Code of 1986, as amended. In such case, the  
7 Department of Insurance's recapture shall be proportionate to the federal recapture  
8 with respect to such qualified equity investment.

9 (2) For purposes of qualified equity investments issued prior to August 1,  
10 2020, the ~~The~~ issuer fails to invest an amount equal to one hundred percent of the  
11 purchase price of the qualified equity investment in qualified low-income  
12 community investments in Louisiana within twelve months of the issuance of the  
13 qualified equity investment.

14 (3) For purposes of qualified equity investments issued after August 1, 2020,  
15 the issuer fails to invest an amount equal to one hundred percent of the purchase  
16 price of the qualified equity investment in qualified low-income community  
17 investments in Louisiana within nine months of the issuance of the qualified equity  
18 investment with at least thirty percent of the purchase price invested in qualified low-  
19 income community investments in impact businesses.

20 (4) The issuer fails to ~~and maintain such level~~ the levels of investment set  
21 forth in Paragraphs (2) and (3) of this Subsection in qualified low-income  
22 community investments in Louisiana until the last credit allowance date for the  
23 qualified equity investment. For purposes of this Section, an investment shall be  
24 considered held by an issuer even if the investment has been sold or repaid if the  
25 issuer reinvests an amount equal to the capital returned to or recovered by the issuer  
26 from the original investment, exclusive of any profits realized, in another qualified  
27 low-income community investment within twelve months of the receipt of such  
28 capital. Periodic amounts received during a calendar year as repayment of principal  
29 on a loan that is a qualified low-income community investment shall be treated as

1 continuously invested in a qualified low-income community investment if the  
 2 amounts are reinvested in another qualified low-income community investment by  
 3 the end of the following calendar year as set forth in 26 CFR 1.45D-1. An issuer  
 4 shall not be required to reinvest capital returned from qualified low-income  
 5 community investments after the sixth anniversary of the issuance of the qualified  
 6 equity investment, the proceeds of which were used to make the qualified low-  
 7 income community investment, and the qualified low-income community investment  
 8 shall be considered held by the issuer through the seventh anniversary of the  
 9 qualified equity investment's issuance.

10 G. For purposes of qualified equity investments issued prior to August 1,  
 11 2020, enforcement ~~Enforcement~~ of the recapture provisions of Subsection F of this  
 12 Section shall be subject to a six-month cure period. For purposes of qualified equity  
 13 investments issued after August 1, 2020, enforcement of the recapture provisions of  
 14 Subsection F of this Section shall be subject to a three-month cure period. No  
 15 recapture shall occur until the qualified community development entity has been  
 16 given notice of noncompliance by the Department of Insurance and afforded six  
 17 months from the date of such notice to cure the noncompliance.

18 H.(1)

19 \* \* \*

20 (b) The qualified community development entity or any transferee pursuant  
 21 to Paragraph (E)(6) of this Section that issues a qualified equity investment certified  
 22 pursuant to this Section fails to meet the investment requirement under Paragraph  
 23 (F)(2) of this Section by the second credit allowance date of such benefit of the six-  
 24 month cure period established pursuant to Subsection G of this Section or Paragraph  
 25 (F)(3) of this Section by the nine-month anniversary of the initial credit allowance  
 26 date without the benefit of the three-month cure period established pursuant to  
 27 Subsection G of this Section.

28 \* \* \*

1 J.(1)(a) Qualified community development entities that issue qualified equity  
2 investments prior to August 1, 2020, shall submit a report to the department within  
3 the first five business days after the first or nine-month anniversary of the initial  
4 credit allowance date, as applicable, that provides documentation as to the  
5 investment of one hundred percent of the purchase price in qualified low-income  
6 community investments in qualified active low-income community businesses  
7 located in Louisiana. ~~Such~~ The report shall include:

8 (a)(i) A bank statement of ~~such~~ the qualified community development entity  
9 evidencing each qualified low-income community investment.

10 (b)(ii) Evidence that ~~such~~ the business was a qualified active low-income  
11 community business at the time of ~~such~~ the qualified low-income community  
12 investment.

13 (b) Qualified community development entities that issue qualified equity  
14 investments on or after August 1, 2020, shall submit a report to the department  
15 within the first five business days after the nine-month anniversary of the initial  
16 credit allowance date that provides documentation as to the investment of one  
17 hundred percent of the purchase price in qualified low-income community  
18 investments in qualified active low-income community businesses, including  
19 qualified low-income community investments in satisfaction of Paragraph (F)(3) of  
20 this Section, located in Louisiana. The report shall include all of the following:

21 (i) A bank statement of the qualified community development entity  
22 evidencing each qualified low-income community investment.

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

26 \* \* \*

27 Section 2. This Act shall become effective on July 1, 2020; if vetoed by the governor  
28 and subsequently approved by the legislature, this Act shall become effective on July 1,  
29 2020, or on the day following such approval by the legislature, whichever is later.

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 45 Original

2020 First Extraordinary Session

Duplessis

**Abstract:** Authorizes an additional allocation and certification of New Markets Tax Credits beginning August 1, 2020.

Present law establishes the La. New Markets Jobs Act to provide credits against the insurance premium tax. Eligibility for the credit is based on the investment of private capital in a low-income community business located in La.

Present law taxes insurers based on the amount of premiums, called a "premium tax".

Present law defines "qualified active low-income community business" (QALICB or business) as an entity which under federal law is defined as a business located in either a census tract with a poverty rate of at least 20% or a census tract with a median income that does not exceed 80% of the benchmark median income.

Proposed law retains present law but specifies that for qualified equity investments (QEI) issued after August 1, 2020, the QALICB shall be engaged in an industry assigned a North American Industry Classification System (NAICS) code of 11, 21, 23, 31, 32, 33, 42, 48, 49, 54, 56, 62, 72, or 81 and have a total number of employees that do not exceed the greater of either 250 or the number of employees set forth for the business's NAICS code sector as provided for in federal law.

Proposed law defines a "qualified community development entity" (QCDE or entity) as a privately managed investment entity that has received New Market Tax Credit allocation authority.

Proposed law retains present law but specifies that for purposes of QEIs issued after August 1, 2020, a QCDE excludes any entity that, together with its affiliates, has invested less than \$100M in La. QALICBs or other La. investments.

Present law defines the types of investments required for tax credit eligibility. Further requires that the investment have at least 100% of its cash purchase price issued by the issuer by the first anniversary of the initial credit allowance date.

Proposed law retains present law but specifies that for purposes of QEIs issued after August 1, 2020, that the investment have at least 100% of its cash purchase price within nine months of the first anniversary of the initial credit allowance date.

Present law defines a "qualified low-income community investment" as any capital or equity investment to any QALICB. The maximum amount of qualified low-income community investments made in a business, on a collective basis, that may be counted towards satisfaction of its qualified equity investment is \$10M for purposes of qualified equity investments issued prior to August 1, 2020.

Proposed law retains present law but specifies that for purposes of qualified low-income community investments issued after August 1, 2020, the maximum amount of qualified low-income community investments made in a business, on a collective basis, that may be counted towards satisfaction of its qualified equity investment is \$5M.

Present law provides that the amount of the tax credit shall be the product of multiplying the amount of the investment purchase price by the following percentages: 14% for the first and second credit allowance dates and 8.5% for the third and fourth credit allowance dates. The total of all such credits taken cannot exceed the taxpayer's state premium tax liability for the tax year for which the credit is claimed; however, unused credits may be carried forward for up to 10 years. Unclaimed tax credits are transferable to one or more transferees.

Proposed law provides that for purposes of qualified equity investments issued after August 1, 2020, applicable percentage shall mean 0% for the first three credit allowance dates and 15% for the fourth through seventh credit allowance dates.

Present law requires that investments eligible for the award of tax credits be certified by the Dept. of Revenue. If an ACDE applies for certification of investments, the department shall inform such entity within 30 days of application whether there is certification or a denial of an application. In the case of a denial, the entity shall have the right to provide additional information regarding the application within 15 days of the denial.

Present law authorizes the department to allocate and certify up to \$55,000,000 of QEI.

Proposed law authorizes, beginning August 1, 2020, the department to accept applications for an additional allocation and certification of up to \$100M of QEI. Further requires the applicant, on a collective basis with its affiliates, to include evidence in its application for tax credits evidence of investment of at least \$100M in.

Present law provides for conditions under which the Dept. of Insurance shall recapture tax credits which include a recapture of federal tax credits by the federal government, or a failure to invest an amount equal to 100% of the purchase price of the investment within 12 months of the issuance of the investment.

Proposed law retains present law but adds a requirement that, purposes of QEI issued after August 1, 2020, the Dept. of Insurance shall recapture a tax credit if the issuer fails to invest an amount equal to 100% of the purchase price of the QEI in qualified low-income community investments in La. within nine months of the issuance of the QEI with at least 30% of the purchase price invested in qualified low-income community investments in impact businesses.

Proposed law defines an "impact business" as located in a rural parish with a population of less than 100,000 people as of the July 1, 2019, census estimate by the U.S. Census Bureau or a QALICB that is owned 50% or more by women, minorities, or veterans.

Present law requires enforcement of the recapture provisions in present law to be subject to a six-month cure period.

Proposed law requires enforcement of the recapture provisions in present law for QEI issued after August 1, 2020, to be subject to a three-month cure period.

Present law requires reporting by a QCDE to the Dept. of Revenue within five days of the first anniversary of the initial credit allowance date, as well as annual reporting with regard to the number of employment positions created and retained as a result of the investments and the average annual salary of such positions.

Proposed law retains present law but specifies that the reporting for QEI made after August 1, 2020, shall be due within the first five business days after the nine-month anniversary of the initial credit allowance date. Further requires the report to provide documentation as to the investment of 100% of the purchase price in investments in QALICBs and a bank statement evidencing each qualified low-income community investment and evidence that the business was a QALICB or impact business at the time of the investment.

Present law requires the Dept. of Revenue to notify the Dept. of Insurance of the name of any insurance company allocated tax credits, as well as the amount of any credits.

Proposed law authorizes the department to promulgate rules to implement the provisions of proposed law.

Effective July 1, 2020.

(Amends R.S. 47:6016.1(B), (E)(5) and (7), (F), (G), (H)(1)(b), and (J)(1); Adds R.S. 47:6016.1(E)(1)(f))